

CHAPTER II

PERFORMANCE AUDIT

PORTS AND TRANSPORT DEPARTMENT

2 Functioning of Gujarat Maritime Board

Executive Summary

The State of Gujarat serves the vast north and central Indian hinterland. Pursuant to enactment of Gujarat Maritime Board Act, 1981, Gujarat Maritime Board (GMB) was established for administration, control and management of all minor ports in the State of Gujarat. The performance audit covers the period from 2008-09 to 2012-13 to get a reasonable assurance for Planning of Port related infrastructure by GoG/GMB, Financial management by GMB, Port related tariff fixation, Operational efficiency of GMB, Project implementation by GMB and Monitoring and control.

GoG declared the Port Policy (December 1995) and enacted Gujarat Infrastructure Development Act, 1999 for development of ports in the State through private participation and GMB. Though Port Policy discouraged development of captive jetties, GMB entered into nine captive jetty agreements. In nine captive jetty agreements (CJAs) where cost verification was completed, maintenance cost of ₹ 108.87 crore was incorrectly added to cost of jetty though it was neither claimed within ten years nor vouchers for actual expenditure were produced by captive jetty owners. Undue benefit was extended to Reliance Petroleum Limited (RPL) by non-recovery of full wharfage rate after the cost of captive jetty (₹ 362.01 crore) constructed by it was set-off. Further, erroneous calculation of set-off value and application of incorrect wharfage rate resulted in short recovery of ₹ 649.29 crore from RPL.

Similarly, Port Policy envisaged development of private jetties as interim arrangement till new ports became operational. However, 16 agreements for private jetties for period from five to twenty-five years were entered in to after declaration of Port Policy. Non-initiation of timely action against the private jetty holders as per terms of License Agreements and non-availability of Bank Guarantee towards minimum wharfage led to outstanding recovery of ₹ 8.25 crore.

GoG extended the port limit for four Single Buoy Moorings (SBMs) without signing the required supplementary concession agreement (SCA) to legally enable GoG to set-off the amount of concession availed by it at the time of transfer of Mundra port. The construction of a quay in Phase 1 of Mundra port was regularised without submission of revised Detailed Project Report (DPR) indicating non-monitoring of the port constructions. Incorrect application of full water front royalty rate instead of the escalated rate for coal and crude handled resulted in short recovery of ₹ 118.12 crore.

2.1 Introduction

The State of Gujarat has 1,600 km long coastline and hence the ports in the State play an important role in stimulating economic activity by serving the vast north and central Indian hinterland. The State had one major port at Kandla and 41 minor ports as on 31 March 2013. The Government of Gujarat (GoG) managed all the minor ports (port) until April 1982. Kandla Port is managed by Government of India (GoI) under the Major Port Trust Act, 1963. Gujarat Maritime Board Act, 1981 (GMB Act) was enacted on 23 June 1981 for administration, control and management of these ports. Accordingly, Gujarat Maritime Board (GMB) was established (April 1982) by GoG under the administrative control of the Ports and Transport (P&T) Department of GoG. It is responsible for the development of infrastructure and port related

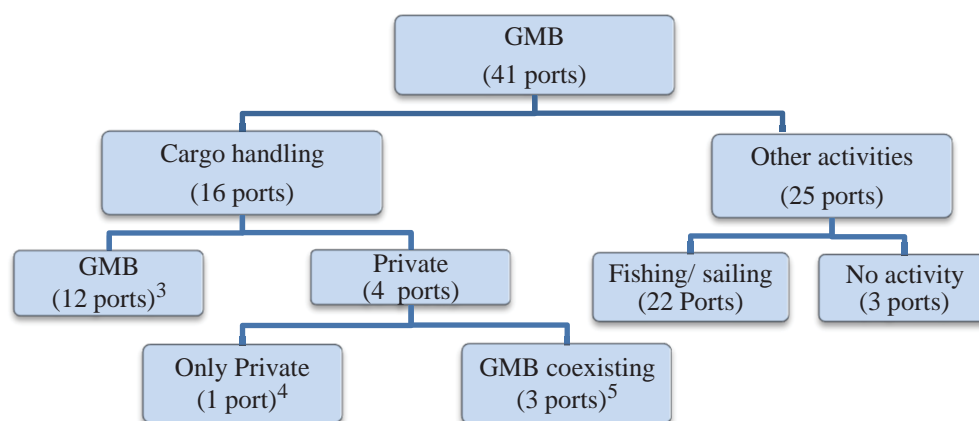


activities. For effective control and administration, the GMB has classified the 41 ports based on their geographical location into 11 Port Offices¹ (POs). GMB controls the activities of ports through its 11 POs and collects both the State charges and its own charges. The management of GMB is vested in a Board of Directors (BoD) consisting of twelve members including the Chairman, who are appointed by the State Government. The Vice Chairman and Chief Executive Officer is assisted in day-to-day functioning by 11 Head of the departments² (HoD) and 11 Port Officers. The activity wise classification of the 41 GMB ports is as given below:

¹ Alang, Bharuch, Bhavnagar, Jafraabad, Jamnagar, Mandvi, Navlakhi, Okha, Porbandar, Surat and Veraval.

² Chief Engineer (Civil), Financial Controller and Chief Accounts Officer, Superintending Engineer (SE) (Mechanical), SE (Dredging), Chief General Manager, Traffic Manager, General Manager (GM) (Human Resources), GM (Projects), Executive Engineer (Privatisation cell), Public Relations Officer and Deputy General Manager (Environment).

Activity wise classification of GMB Ports



For the purpose of the review, Audit reviewed the records available at Head office and selected 3 out of 11 POs based on revenue earned and traffic handled in the ports. The selected POs had five cargo handling ports and 14 fishing and sailing ports. All the captive jetty⁶ agreement, license agreement of private jetty⁷ and concession agreements in respect of private ports⁸ were reviewed in Audit. Besides the Schedule of Port Charges (SoPC) notified in 2003 and 2012 were reviewed in Audit. The Glossary of terms used in this performance audit has been explained in the **Appendix-II**.

The functioning of Gujarat Maritime Board was earlier reviewed and reported in the C&AG's Audit Report (Civil), Government of Gujarat for the year ended 31 March 2005. The discussion on Report was completed by the Public Accounts Committee. However, no recommendations were made (January 2014).

2.2 Audit objectives

Audit undertook this performance audit to get a reasonable assurance that:

- the planning done by the P&T Department and GMB was adequate for implementing the Port Policy and BOOT Principles;
- the grants were released as per agreed parameters and the expenditure was incurred in accordance with the GoG and GMB's approved budget and with due regard to financial norms and propriety;
- GMB had a system for regular revision of tariffs and timely recovery of the same;
- the ports of GMB were managed in an effective and efficient manner;

³ Bedi, Bhavnagar, Jakhau, Magdalla, Mandvi, Mul-Dwaraka, Navlakhi, Okha, Pipavav (Victor), Porbandar, Sikka and Veraval.

⁴ Hazira port.

⁵ Dahej, Mundra (Old Mundra Port and Gujarat Adani Port Limited) and Pipavav.

⁶ Jetties constructed by the industries for captive use in GMB ports.

⁷ GMB jetties given to private parties for commercial operation in GMB ports.

⁸ Minor ports in the State of Gujarat, which are handed over for a fixed period to private sector/ joint sector by entering into a concession agreement.

- the execution of works by GMB at its ports were done with due regard to efficiency, economy and effectiveness;
- the agreements entered into with private parties for development of captive jetties, private jetties and private ports were not prejudicial to the interest of GMB or GoG; and
- GMB had a proper and adequate monitoring mechanism in place.

2.3 Audit scope and Methodology

The performance audit covered the period from 2008-09 to 2012-13. An entry conference on 20 May 2013 was held with the Additional Chief Secretary of the P&T Department and the Vice Chairman and Chief Executive Officer (VC&CEO) of the GMB in which the scope, methodology and audit objectives were explained. Audit examined the records at Head Office and in the selected three POs⁹ of GMB. The audit findings was reported to the Management/ State Government and the replies received (November/ December 2013) have been incorporated in the relevant paragraphs. An exit conference was held on 5 December 2013 with the Additional Chief Secretary of the P&T Department and GMB Officials to discuss the draft audit findings. The views expressed by them have been considered while finalising this report.

2.4 Audit criteria

Audit adopted following audit criteria for assessing the performance of GMB.

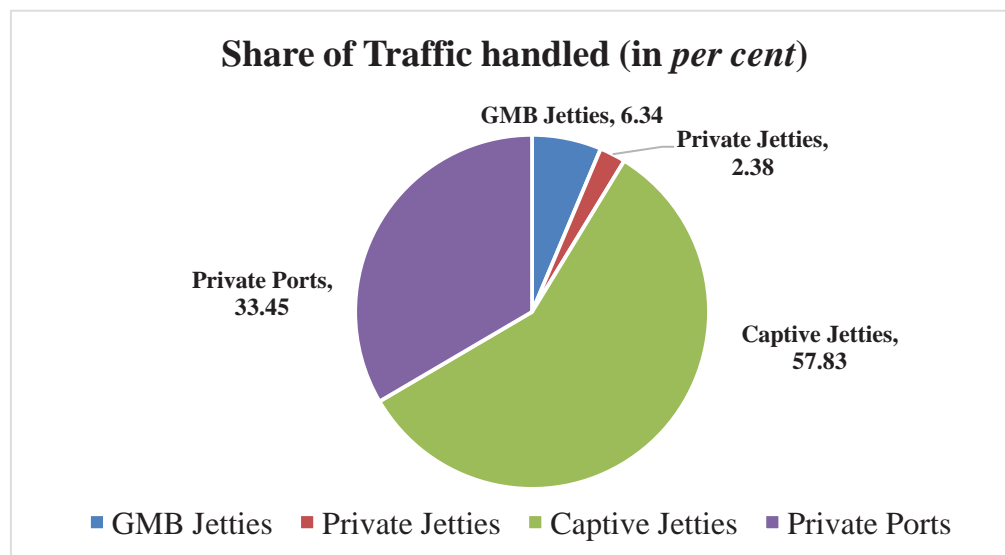
- Indian Ports Act, 1908, GMB Act, 1981, GoG's Port Policy (1995), GoG's BOOT Principles (1997) and Gujarat Infrastructure Development Act, 1999;
- GMB's annual plan, five year plan for development of ports;
- Agenda and minutes of the BoD of GMB and its subsidiary committees;
- Gujarat Budget Manual, Gujarat Financial Rules, Progress reports, correspondence and utilisation certificates in respect of grants, *etc.*;
- Schemes, guidelines, resolutions and instructions of both the GoG and the GoI;
- Schedule of Port Charges (SoPC) as prescribed, approved and updated; and
- Project reports submitted by the developers, agreements with private participants for the development of captive jetties and private ports and license agreements for private jetties.

⁹ Bharuch, Jamnagar and Magdalla.

Audit Planning

2.5 Planning

During 2008-09 to 2012-13, captive jetty, private jetty and private ports handled majority of the port traffic in the State (93.66 per cent) as may be seen below. The share of GMB jetty was very negligible in the total port traffic handled in the State (6.34 per cent).



The GoG/ GMB had initiated several measures for the privatisation of the port sector. The GoG declared the Port Policy¹⁰ in December 1995, issued BOOT (Build, Own, Operate and Transfer) policy in July 1997 and later enacted Gujarat Infrastructure Development Act (GID Act) in April 1999, for the development of ports in the State through GMB and with private sector participation. The P&T Department and GMB are responsible for preparing long-term and short-term plans for ensuring the timely implementation of the objectives of the Port Policy and regulating the port development activities as per the provisions of BOOT Principles and GID Act.

Audit observed that due to non-fixation of time limit in the Port Policy and BOOT Principles, the objectives of the Port Policy were not fully achieved in the manner envisaged as discussed in **paragraph 2.10**.

The Port Policy also envisaged formation of a Dredging Corporation of Gujarat Limited, a Port Regulatory Authority, laying down qualification criteria for pilots and granting licenses for deployment of pilots and appointment of pilotage agencies. Audit observed that these were not done as on 31 March 2013.

¹⁰ The Port Policy for development of port infrastructure in the State was declared by identifying the locations where ports were to be developed with private/ joint sector participation as per the BOOT principles.

2.6 Financial management

2.6.1 The GMB funds its operations from the charges it recovers from its port users as per the SoPC. GMB also receives 15 per cent of the State charges collected by it as administrative charges from the GoG viz., wharfage charges¹¹, Water Front Royalty¹² (WFR), etc., on its behalf. Further, GMB gets capital grant from the GoG for any special capital expenditure. The accounts up to 2011-12 have been audited while that of 2012-13 have been adopted by the BoD. The audit is under progress (January 2014). The financial position of GMB for the year 2008-09 to 2012-13 is as given in **Table 1**:

Table 1: Financial Position of GMB

(₹ in crore)

Particulars	2008-09	2009-10	2010-11	2011-12	2012-13
Assets					
Fixed Assets	534.95	588.72	594.22	679.00	699.06
Less: Depreciation	159.56	171.92	184.49	195.18	208.58
Net Fixed Assets	375.39	416.80	409.73	483.82	490.48
Work in progress	42.36	38.28	125.79	95.89	197.13
Investment	174.68	187.79	160.94	166.80	166.80
Current Assets	605.24	612.56	691.75	852.46	1,137.22
Total Assets	1,197.67	1,255.43	1,388.21	1,598.97	1,991.63
Liabilities					
Revenue reserves	740.86	794.02	815.30	939.91	1,187.36
Other funds	180.94	180.94	280.94	330.94	522.94
Current liabilities	275.87	280.47	291.97	328.12	281.33
Total Liabilities	1,197.67	1,255.43	1,388.21	1,598.97	1,991.63

(Source: Financial Statements of GMB)

The substantial increase in the current assets during 2011-12 and 2012-13 was due to increase in amount of advance tax paid, administrative charges receivable from the GoG and increase in the deposits of surplus funds. Revenue reserves had increased due to the increased profits but the fixed assets had not increased substantially indicating low major capital expenditure by GMB out of its own funds during the above period.

2.6.2 The working results of GMB for the period from 2008-09 to 2012-13 are as given in **Table 2**:

Table 2: Working results

(₹ in crore)

Particulars	2008-09	2009-10	2010-11	2011-12	2012-13
Income					
Operational income	109.89	139.68	137.70	181.04	254.52
Administrative charges received/ receivable from the GoG	41.80	51.53	54.18	68.02	86.65
Interest income	52.01	29.94	26.92	43.48	56.69
Other income	3.54	10.33	14.03	6.13	4.08
Total Income	207.24	231.48	232.83	298.67	401.94
Expenditure					
Operational expenditure	35.77	63.96	33.91	40.91	45.32
Expenditure on employees	55.19	49.95	61.66	67.96	76.52
Administrative expenses and other charges	16.79	16.61	68.46	17.69	19.66
Pension and gratuity contribution	74.08	47.80	47.52	47.50	12.99
Total Expenditure	181.83	178.32	211.55	174.06	154.49
Net revenue	25.41	53.16	21.28	124.61	247.45

(Source: Financial Statements of GMB)

¹¹ A charge levied by the GoG on cargo landed at/ shipped from GMB Ports (including GMB jetty, Private jetty and Captive jetty). This charge is also known as landing and shipping fees.

¹² Charges levied by the GoG for water front leased to the developer on cargo landed at/ shipped from Private Ports.

During 2012-13 the operational income of GMB increased due to upward revision of port related charges and increase in cargo handling; whereas in 2011- 12 the increase was due to increased cargo and increased income from ship recycling and ship building yards. The high administrative expense and other charges in 2010-11 were due to write-off of ₹ 45.81 crore due to reduction in the value of investment held in Gujarat Chemical Port Terminal Company Limited.

2.6.3 Annual Budgets

Up to 2007-08, GMB was recovering all charges under the GMB Act and depositing 30 per cent of it to the GoG. The GoG amended (30 September 2008) the GMB Act specifying that the State charges¹³ to be levied by the GoG were to be collected by the GMB on GoG's behalf and deposit the same in the GoG's account¹⁴ directly without taking the same in GMBs books of accounts. Other charges¹⁵ were to be levied and collected by GMB as its revenue. The GoG paid to GMB, 15 per cent of the total State charges recovered by it as administrative charges. To compensate for the reduced revenue, the GoG was providing separate capital grant for development expenditure of the ports to GMB.

2.6.4 Budget estimates of the GoG revenue

The detailed Budget estimates of the GoG revenue from State charges *vis-à-vis* actual revenue realised for review period is as given in **Table 3**:

Table 3: Budget of GoG Revenue

(₹ in crore)						
Year	2008-09	2009-10	2010-11	2011-12	2012-13	Total
Budget estimates of the GoG of State charges receivable	266.56*	500.00	540.00	540.00	728.00	2,574.56
State charges collected and deposited by GMB	278.67	343.53	361.21	453.49	577.63	2,014.53
Share of GMB at 15 per cent	41.80**	51.53	54.18	68.02	86.65	302.18
Actually received by GMB	41.80**	51.08	76.87	46.90	65.07	281.72

(Source: Budget documents of the GoG)

*The figure for 2008-09 is as per the revised estimates since the figures of budget estimates were not available being first year after amendment.

** This amount was retained by GMB as its administrative charges from the amount deposited in GoG.

From the above table it can be observed that against the budget estimates of ₹ 2,574.56 crore, the GMB deposited ₹ 2,014.53 crore towards State charges during 2008-09 to 2012-13. Against the actual total State charges deposited by GMB for the period, the GMB received ₹ 281.72 crore, which led to short receipt of ₹ 20.46 crore.

The Government stated (December 2013) that GMB had coordinated with the Department to get the shortfall released.

¹³ State Charges are wharfage charges, lighterage levy, license fees, water front royalty and water front fees.

¹⁴ Sub-head 1 to 7 of minor-head 103 and sub-head 1 of minor-head 800 of Sub-major Head 02 of Major Head 1051 for Ports and Light houses of the GoG.

¹⁵ Other charges are Port dues, Anchorage charges, Berth hire charges, Pilotage charges, Mooring Charges, Beaching fees, Demurrage charges, Detention charges, etc.

2.6.5 Budget provisions of the GoG capital grant

The GoG provided capital grant to GMB in the budget¹⁶ for the development of ports. The details in this regard are as given in **Table 4**:

Table 4: Capital Grant provided to GMB

(₹ in crore)				
Year	Budget provision	Received by GMB	Utilised by GMB	(Excess)/ Saving
1	2	3	4	3-4=5
2010-11	100.00	100.00	100.00	--
2011-12	50.00	50.00	50.00	--
2012-13	256.00	192.00	40.16	151.84
Total	406.00	342.00	190.16	151.84

(Source: Budget documents of the GoG)

During 2010-11, against the capital grant of ₹ 100 crore released for four projects¹⁷, GMB had spent ₹ 86.66 crore on these and had diverted the remaining ₹ 13.34 crore to other projects. The capital grant of ₹ 192 crore was released in 2012-13 for construction of Roll on-Roll off (Ro-Ro) ferry project. However, only ₹ 40.16 crore was utilised by GMB and the remaining ₹ 151.84 crore remained unutilised at the end of 2012-13.

The Management stated (November 2013) that the diversion of grant for other projects had been done under intimation to the Government. The same has been endorsed by the GoG (December 2013). However, the reply was not acceptable as no approval for diversion had been received from the GoG.

2.6.6 Outstanding recovery of lease rent from ABG Shipyard Limited

The GMB handed over possession of the water front of 900 metres and adjoining backup land of 2,68,215 square metre (sqm) in village Jageshwar in Bharuch District to ABG Shipyard Limited (ABG) in two Phases (May and July 2006) for 30 years lease with effect from 1 April 2006 for shipbuilding yard. The lease rent was to be paid in advance before the last day of previous year and was to be escalated by 10 *per cent* after every three years¹⁸.

Audit observed (May 2013) that GMB had neither recovered lease rent of ₹ 1.13 crore (₹ 96.78 lakh *plus* interest ₹ 16.21 lakh) for the year 2012-13 nor the lease rent of ₹ 96.78 lakh for the year 2013-14 (due on 1 April 2013) as on date (June 2013). Thus, ₹ 2.10 crore remained outstanding (June 2013) and was not paid in spite of issuance of reminders by GMB to ABG. GMB, however, did not take any action to suspend the operation of shipbuilding facility of ABG as per the terms of the agreement.

¹⁶ Under sub-head 01 of minor-head 800 of Sub-major Head 02 of Major Head 5051 for capital outlay on Ports and Light houses of the GoG.

¹⁷ Purchase of land at Dahej: Sanction (S)-₹ 45 crore (Expenditure (E)-₹ 59.62 crore); Purchase of land at Chhara: S-₹ 36 crore (E-₹ 0); Development of Ro-Ro ferry between Ghogha and Dahej: S-₹ 8 crore (E-₹ 6.64 crore); Development of Lakadiya bridge at Bhavnagar: S-₹ 11 crore (E-₹ 20.40 crore).

¹⁸ The lease rent was to be ₹ 27.50 *per sqm* (1 April 2006 till 31 March 2009), ₹ 30.25 *per sqm* (1 April 2009 till 31 March 2012) and ₹ 33.27 *per sqm* (1 April 2012 till 31 March 2015).

The Government stated (December 2013) that if the outstanding was not recovered within the time limit given by GMB, action as per the agreement would be taken. It was further stated that a part recovery of ₹ 25.60 lakh was made (December 2013) and the balance amount will be recovered as per terms of agreement.

2.6.7 Non-utilisation of funds due to delay in project implementation

Under the GoI scheme for ‘Assistance to States for Developing of Export Infrastructure and other Allied Activities (ASIDE) for development of Minor Fishing Harbour (MFH)’, GMB obtained (March 2008) assistance of ₹ 16.67 crore through the Fisheries Department of GoG for developing fishing harbour at Jafrabad Port. As stipulated in the administrative approval granted by the GoG for the project (April 2007), the environmental clearance for the project was to be obtained by the GMB before commencement of construction of MFH. Being a fishing harbour project, the GMB requested (September 2008) the Fisheries Department of the GoG to obtain the environmental clearance. However, GMB failed to follow up with the Fisheries Department leading to non-utilisation of ₹ 16.67 crore since March 2008. It led to non-realisation of the envisaged benefits of providing landing and shipping facility and fish drying platform area for “Bumla” fish to fishermen (September 2013).

In the exit conference (05 December 2013) it was stated that the possibility of utilising the fund or surrendering it to GOI would be assessed for taking necessary action. Government stated (December 2013) that it had taken proactive role and has followed up the matter with the Fisheries Department for expediting the environmental clearance. However, the reply was not acceptable as the administrative approval of GoG required GMB to obtain the environment clearance.

Tariff fixation

2.7 Schedule of Port Charges

The GMB is empowered to levy and revise various charges under Sections 20, 22A, 37, 38, 39 of GMB Act, 1981 and Sections 33 and 35 of the Indian Ports Act 1908. Such levy and revision are subject to approval of the GoG under Section 41 of GMB Act. GMB prepares and submits the tariff proposals to GoG for their approval. The GoG notifies the Schedule of Port Charges (SoPC) through notifications.

Under the Port Policy, Private ports are free to fix their own tariff except Water Front Royalty (WFR). Further, Port dues are notified under the Indian Ports Act, 1908, which prescribes the upper limit within which the private ports are free to fix the port charges. WFR is the only charge payable by the developer of the private port to GoG. The developer pays WFR at concessional rate to GoG till the Approved Capital Cost (ACC) for development of the private port is recovered. After the recovery of ACC, the developer is required to pay WFR at the full rates notified in SoPC.

In GMB ports, there are captive jetties, private jetties and GMB jetties. They have to pay various charges to GMB/ GoG as per the SoPC. However, the captive jetty holders are given rebates in wharfage charges till their capital cost are set-off. Also, private jetty operators are subject to lower wharfage charges.

The current SoPC was notified in 2012 and was made effective from 20 July 2012. Earlier the SoPCs were revised in 1989, 1994, 1998, and 2003. The major charges levied as per 2012 SoPC are given in **Table 5**:

Table 5: Classification of Major charges levied under 2012 SoPC

Sl. No.	Type of charges	Applicable sections	Levied by	Main income head	Basis for charge	Remarks
Board Charges under the provisions of Indian Ports Act, 1908						
1	Board charges	Section 33 and 35 of Indian Ports Act, 1908	GMB or person/ body authorised on its behalf	1) Port dues 2) Pilotage charges 3) Towsages	every entry for 30 days Each call Each call	Levied for entry into the port and specific service/ assistance for safe berthing
State and Board Charges under the provisions of GMB Act, 1981						
2	State charges (SC)	Section 20, 22A, 37, 38 and 39 of the GMB Act	GMB on behalf of the GoG	1) Wharfage charges ¹⁹ 2) Water front royalty ²⁰ 3) Lighterage levy 4) Other license fees 5) Water front fees	Per MT Per MT Per MT Per annum Per annum	Mainly cargo and permission related charges
3	Board charges (BC)	Section 37, 38 and 39 of the GMB Act	GMB	1) Berth hire charges 2) Mooring fees 3) Anchorage dues 4) Permit fees 5) Rent	Per day and <i>per</i> Gross Registered Tonnage (GRT) Per Day Per month	Mainly vessel and service related charges

(Source: Information collected from the Government Resolutions/ Notifications of the GoG)

During the review in Audit (June 2013) of SoPC of 2012, the following were noticed:

2.7.1 Revision of wharfage charges

Audit observed that the wharfage charges for private jetties were reduced²¹ by 11 to 67 *per cent* for different commodities and wharfage charges for GMB jetties were reduced by 8 to 69 *per cent* for which no justification was available on record. As a result, Audit could not do any impact analysis.

The Government stated (December 2013) that the reduction in wharfage rate was to maintain the position of GMB in the market. The reply was not acceptable as there was no justification available for reduction in rates even when the SoPC was revised after nine years and further no calculation existed to justify the reduction based on a peer comparison.

2.7.2 Non-levy of sand scooping charges on capital dredging

Sand scooping is an activity of excavating sediment from the sea bed. Since the port limits belong to GMB, the latter imposed sand scooping charges in

¹⁹ Wharfage charges are applicable to GMB jetty, Private Jetty and Captive jetty.

²⁰ Water Front Royalty is applicable to private ports.

²¹ Except 40 feet empty container whose rates were increased by 3.45 *per cent*.

respect of sand scooped out of sea or river anywhere within the port limits. In 2003 SoPC, an amount of ₹ three *per* tonne was leviable, however, in the 2012 SoPC, the sand scooping charges were made inapplicable in respect of capital dredging²². Consequently, GMB would not be able to recover the same from the upcoming private ports and captive jetties which are doing capital dredging and reclaiming the land and using it at a token rent during the lease period. The income of GMB from sand scooping charges as billed (May 2004 and June 2010) on capital dredging in respect of two developers at Magdalla Port was ₹ 9.67 crore. The amendment had deprived the GMB of similar revenue in future.

The Government stated (December 2013) that there was no revenue loss to GMB as sand scooping charges had been included in the Shipbuilding Policy 2010 and the rates for the same were under finalisation. The reply was not acceptable as the Shipbuilding Policy, 2010 refers to the SoPC for the rates. Further, even if the rates are decided under the Ship Building Policy, it will apply to capital dredging done for shipbuilding only and not for capital dredging done for other purposes.

2.7.3 Non-levy of detention charges

Detention charges were levied on the vessels arriving late at berth beyond the scheduled time, which served as a deterrent. In the 2003 SoPC, there was a provision for levying of detention charges, which were removed in the 2012 SoPC without any justification.

The Government stated (December 2013) that the vessels were now guided by the vessel traffic management system (VTMS) and thus, there were few chances of delay in berthing. The reply was not acceptable as VTMS is only a navigational aid for traffic management and had no connection with levy of detention charges at berth.

The GoG may consider levy of detention charges to ensure berthing discipline.

2.7.4 Reduced water front royalty rates for upcoming ports

Water Front Royalty (WFR) was payable at the rates prescribed in 2003 SoPC till 19 July 2012. From 20 July 2012 (when the 2012 SoPC became applicable), WFR applicable for new upcoming ports was notified separately. Audit observed (June 2013) that, the WFR prescribed in 2012 SoPC for the new upcoming ports were below the WFR prescribed in 2003 SoPC except for Liquefied Natural Gas (LNG) cargo. The applicability of WFR for different categories was as under:

- For new upcoming ports – 2012 SoPC
- For existing ports- 2003 SoPC at escalated rates
- For ports where Letter of Indents (LoI) has been issued but the port is not yet operational – 2003 SoPC at base rate from the date of commencement

²² It is different from maintenance dredging. It involves channel deepening and widening to accommodate larger vessels, with the aim of achieving larger economies of scale.

of cargo operation and the same will be escalated by 20 per cent after every three years.

Comparative rates of the WFR are given in Table 6:

Table 6: Comparative Water Front Royalty rates

(Amount in ₹)

Cargo	Unit (per)	Rate as per 2012 SoPC	Base rate of 2003 SoPC	Rate of 2003 SoPC escalated till July 2012
Solid	MT	25	30	62.20
Petrol, Oil and Lubricants (POL)	MT	48	60	124.40
Liquid other than POL	MT	32		
Crude	MT	16	36	74.65
LNG	MT	120	60	103.68
Container	TEU ²³	397	600	1,036.80
Cars	car	92	Rate of solid cargo was applied on per MT basis	

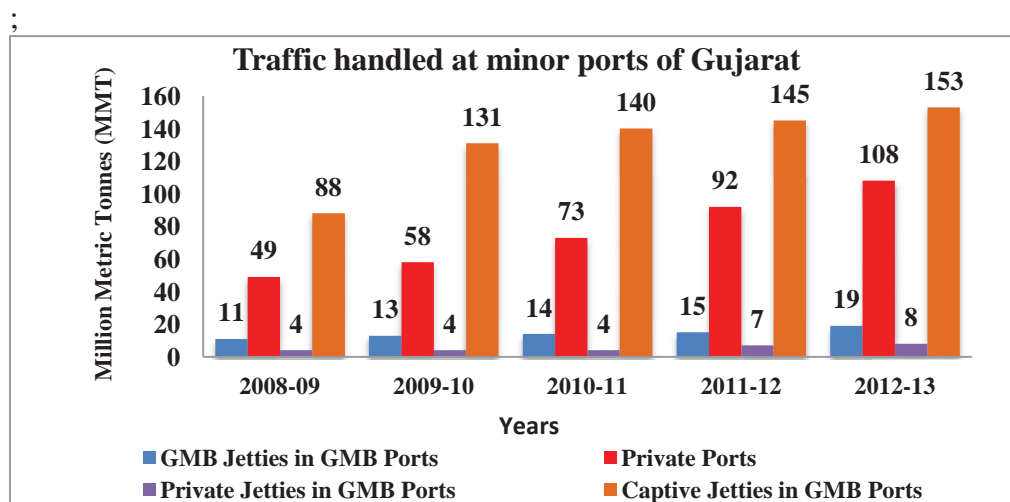
(Source: Information provided in the SoPC)

Thus, the revised WFR was made more favourable for the upcoming ports, which was not justified on record.

The Government stated (December 2013) that new ports were not entitled to set-off on the cost incurred by them while all existing ports were entitled to set-off. Hence, the royalty for new upcoming ports was kept on the lower side. The reply was not acceptable as the upcoming ports where LoIs have been issued are subject to the base rate of 2003 SoPC, which also is higher than the new rates of 2012 SoPC and in these ports, cost set-off was not available.

2.8 Operational efficiency of GMB ports

The details of traffic handled by various Jetties in GMB ports and the private ports during the period 2008-09 to 2012-13 is shown in the graph below:



It can be seen from the above that the private ports and captive jetties handled majority of the port traffic of the State. The traffic handled by GMB jetties increased from 11 MMT to 19 MMT during the period 2008-13 but was only 6.60 per cent of total traffic handled in 2012-13. The details of various types

²³ Twenty feet equivalent units.

of jetties in cargo handling minor ports of Gujarat are given in the **Appendix-III**.

Audit reviewed the operation of 22 GMB jetties in eight cargo handling GMB ports based on records available at the head office of GMB. Of the remaining four ports, one port had two GMB jetties, which were not included in the analysis as the handling capacity of jetties was not available. The other three ports had only private and captive jetties. The efficiency of the GMB jetties during the review period is given in **Table 7**:

Table 7: Utilisation efficiency of GMB Jetties

Sl. No.	Name of the Port	Number of Jetties	Cargo handling Capacity	Actual cargo handled	Utilisation (per cent)
			Million Metric Tonne (MMT)		
1	Magdalla	2	7.35	16.08	218.70
2	Bedi	3	9.55	6.99	73.19
3	Porbandar	2	18.10	5.48	30.28
4	Navlakhi	1	21.15	11.07	52.34
5	Bhavnagar	2	9.15	2.50	27.32
6	Veraval	5	10.85	0.28	2.58
7	Okha	6	19.80	7.32	36.97
8	Mandvi	1	1.60	0.65	40.63
Total		22	97.55	50.37²⁴	51.64

(Source: Information provided in the final report prepared for proposing the 2012 SoPC for cargo handling capacity and MIS of GMB for actual cargo handled)

Audit observed that the GMB operated jetties handled cargo of 50.37 MMT during review period, which was 51.64 per cent of its total cargo handling capacity during that period. The utilisation of GMB jetties had huge variation and it varied from 2.58 per cent at Veraval to 218.70 per cent at Magdalla. The commercial utilisation at Porbandar and Veraval was low due to heavy utilisation by the Indian Navy and Fishermen Boats. The percentage utilisation at the ports of Magdalla, Bedi and Navlakhi were above the average utilisation percentage whereas all other ports showed utilisation below the average.

The Government stated (December 2013) that reasons for variation in operational efficiency was due to locational advantage, connectivity of the port and industries around the port.

Project implementation by GMB

GMB did not develop any new port during the review period but had been incurring expenditure in providing infrastructure facilities at its ports. Audit reviewed 48 out of 214 contracts awarded by the GMB during 2008-09 to 2012-13 relating to civil works, mechanical and other miscellaneous items. Major Audit observations relating to the review of these contracts are discussed below:

²⁴ The above does not include traffic handled at the Ship recycling yard.

2.9 Not invoking of contract provisions against the defaulting contractors

GMB entered into agreements for purchase of vessels. The provisions of the agreements entered into with the contractors for the purchase empowered the GMB to cancel the contract and get back the amount paid with interest at 14 *per cent* in case the contractors default in supply. Further, GMB could purchase the vessel at the risk and cost of the defaulting contractors. Audit observed that in the following instances GMB did not invoke the above provisions against the defaulting contractors.

2.9.1 Purchase of tug

GMB entered (October 2003) into an agreement with NMPL²⁵ for purchase of a tug costing ₹ 1.59 crore with stipulated delivery period of 14 months (19 December 2004). The tug was to be used for inspecting the ships arriving at its Alang and Sosiya Recycling Yard (ASRY) for demolition. Even after lapse of more than nine years from the scheduled delivery date, the tug was not delivered (September 2013). This led to blocking of ₹ 1.14 crore and consequential interest loss of ₹ 96.86 lakh at the rate of 14 *per cent* from January 2005 to July 2013.

The Government stated (December 2013) that filing a civil suit against NMPL would have involved considerable time and cost, hence, it was decided to pursue with the party for delivery and resultantly the tug was likely to be delivered in the current year. The reply was not acceptable as the tug service could not be provided since December 2004 and had the tug service been required, the matter would have been pursued eight years ago. The inaction led to blocking up of funds and potential revenue loss.

2.9.2 Purchase of hovercraft

GMB entered (17 November 2008) into an agreement with M/s. SHM Ship care (SHM) for purchase of a hovercraft²⁶ at a cost of ₹ 6.30 crore for operating passengers services between the two tourist destinations *viz.*, Madhavpur and Porbandar. The same was to be delivered by July 2009. Frequent extension of time was sought by SHM and GMB extended delivery period up to January 2011. GMB released payments of ₹ 3.89 crore in instalments after retaining ₹ 52 lakh towards Security Deposit, Liquidated Damages and Retention money up to July 2012. However, the delivery of hovercraft was awaited (June 2013). The non-delivery of hovercraft for a period of 57 months since the placement of order led to blocking the fund of ₹ 3.89 crore and consequential interest loss of ₹ 1.14 crore at the rate of 14 *per cent* from June 2010 to July 2013.

Audit observed (June 2013) that the GMB did not invoke the provisions of the agreement against the defaulting contractor and consequently blocked funds of ₹ 3.89 crore without achieving the objective for which the purchase was

²⁵ Neptune Marine Private Limited, Mumbai.

²⁶ Hovercraft is a vehicle or craft that travels over land or water on a cushion of air provided by a downward blast.

proposed. The Government stated (December 2013) that GMB with the apprehension to complete the work had not terminated the agreement and that the hovercraft was expected to be delivered soon.

The Government may fix an exact date for delivery of hovercraft to GMB so that the matter is not further delayed.

2.9.3 Additional financial burden due to incorrect estimation of cost of work

The Navy and GMB, entered (1 May 2006) into an Expression of Interest for construction of a 200 metre dual purpose jetty adjacent to the existing 150 metre GMB jetty for use of naval and commercial vessels with an agreement to share all expenses and future escalations equally. The agreement entered (January 2011) between GMB and Navy estimated the cost of construction as ₹ 50.28 crore and froze the Navy's share at ₹ 25.14 crore.

Audit observed (June 2013) that GMB had already called for the bids for the above work on 11 August 2010 and the lowest quoted cost for construction work was available with GMB in December 2010 before it entered into the agreement with Navy in January 2011. Had the quoted cost of lowest bidder and other related works totalling to ₹ 67.37 crore been considered, then the Navy's share would have been ₹ 33.69 crore. The non-adoption of the correct rate and erroneous calculation of sharable total estimated cost led to incurring of avoidable expenditure of ₹ 8.55 crore by GMB.

The Government stated (December 2013) that GMB had decided to freeze the cost for Indian Navy as GMB would be able to use the jetty for commercial cargo when it was not being used by naval vessels. The reply was not acceptable as the MOU envisaged sharing of all costs and escalations and no freezing of costs was envisaged.

2.9.4 Injudicious rejection of tender—Avoidable expenditure

GMB decided (21 October 2003) to replace the two Dumb Hopper Barges²⁷ (DHBs), in the Dredgers used at Bedi and Mandvi Ports, at an estimated total cost of ₹ 7.37 crore. The tenders were invited (16 September 2004) and the lowest bidder quoted ₹ 7.42 crore for two Self Propelled Hopper Barges (Barges). GMB rejected (July 2006) the offer on the plea that the bidder did not agree to reduce the quoted cost.

The GMB re-invited (September 2006) the tender and the lowest bidder quoted ₹ 8.34 crore for two Barges. As no Tender Approval Committee (TAC) meeting of GMB was held between October 2006 and April 2008, the tenders were not finalised within the validity period of 120 days from the date of opening of bid *i.e.*, 6 August 2007. The tender was invited for a third time and the work was awarded (24 August 2012) at ₹ 12.70 crore (each Barge at ₹ 6.35 crore) with the stipulated delivery period of 14 months.

²⁷ A Dredger has two Hopper Barges, which has to be towed by other Boat to carry the mud/material recovered in the dredging process for dumping it into mid sea.

The rejection of the initial offer based on the reason adduced, which was flimsy and delay in holding the TAC meeting for the second tender invited led to an avoidable expenditure of ₹ 5.28 crore (₹ 12.70 crore less ₹ 7.42 crore).

The Government stated (December 2013) that the initial offer was rejected as it was above the amount put to tender and that the final offer was very economical. The delay of eight years in placing an order for the two barges led to a loss of ₹ 5.28 crore to GMB, which proves that the whole process was not economical.

2.10 Development in the port sector through Private Participation

In 1991, Government of India (GoI) initiated various economic, trade and industrial reforms through the policy of liberalisation. As a first step in the process of liberalisation in port sector, GMB, with the approval of GoG had entered (7 February 1992) into a Memorandum of Understanding (MoU) with Gujarat Pipavav Port Limited (GPPL) (a Joint Sector Company) for the development of Pipavav Port. In addition, the GoG notified (20 December 1993) concessional wharfage rate for captive jetty²⁸ constructed by the industry at their own cost.

The GoG declared (December 1995) a Port Policy to expedite the creation of port facilities with the participation of private enterprises in the development of port infrastructure. The main strategies of the Port Policy were:

- Private investment in the existing minor ports through privatisation of incomplete wharf, jetty, quay of GMB and private construction of new wharfs and jetties (hereinafter called private jetty) in selected sites for a period of five years till new ports become operational;
- Development of 10 new port sites on Build, Operate, Maintain and Transfer (BOMT) basis; of which four²⁹ were to be developed under joint sector and six³⁰ through exclusive investment by private sector. In respect of ports developed by private sector (hereafter called private ports)³¹ only WFR will be decided in the SoPC approved by GoG whereas the port developer was free to charge any other service charges;
- To make the new port projects as mentioned above financially viable, all industrial units would be encouraged to make use of new port facilities being set-up and permission for captive jetties would be given only in exceptional cases;
- Privatisation of services was to be done in specific areas like lighterage, dredging, pilotage, tug towing service, etc.;

²⁸ Jetties constructed by the licensee or industries at their own cost for their captive use wherein GMB/GoG grants them rebates in the wharfage charges till their capital cost is set-off.

²⁹ Rozi (Bedi), Positra, Dahej and Mundra.

³⁰ Simar, Mithiwirdi, Dholera, Hazira, Vansi-Borsi and Maroli.

³¹ Private ports are ports where declared port limits are handed over to a private party for development under concession agreement for a specified period, which enables the concessionaire to recover its cost of development as a set-off from the water front royalty payable to GoG.

- Development of port based industrial estates and infrastructure development for efficient handling of cargo movement; and
- Development of coastal shipping like Ro-Ro service and hovercraft services.

To provide guidelines for investment analysis and capital recovery for the private port projects under the Port Policy, the GoG declared (29 July 1997) the Build, Own, Operate and Transfer (BOOT) Principles.

Prior to declaration of Port Policy (December 1995) the GMB had already entered into 15 captive Jetty Agreements (CJAs). Audit observed (June 2013) that though the Port Policy discouraged the development of captive jetties, GMB had entered into nine more CJAs after declaration of Port Policy. Further, though Port Policy envisaged private jetties as an interim arrangement till new ports became operational, it was observed that 16 agreements for private jetties were entered for periods ranging from five to 25 years between May 1995 and April 2011. It was also noticed that as against the 10 ports to be developed with joint/ private sector under the Port Policy, three ports³² were developed up to March 2013. It was further observed that the Port Policy did not envisage any time limit for development of private ports.

In addition to the above, a Port at Pipavav was envisaged in 1992 for development as a joint sector port. Subsequently, State Government disinvested its share in Pipavav Port in June 1998 and it became a private port.

Audit reviewed the captive jetty agreements, license agreements for private jetties and the concession agreements for development of private ports. The observations relating to these are discussed hereunder.

2.11 Captive jetties for industries

Captive jetties/ wharfs are constructed by the licensee/ industry at their own cost for their captive use and are granted rebates in wharfage charges by GMB/ GoG till their capital cost is set-off. In December 1993, the GoG for the first time declared concessional wharfage charges for captive jetties till the cost of construction was set-off or till 25 years whichever was earlier. In continuation thereof, GoG prescribed (May 1999) the terms and conditions related to CJAs, which were adopted by GMB in 21 CJAs that it had entered into till April 2011. As discussed earlier, the Port Policy envisaged that the permission for new captive jetties would be given in exceptional cases only. GMB entered into nine CJAs after 1995. As per the terms of CJA, the GMB allowed rebate on the wharfage charges declared in the SoPC for setting off the capital cost of construction (CCoC) of the licensee. The CCoC consisted of the following components:

- the actual cost of construction (including pre-operative expenses);

³² Dahej, Mundra and Hazira.

- interest on actual cost of construction at the rate of 12 *per cent per annum* for the construction period;
- maintenance cost at the flat rate of five *per cent per annum* on actual construction cost for a period of five years (maximum 25 *per cent*) to be claimed within first 10 years from the date of issue of completion certificate;

The above components of CCoC other than interest were to be computed based on books of accounts of the licensee.

A procedure had been framed for verification and certification of the CCoC after completion of the construction and submission of the cost details by the licensee. A technical team of the GMB verified the construction with approved drawings and submitted its report to the Captive Jetty Cost Verification Committee (CJCVC). Based on the technical report, a Chartered Accountant (CA) appointed by the GMB verified the actual cost of construction with vouchers, books of accounts of licensee, and submitted a consolidated report to CJCVC of the acceptable actual cost of construction.

The CJCVC after getting the approval of the licensee for the finalised cost, added the interest during construction at the prescribed rates and forwarded this verified cost to the GMB. The CCoC could be increased by maintenance cost to the extent of 25 *per cent* of actual cost of construction *i.e.*, maximum five *per cent* of the actual cost for any five years; if the licensee claimed maintenance cost with vouchers within ten years of construction and the same was approved by the CJCVC. In cases where finalisation of CCoC was delayed, CJCVC added the maintenance cost while finalising the cost at their level itself.

As per the CJA, the following rebates were allowed from the wharfage charges declared in the SoPC until the CCoC was set-off:

- Rebate of 80 *per cent* on the wharfage charges specified in the SoPC.
- Additional rebate of 25 *per cent* for transportation between two ports of GMB or 15 *per cent* for transportation to and from any Indian port.
- If captive Single Buoy Mooring³³ (SBM) facilities were constructed by the captive jetty owner for the movement of liquid cargo, additional concession of 50 *per cent* of the wharfage rate for cargo specified in SoPC.

The above rebate and concession allowed as per the terms and conditions prescribed in May 1999 were discontinued in January 2010. This discontinuance was to be effective for new captive jetties commissioned after 31 March 2012. The GMB entered into three CJAs after the rebate and concession were discontinued. The observations relating to 24 CJAs are discussed below:

³³ Single Buoy Mooring is an equipment that has been put in the sea for handling the liquid/ gas cargo from large vessels that require more draft for berthing.

2.11.1 Delay in captive jetty cost verification

The status of cost verification of CJAs as on 31 March 2013, wherein cost set-off was available is given in **Table 8**:

Table 8: Cost verification status of Captive Jetties

No. of CJAs	Status of cost verification work (as on 31 March 2013)
9	GMB had approved the capital cost of construction.
3	Technical verification was in progress.
6	Cost verification was in progress.
3	Captive jetty owners had not furnished the required information.

The details of the CJAs are given in **Appendix-IV**. In eight CJAs³⁴ out of 12 CJAs where the CCoC had not been finalised, more than 10 years had lapsed since operation of jetties by the licensees. Audit is of the view that this may lead to inadvertent grant of concession in wharfage charges to licensee over and above the CCoC.

The Government stated (December 2013) that the delay occurred because the cost verification was a very detailed process, which was carried out in house along with the routine work of GMB. However, the delay had not put GMB to any loss. The reply was not acceptable as any technical and cost verification to be effective and meaningful should be done within a reasonable period and the verification may thus be completed at the earliest.

2.11.2 Approval of maintenance cost without verification of vouchers

As per clause 24 of the CJAs, the licensee was entitled to claim maintenance cost at the flat rate of five *per cent per annum* on the actual cost of construction for a maximum period of five years. For this, the licensee had to submit authenticated details of actual maintenance cost duly supported by books of accounts/ vouchers for approval of the CJCVC within 10 years of the completion of the jetty. Even where the maintenance cost was considered by CJCVC while finalising the CCoC at the initial stage, it had to be claimed by the licensee within ten years from the date of completion of jetty and supported by the vouchers.

Audit observed that in the nine CJAs wherein CCoC had been finalised, total maintenance cost of ₹ 108.87 crore had been added at a flat rate of 25 *per cent* (five *per cent* × five years) on the actual cost of construction *plus* interest by the CJCVC while finalising the CCoC. The maintenance cost should not have been included in the CCoC of the above nine CJAs as they had neither been claimed by the licensee within 10 years nor vouchers been submitted for the same. Thus, GMB had allowed an undue benefit of ₹ 108.87 crore to these captive jetty owners which needs to be recovered.

The Government stated (December 2013) that as per the CJA, eligible cost shall include maintenance cost at a flat rate of five *per cent per annum* for a period of five years. As per a legal opinion taken by them in this regard, in

³⁴ L&T Ro-Ro, Essar LPG, RIL- Ethylene, RIL- EDC cum Ro-Ro and RIL- Second gas jetty, RPTL 4 Tanker berths, RIL-SBM 1 and 2 and Sanghi Industries Limited.

view of the word flat rate mentioned in the CJA, evidence of maintenance cost will not have any relevance. The reply was not acceptable as the word flat rate cannot be read in isolation but has to be read with other provisions in the same clause wherein it is clearly mentioned that maintenance expenditure has to be claimed by the captive jetty owner and supported by books of accounts within 10 years of date of completion of jetty.

2.11.3 Additional capital cost allowed to Reliance Petroleum Limited

GMB entered (28 July 1999) into a CJA with Reliance Petroleum Limited (RPL) for construction and use of two SBMs for its captive consumption at Port Sikka. The construction of SBMs were completed and loading/ unloading of petroleum cargo commenced from 10 September 1999. After requests by GMB/ GoG, RPL submitted (20 July 2005) the detailed records of the cost of ₹ 313.59 crore. However, it did not include voucher details of ₹ 43.47 crore.

As RPL had already availed rebate of ₹ 311.80 crore until June 2009, GMB directed (27 July 2009) its Chartered Accountant to expedite the cost finalisation process and its submission to CJCVC. Meanwhile, RPL lodged another claim (10 June 2010) for inclusion of a further amount of ₹ 138.92 crore in the CCoC being ₹ 48.42 crore towards interest and ₹ 90.50 crore towards maintenance cost. The capital cost claimed by RPL thereby increased to ₹ 452.51 crore. As the cost finalisation was still pending (19 March 2012), GMB commenced recovery of wharfage charges at the rate of ₹ 18 *per* MT from RPL as it had availed rebate of ₹ 437.88 crore until February 2012. The reports of the Chartered Accountant and the CJCVC were pending (July 2013).

Audit observed that:

- GMB has not finalised the cost even after eight years (June 2013) though cost break-up had been submitted by RPL in July 2005.
- Since the maintenance cost was claimed by RPL after expiry of 10 years from 5 October 1999, the same was not allowed as per CJA.
- The recovery of full wharfage charges of ₹ 36 *per* MT should have started when aggregate rebate had become equal to the CCoC of ₹ 362.01 crore *i.e.*, actual cost of construction of ₹ 313.59 crore *plus* interest of ₹ 48.42 crore.
- As discussed in the **Paragraph 2.11**, under the CJA, a rebate of 50 *per cent* of the wharfage charges was allowed for SBM. Also, a further rebate of 80 *per cent* on the balance wharfage was allowed.
- For the purpose of set-off, aggregate of both the rebates should have been considered. However, GMB considered only the 80 *per cent* rebate for set-off against the CCoC as depicted in the **Table 9**:

Table 9: Rebate considered against CCoC for RPL

Sl. No.	Particulars	10 September 1999 to 18 March 2003	19 March 2003 to 19 July 2012	20 July 2012 to till Date
1	Applicable SoPC (Year of Notification)	1998	2003	From 20 July 2012 GMB was charging the wharfage charges of ₹ 18 per MT which was the rate as per the 2012 SoPC where set-off has been completed.
2	Wharfage Rate as per SoPC (₹ per MT)	12	36	
3	50 per cent rebate (₹ per MT)	6	18	
4	80 per cent rebate (₹ per MT) (80 per cent of 2 -3 above)	4.80	14.40	
5	Wharfage rate actually paid {2-(3+4)}	1.20	3.60	
6	Set-off as worked out by Audit (₹ per MT) (2-5)	10.80	32.40	
7	Set-off as per GMB (₹ per MT) (4)	4.80	14.40	
8	Wharfage rate after cost is set-off (₹ per MT)	12	36	

- GMB instead of recovering full wharfage rate of ₹ 36 per MT from 29 January 2006 when allowable cost of construction of ₹ 362.01 crore was set-off, continued to allow set-off for ₹ 440.24 crore until 19 March 2012. It then started recovering wharfage of ₹ 18 per MT instead of ₹ 36 per MT as it continued to give the 50 per cent rebate for SBMs even after capital cost recovery. The details of erroneous calculation made by GMB in determining the full wharfage and the set-off level are given in Table 10:

Table 10: Erroneous calculation in determining full wharfage

Sl. No.	Particulars	Cargo handled in MMT	Amount	
			₹ per MT	(₹ in crore)
Set-off calculated by GMB				
1	10 September 1999 to 18 March 2003	103.397	4.80	49.63
2	19 March 2003 to 19 March 2012	271.257	14.40	390.61
	Total set-off allowed	374.654		440.24
Set-off worked out in Audit				
3	10 September 1999 to 18 March 2003	103.397	10.80	111.67
4	19 March 2003 to 29 January 2006	77.265	32.40	250.34
	Total Set-off to be allowed	180.662		362.01
Short recovery of Wharfage as worked out in Audit				
5	30 January 2006 to 19 March 2012	193.992	32.40 (₹ 36 less ₹ 3.60)	628.53
6	20 March 2012 to 20 July 2012	11.535	18 (₹ 36 less ₹ 18)	20.76
	Total short recovery	205.527		649.29

Thus, the above led to short recovery of wharfage charges of ₹ 649.29 crore and undue favour to RPL.

The Government stated (December 2013) that set-off had been calculated based on the leviable wharfage rate and not based on the gross wharfage rate. It was further stated that since the capital cost of RIL had not been finalised, the SBM rebate of 50 per cent had been continued even after the 80 per cent rebate had been stopped. The reply was not acceptable as the SoPC prescribed only one wharfage rate and did not differentiate between leviable and gross wharfage rates. It may be further added that the rebates of 50 per cent and

80 per cent, as per the CJA, were for setting off the capital cost incurred by the captive jetty owner and therefore the set-off could not be restricted to only one of them. Consequently, none of the rebates could continue after the cost had been set-off just because the cost finalisation was pending. The amount of ₹ 649.29 crore needs to be recovered.

2.12 Private Jetty Agreements

As per the Port Policy, it was decided to invite private investment in existing minor ports till new private ports became operational. As per general guidelines for privatisation, either the incomplete works of wharf/ jetty/ quay of GMB were to be privatised or the private entrepreneurs were to be allowed to construct new wharves/ jetties at selected sites. The entrepreneurs had to assure a minimum cargo handling during the license period granted by the GMB. The SoPC prescribed reduced wharfage rates for private jetties though other charges were payable at normal rates. The privatisation of these facilities was to be done by inviting open bids.

GMB entered into 16 License Agreements (LAs) between May 1995 and December 2011 for operation of private jetties as detailed in **Appendix-V**. Audit observed that out of the 16 LAs, in respect of seven LAs (Sl. No.1 to 5 and 7 and 8) no tenders were invited. They were entered into based on MoUs with GoG or offers received from private parties, which was in violation of Port Policy. Thus, the opportunity of competitive bidding was lost.

The observations in respect of these are discussed below:

2.12.1 Non-stipulation of minimum wharfage

Out of the 16 LAs, minimum cargo handling was stipulated in 15 LAs, but in the LA with Jaydeep Associates Limited (JAL) was neither minimum cargo nor minimum wharfage stipulated. Audit observed (June 2013) that JAL did not handle any cargo during 2009-10 and GMB in the absence of any provision in the agreement GMB could not recover any penalty for the same.

In five LAs referred at Sl. No. 1,3,4,7 and 10 of the **Appendix-V**, minimum wharfage was also stipulated over and above minimum cargo. However, in 10 LAs only minimum cargo was stipulated.

The Government stated (December 2013) that JAL was allotted a damaged wharf on 'as is where is basis' and minimum cargo was not stipulated. Further, it was stated that GMB has been earning wharfage on it. The reply was not acceptable as the Port Policy envisaged incurring of capital expenditure by private parties either for new or incomplete jetties and the minimum cargo was stipulated in all other LAs. Therefore, the waiver of stipulating minimum cargo in the LA with JAL was not correct.

2.12.2 Inclusion of defective minimum wharfage clause

GMB entered (1 December 2005) into LA with Welspun Gujarat Stahl Rohren Limited (WGSL) for use of the existing GMB wharf at Dahej Port for

handling iron pipes and plates. In the LA, WGS� assured handling a minimum cargo quantity (MCQ) of one lakh metric ton (MT) *per annum* without any cargo type specification. If during a year, there was a shortfall in the quantity of cargo handled, the minimum wharfage would be recovered for the shortfall quantity based on the average wharfage rate of the commodities handled during the respective financial year or part thereof. However, if no cargo was handled, the minimum wharfage payable will be calculated on the MCQ based on the wharfage rate applicable to iron pipes and plates of ₹ 58 *per* MT. A minimum wharfage amount independent of quantity was not specified in the LA.

WGS� consigned (10 April 2009) seven MT of Salt from Gogha (Bhavnagar) Port to itself at Dahej Port. The wharfage rate for Salt (after considering coastal rebate) was ₹ 5.25 *per* MT. As there was, a shortage of 99,993 MTs against the MCQ stipulated during 2009-10, GMB recovered the penalty of ₹ 5.25 lakh³⁵.

Audit observed (June 2013) that neither the minimum wharfage amount was fixed based on the rate of ₹ 58 *per* MT applicable for iron pipes and plates nor the type of cargo specified as iron pipes and plates. Instead, the LA prescribed recovery of shortfall in the quantity of cargo based on average wharfage rate of salt which was the commodity actually transported. Thus, due to non-stipulation of minimum wharfage amount in LA, the WGS� avoided payment of the penalty of ₹ 52.75 lakh (₹ 58 *per* MT × 99,993 MT).

The Government stated (December 2013) that the issue would be suitably addressed to prevent loss of assured revenue.

2.12.3 Non-recovery of minimum wharfage

As per the provisions of the LA, GMB could terminate the LA and take over the possession of jetty in case of default in the payment of dues by the licensee. However, due to non initiation of timely action, arrears of minimum wharfage of ₹ 8.25 crore remained unrecovered (March 2013) as given in **Table 11:**

Table-11: Arrears of minimum wharfage

Sl. No.	Name of the Party	Year of shortfall	Wharfage amount due for shortfall (in ₹)	Amount of BG to be taken at the beginning of the year	Remarks
1	Saurashtra Cement Limited	2010-11	20,89,673 ³⁶	At least BG of ₹ 50 lakh	
2	Welspun Gujarat Stalr Rohren Limited (licence period was over in June 2011)	2008-09	16,60,056	At least BG of ₹ 50 lakh	
		2009-10	5,24,963		
		2010-11	46,40,000		
3	Ashapura International Limited ³⁷ (terminated on 22 February 2013)	2008-09	70,00,000	BG of ₹ 70 lakh at the beginning of each year which was	In 2012-13 the amount is due for period till
		2009-10	70,00,000		
		2010-11	70,00,000		

³⁵ At the wharfage rate of ₹ 5.25 × 99,993 MT.

³⁶ The minimum wharfage amount is calculated at the weighted average rate of cargo handled in the previous year that is applied on the minimum guaranteed cargo.

³⁷ The matter is sub-judice as GMB has filed civil suit in Honorable City Civil Court.

Sl. No.	Name of the Party	Year of shortfall	Wharfage amount due for shortfall (in ₹)	Amount of BG to be taken at the beginning of the year	Remarks
		2011-12	70,00,000	the minimum wharfage charges guaranteed	4 December 2012
		2012-13	47,43,378		
4	Shantilal and Company	2010-11	39,00,418	No BG was stipulated	
		2011-12	49,23,365		
5	Continental Warehousing Corporation Limited ³⁷ (terminated on 7 March 2012)	2006-07	15,38,322	No BG was stipulated	
		2007-11	1,83,42,500		
6	J. M. Baxi and Company	2010-11	21,56,734 ³⁶	No BG was stipulated	
7	Ruchi Infrastructure Limited	2004-05	60,37,840 ³⁶	No BG was stipulated	
		2009-10	39,62,391 ³⁶		
Total outstanding			8,25,19,640		

(Source: Information collected from GMB)

Further, as seen from the above table, in respect of four cases (Sl. No. 4 to 7 of the **Table 11**) no bank guarantee (BG) was stipulated in the LAs. In three LAs (Sl. No. 1 to 3 of the **Table 11**) though BG was stipulated in the LAs, there was nothing on record (June 2013) to indicate the availability of BG, if any, taken from the parties by GMB. Thus, non-initiation of timely action as per terms of LA and due to non-availability of BG in the above cases, the possibility for recovery of the dues was remote. Even though Audit had earlier reported³⁸ the recovery in respect of Continental Warehousing Corporation Limited, the amount was not recovered (September 2013).

The Government stated (December 2013) that the LAs at Sl. No. 4 to 7 of the **Table 11** were as per terms and conditions submitted and approved by the Honourable High Court of Gujarat, wherein no condition of BG was stipulated. It was further stated that GMB had formulated a committee of the senior officials (of GMB) to examine such type of issues.

2.12.4 Non-recovery of additional charges for exclusive use of jetty

Narmada Cement Company Limited (NCCL) entered (8 February 1979) into a land lease agreement (LLA) for a period of 30 years with GoG for a five acre plot of 22,360 square metre (sqm)³⁹ to set up a cement grinding plant at Magdalla Port, adjacent to the GMB 1 jetty (210.30 metres). The lease rent was ₹ three *per ten sqm per annum* (1979) subject to further revision every five years. NCCL was amalgamated (1 October 2005) with Ultra Tech Cement Limited (UTCL) and the lease, rights were continued in the name of UTCL.

In the year 1982, GMB constructed a new jetty, GMB 2 (143.53 metre length) adjacent to the existing jetty near the leased land. The Port Officer informed (20 December 1982) GMB that NCCL had installed conveyor on the three sides of GMB 2 jetty and fitted a rail track for movement of unloader on the

³⁸ Paragraph No. 2.2.5.1 of the C&AG's Audit Report (Civil) for the year ended 31 March 2011, Government of Gujarat.

³⁹ GMB for its requirement took back (15 May 1987) 3,730 sqm land from NCCL.

length of GMB 2 jetty. As a result, the GMB 2 jetty could be accessed only through the NCCL yard as access from the existing GMB 1 jetty had been blocked. As such, cargo other than that meant for NCCL could not be handled in GMB 2 jetty. Thus, GMB 2 jetty was exclusively used only by UTCL. The Port Officer thus suggested (20 December 1982) for recovering jetty rent in addition to berth hire charges for such exclusive usage. However, GMB had not taken any decision yet (December 2013) and exclusive usage of the GMB 2 jetty by UTCL was being continued.



GMB 2 Jetty showing permanent installations resulting in exclusive usage

Audit observed that considering the exclusive use of GMB 2 jetty by UTCL and the expiration of the lease agreement in January 2008 of GMB 1 Jetty, GMB should have fixed a minimum guaranteed cargo of 1.304 MMT⁴⁰ *per annum* based on the length of jetty as per the practice in vogue for private jetty. If this was done, GMB could have avoided loss of ₹ 7.48 crore⁴¹ towards wharfage and ₹ 1.42 crore⁴² towards port dues, berth hire charges, *etc.*, during the period 2008-09 to 2012-13. Further, even though the LLA expired on 21 January 2008, the same was still to be renewed (December 2013).

GMB continued to recover lease rent as per terms of the expired LLA instead of recovering the rent as specified in prevailing SoPC. This led to loss of rental income of ₹ 35.55 lakh (₹ 25.09 lakh⁴³ *plus* ₹ 10.46 lakh⁴⁴).

The Government stated (December 2013) that the decision on lease rent or renewal of lease was under consideration and once it was finalised it would be

⁴⁰ Being the proportionate cargo for 143.5 metre GMB 2 jetty based on the average cargo of 1.908 MMT handled during 2005-08 on 210 metre GMB 1 jetty.

⁴¹ Being the difference of minimum wharfage payable on minimum guaranteed cargo at the SoPC rates applicable to private jetty and actual wharfage paid on actual cargo handled at the rates applicable to GMB jetty.

⁴² Being the average *per* MT rate of other charges paid by GMB 2 jetty applied to the shortage quantity against the minimum quantity of guaranteed cargo.

⁴³ Being the difference of ₹ 300 *per* ten *sqm* *per annum* rate for industrial and commercial purpose less ₹ 30.65 *per* ten *sqm* *per annum* × land leased of 18,630 *sqm* × 5 years period after expiry of lease (22 January 2008 until 21 January 2013) as rent is recovered in advance for the next year.

⁴⁴ Being the difference of ₹ 600 *per* ten *sqm* *per annum* rate for industrial and commercial purpose less ₹ 38.35 *per* ten *sqm* *per annum* × land leased of 18,630 *sqm* × 1 year period after expiry of lease (22 January 2013 until 21 January 2014) as rent is recovered in advance for the next year.

applied from the date of renewal of lease. The reply was not acceptable as the decision on lease rent was still pending and the issue of exclusive use of GMB jetty by NCCL (UTCL) had not been addressed.

Development of private ports

The GoG declared a Port Policy in 1995 regarding privatisation of ports. The salient features of the same are discussed in **Paragraph 2.10**. The MoU for development of Pipavav Port was entered into prior to the declaration of the Port Policy and the concession agreement was entered (30 September 1998) as per the BOOT Principles, which came into effect from July 1997. The Pipavav Port was initially envisaged to be developed under joint sector but it was later privatised through disinvestment (18 June 1998) prior to the concession agreement.

Under the Port Policy, the Mundra and Dahej Ports were to be developed as Joint sector ports. However, Mundra Port was later privatised by disinvestment (March 2006). The remaining two ports of Bedi and Positra were yet to be developed (December 2013). Of the six ports to be developed as private ports in accordance with the Port Policy, only Hazira Port had been developed (April 2005). The remaining were at various stages of bidding as on December 2013. The concession and sub-concession agreements entered into in respect of the four ports, which have been developed under private sector, are given in **Table 12**:

Table 12: Concession agreements entered into

Name of Port	Name of main concessionaire	Name of sub-concessionaire
Pipavav	Gujarat Pipavav Port Private Limited (GPPL)	Nil
Mundra	Gujarat Adani Port Limited (GAPL)	Mundra International Container Terminal Private Limited
Dahej	1-Gujarat Chemical and Port Terminal Company Limited (GCPTCL)	Nil
	2-Petronet LNG Limited (PLL)	Adani Petronet (Dahej) Port Private Limited (APPPL)
Hazira	Hazira Port Private Limited (HPPL)	Adani Hazira Port Private Limited (AHPPL)

The guidelines for investment and recovery of capital cost for the private port projects under the Port Policy were declared (29 July 1997) by the GoG as the BOOT Principles. The salient features of the BOOT Principles were as under:

- GMB will identify the port location and lease the backup land to the developer.
- The BOOT period would generally be for 30 years.
- The developer had to get the DPR, Development Plan and Environment Impact Assessment study approved by the GMB.
- The GoG would permit sub-leasing/ sub-contracting of services at the responsibility of the developer.

- The developer will have flexibility in deciding and collecting all port related tariff except the GoG notified WFR.
- The developer would be allowed WFR payment at concessional rates until such time the total Approved Capital Cost (ACC) is set-off. Extension of concessional rates would be allowed for two major expansions.
- At the end of the BOOT period, the assets would be transferred to the GoG at the fair value of the assets.

Audit reviewed the CAs entered into in respect of the private ports and the development of Mundra Port. The observations in this regard are discussed hereunder:

2.13 Development of Mundra Port

The Mundra Port is the largest private port developed under the Port Policy. The GoG initially permitted (10 January 1994) the Adani Port Limited (APL) to build and operate a captive jetty at Mundra Port. The GoG accepted (24 September 1997) the proposal of APL for development of Mundra Port as a total port through a joint venture between APL and Gujarat Ports Infrastructure Development Company Limited (GPIDCL- a wholly owned GMB Company). The port limits of Mundra Port were declared (21 January 1998) by GoG under the Indian Ports Act, 1908. The CA was entered into between GAPL (promoted by APL and GPIDCL), the GoG and the GMB in February 2001. The CA superseded the permission for construction of jetty. Audit observations related to the development of this Port are discussed in succeeding paragraphs.

2.13.1 Concession agreement with GAPL for development of Mundra Port

As per the shareholders agreement (1998) GPIDCL was to hold 26 *per cent* stake in GAPL. It further provided that GPIDCL may dilute its equity capital up to 11 *per cent* after a period of three years from the date of commencement of commercial operation as defined in the CA. However, as per GoG order (September 2000), the proposed holding of GPIDCL was reduced from 26 to 11 *per cent*, which was in violation of the shareholders agreement because the CA had not been entered into till that date and as such GPIDCL's stake in GAPL was under lock-in.

A scheme of amalgamation between GAPL (Transferee Company) and APL (Transferor Company) was approved (November 2003/ January 2004) by the shareholders of the two companies wherein 95 shares of GAPL were to be given for every 100 shares of APL. The scheme was referred to the Honourable High Court of Gujarat for approval in accordance with the requirements of the Companies Act, 1956. Pending the approval of amalgamation by the Honourable High Court, GoG filed its objection to the proposed amalgamation, as it would reduce GPIDCL holding in GAPL to 8.55 *per cent*. With the reduction in shareholding of GAPL to 8.55 *per cent*, GPIDCL was to lose the right to appoint the Chairman on GAPL Board of Directors (BoD). However, GoG withdrew the objection following an

agreement with GAPL (April 2005) and consequently, the Honourable High Court of Gujarat approved the amalgamation (21 April 2005).

As per the agreement of April 2005 between the GoG and GAPL, the shares of GAPL were to be valued by an independent valuer prior to and after amalgamation and based on the valuation GoG would decide whether to disinvest its holding in GAPL or to subscribe further shares so as to retain its holding at 11 per cent. The valuer appointed by GoG, valued (November 2005) the shares of GAPL at ₹ 101.30 per share pre-merger and at ₹ 110.60 per share post-merger as on 31 March 2004.

The GoG decided (24 March 2006) to disinvest its stake of 1.54 crore shares in GAPL at ₹ 110.60 per share. Accordingly, the GPIDCL transferred (March 2006) these shares to GoG which realised ₹ 197.79 crore (including interest at nine per cent for the period from 1 April 2004 to 14 January 2006) on the disinvestment. The development of Mundra Port which was envisaged as a joint sector port turned out to be a private sector port for which competitive bidding was not followed.

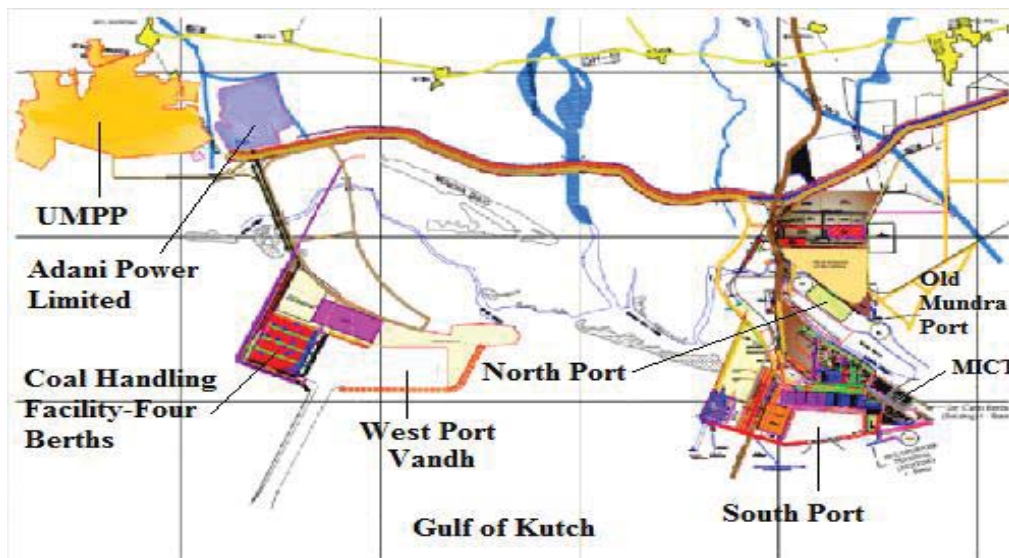
The development of Mundra Port was planned in two phases as given in **Table 13**:

Table 13: Development of Mundra Port as planned

Particulars of Phase	Details of Structures
Phase 1	815 metre quay wall, 1100 metre quay wall, One SBM
Phase 2	South Port, West Port (Vandh), North Port, Three SBMs

A map of the Mundra Port is given below:

Map of Mundra Port



2.13.2 Deficient lease and possession agreement

The GoG allotted (11 January 2000) 4,518.37 acres of land to GMB at the prevailing market rate for allotment to GAPL on lease basis under the BOOT Principles. It was stipulated in the allotment that GAPL would not sublease the land without prior permission of the GoG. The value of land was assessed

(23 March 2000) by the District Land Valuation Committee at ₹ 5.66 crore. As this value exceeded ₹ 50 lakh, the final cost of land was to be decided by the State Land Valuation Committee (SLVC). The GMB was to deposit the differential amount on final valuation to the GoG.

GMB handed over the possession of land (15 April 2000) to GAPL. GMB entered (28 September 2000) into lease and possession agreement (LPA) for lease of 3,404.37 acres land worth ₹ 4.76 crore (being proportionate value of total land) to GAPL with lease rent of ₹ 23.80 lakh⁴⁵ *per annum* to be escalated by 20 *per cent* after every three years. However, the LPA did not have any clause for recovering the additional lease rent from GAPL as and when the final cost of the leased land was decided by SLVC. Despite 13 years having elapsed the SLVC has not determined the cost of land (September 2013).

The Government stated (December 2013) that had the SLVC or collector instructed GMB to take necessary action, then GMB could have reviewed the LPA. The reply was not acceptable as no separate instruction in this regard was required because as GMB was to pay the increased valuation, as and when decided by SLVC, a suitable clause should have been inserted in the LPA by GMB to protect its own interest. In the absence of the same, GMB will not be able to recover the differential lease rental at five *per cent* of revised (enhanced) valuation.

2.13.3 Extension of port limit without supplementary concession agreement

As per the approved DPR for Phase 1, the work was to be carried out in two sub-phases *i.e.*, Phase 1A and Phase 1B. In Phase 1A a multipurpose terminal of 815 metre length having four berths were to be developed. In Phase 1B, a container terminal/ cargo terminal of 1100 metre length was to be developed along with a Crude Oil Terminal/ SBM for HPCL. The work was to be completed within three years from obtaining environment clearance (EC).

GoG had originally defined port limit (January 1998) and GAPL had completed construction of the multipurpose terminal under Phase 1A prior to entering into CA (February 2001). In the meanwhile, GAPL further requested (13 January 2000) the GoG for extension in port limit for constructing HPCL SBM in Phase 1B and the three SBMs under Phase 2. The GoG accepted (21 May 2002) the request of GAPL for extension in the port limit subject to acceptance of the following conditions:

- GAPL would pay full WFR on the cargo to be handled on the SBMs to be constructed in Phase 2;
- The concessional WFR availed by GAPL under the CA for set-off would be adjusted from the depreciated replacement value (DRV)⁴⁶ or

⁴⁵ Being five *per cent* of the cost of 3,404.37 acres land amounting to ₹ 4,76,03,645 as valued by the District land valuation committee.

⁴⁶ **DRV** = (Gross Replacement Value (GRV) derived for asset by an independent appraising team × Remaining life of the assets) ÷ total life of the assets.

depreciated historical cost (DHC)⁴⁷ as applicable at the time of the transfer of the port to GMB/ GoG; and

- GAPL would give a written consent of acceptance to the above two conditions and the necessary changes in this regard would be made to the CA.

GAPL accepted (22 May 2002) the above conditions but also stated that they may have to represent to the GoG for reconsideration on the above conditions after sensing the reactions of their financial institutions to such deviations. The GoG, however, did not accede to the request of GAPL for reconsideration of the conditions and directed (24 May 2002) the signing of supplementary concession agreement (SCA). However, on the same day without waiting for the execution of the SCA, GoG extended (24 May 2002) the port limits of Mundra Port.

In spite of repeated requests by the GoG/ GMB, the SCA had not been signed (December 2013) by GAPL and this fact was also reported⁴⁸. The GoG also asked the Maritime Development Committee (MDC) that consisted of Chief Secretary, Secretaries of Finance, Industries and Mines, Ports and Fisheries, R&B Department and CEOs of GMB and GIDB. The MDC was appointed (28 January 2005), to decide on the issue. The MDC is yet to decide this crucial issue and has met only once since its formation (January 2005).

Consequently, the legal enforceability of recovering full WFR on the three SBMs of Phase 2 and adjusting of concessional WFR claimed for set-off amounting to ₹ 1,033.24 crore availed by GAPL till March 2013 (as calculated by GMB) against the DRV and DHC at the time of transfer of port has not yet been established (December 2013).

The Government stated (December 2013) that the SCA only was not signed because the matter was not resolved by the MDC. Further it was stated that the non-signing of SCA did not have any adverse impact as the set-off condition would be applicable only at the end of the BOOT period. The reply was not acceptable as only with the signing of SCA can legal enforceability to the conditions agreed by GAPL be ensured. The reply did not state why the MDC was not able to resolve the issue if all the conditions had been accepted by GAPL.

2.13.4 Regularising delayed construction of Phase 1 SBM and allowing concessional royalty

The GoI issued environment clearance for the Crude Oil Terminal/ SBM (24 April 2000) and Container Terminal (20 September 2000) planned under Phase 1B, and the same were scheduled to be completed by 23 April 2003 and 19 September 2003 respectively. As the scheduled dates were not adhered to, GMB issued (9 August 2004) a notice to recover Liquidated Damages (LD) as

⁴⁷ DHC = Written down value of the assets depreciated on Straight Line method at the rates specified in the Companies Act, 1956.

⁴⁸ Paragraph No. 3.3.9.1 of the C&AG's Audit Report (Civil) for the year ended 31 March 2005, Government of Gujarat.

per the CA⁴⁹. GAPL explained (4 October 2004) to GMB that the first (HPCL) SBM under Phase 1B could not materialise and hence a fresh agreement was entered into with Indian Oil Corporation Limited (IOCL) (October 2002) for the said SBM. GAPL had obtained environment clearance only in July 2004 and therefore its scheduled completion date should be three years from that date.

The IOCL SBM was completed on 18 March 2005 *i.e.*, within one year from date of its environmental clearance (EC) but without submission of the DPR to GMB for its approval. GAPL requested (October 2005) GMB to regularise the SBM construction by IOCL and consider this as the first SBM instead of the one originally planned through HPCL. GMB recommended to GoG (August 2006) to condone the delay and accept the GAPL's request. The GoG accorded (27 September 2007) its consent to the recommendation of the GMB.

It was observed in Audit that as per Model Concession Agreement (MCA), a construction guarantee of three *per cent* of DPR cost was to be taken from developer and in case of non-adherence to scheduled time limit, LD equal to loss in WFR income for the projected annual cargo for a maximum period of six months was recoverable by invoking construction guarantee. However, GMB did not include the clause for construction guarantee in the agreement with GAPL and also limited levy of LD to ₹ 18 lakh. Based on the fixed charges specified in the port user agreement entered between IOCL and GAPL in respect of the SBM, minimum handling of 8.25 MMT *per annum* was specified. Considering the same, the loss in WFR for six months worked out to ₹ 14.80 crore⁵⁰. GMB by diluting the LD clause gave an undue benefit to GAPL.

The Government stated (December 2013) that the delay in the construction was condoned as reasons for delay was not in the control of GAPL and that the LD as per the CA with GAPL had been imposed. The reply was not acceptable as the CA entered into with GAPL was not in consonance with MCA and the LD terms were modified in the CA with GAPL to give the latter undue benefit. This action was arbitrary and allowed undue benefit of ₹ 14.80 crore to GAPL.

2.13.5 Irregular construction of quay without approval of DPR

GAPL had to construct a Container Terminal (CT) of 850 metre and a berth of 250 metre length for general cargo in Phase 1B by 19 September 2003. GAPL completed construction of only 632 metre of CT within the scheduled completion date. It further requested (June/July 2004) GMB to grant no objection certificate for development of a multipurpose terminal (MPT) of approximately 601.50 metre length in addition to the 1,100 metre length already approved under Phase 1B. GMB however, accorded (31 December 2004) in principle approval for construction of MPT of 600 metre for obtaining Environmental Clearance (EC) subject to the

⁴⁹ The licensee will pay to the licensor liquidated damages not exceeding ₹ 10,000 *per day* of delay up to a maximum period of six months.

⁵⁰ 4.125 MMT for six months × WFR of ₹ 36 *per MT*.

condition that GAPL should obtain GMB's approval on DPR and permission prior to starting the construction of MPT.

GAPL received EC in February/April 2007 and informed (June 2007) GMB that it had constructed 1,843 metres under Phase 1B against 1,100 meter approved in the DPR and requested GMB to regularise the construction of the additional 743 metre under Phase 1B as given in **Table 14**:

Table 14: Approval and actual implementation of berth construction

(Figures in metre)

Sl. No.	Type of Berth	Approved berth plan			Actual Implementation	Period
		As per approved DPR	Additional in principle approval for EC	Total		
1	General Cargo	250	600	850	575	2006-07
2	Container Terminal	850	--	850	632	2003-04
					636	2007-08
	Total	1,100	600	1,700	1,843	

GMB accorded in principle approval (July 2007) to the above augmentation and recommended (10 August 2007) the same to GoG subject to the conditions of submission of revised DPR and revised cost besides forfeiture of LD of ₹ 18 lakh withheld in Phase 1. The GoG accorded the approval in October 2007. The decision of the GoG was conveyed (October 2007) to GAPL but the conditions were not complied with for over six years (September 2013). Further, as discussed in **Paragraph 2.13.3** the terms of LD was diluted in the CA. Because of this action only a meagre amount of ₹ 18 lakh was recovered against the LD of ₹ 4.36 crore⁵¹ due to be recovered resulting in an undue benefit being passed on to GAPL.

Audit observed that the monitoring mechanism of GMB was not geared to protect its own interests. GAPL had unilaterally changed configurations of approved DPR, undertaken the constructions based on clearances not obtained by it and later approached GMB for regularisation of all constructions. Even the conditions of submission of revised DPR and revised cost, subject to which the regularisation was made by GoG, had not been complied with by GAPL despite a lapse of over six years.

The Government stated (December 2013) that the maximum possible penalty under the CA had been levied on GAPL and no lenient treatment had been given to GAPL. The reply was not acceptable as the conditions of the diluted CA were not according to MCA leading to non-recovery of LD of ₹ 4.18 crore. Further, the GMB had failed to strictly enforce the conditions it set-out resulting in GAPL taking unilateral decisions. Also, the formality of regularisation proposed for the unauthorised construction by GMB to GoG was a fait accompli.

⁵¹ The cargo projection for the Container terminal for the year 2003-04 was 1,45,500 TEU against which actual cargo handled was 49,000 TEU. Thus, loss of WFR for six months would have been 72,750 TEU × WFR of ₹ 600 per TEU.

2.13.6 Under recovery of full WFR from SBM 2 of Phase 2 and regularisation of construction without approval

The GMB accorded (December 2008) in principle approval for construction of the three SBMs planned under Phase 2 at an estimated cost of ₹ 3,700 crore. As the three SBMs were approved for construction outside the original Mundra Port limits, the in principle approval was subject to the condition of recovery of full WFR and signing of supplementary agreement. Further EC and separate DPR had to be submitted and consent of GMB prior to starting the construction had to be obtained.

GAPL sought (November 2009) the permission of GMB for construction and operation of SBM by entering into SCA. It submitted the project report (March 2010) along with a request for including the name of HPCL Mittal Pipeline Limited (HMPL) in the SCA. Pending GMB's approval on the DPR/permission to start construction, GAPL went ahead with the construction and obtained (19 March 2011) the landing and shipping declaration directly from Customs Department for commissioning of SBM. GAPL requested the GMB (23 April 2011) to regularise the SBM construction and grant post facto permission for the construction. Audit observed that the construction of SBM was in violation of the GMB Act.

The GMB approved (30 June 2011) the DPR 'in principle', accepted HMPL as a sub-concessionaire and granted post facto permission for the construction and recommended the same to GoG. The GoG also approved (December 2011) the decision of GMB as a fait accompli.

HMPL had commenced handling of crude at the SBM from August 2011. It handled 5.41 MMT of crude oil till March 2013 and GMB recovered full WFR at ₹ 36 per MT amounting to ₹ 19.48 crore. However, Audit observed that the WFR rate of ₹ 36 per MT was the base rate of 2003 SoPC and the current WFR rate after escalation of 20 per cent on every three year basis, which worked out to ₹ 74.65 per MT up to March 2013 was not applied. Based on the quantity handled (August 2011 to March 2013), the wharfage charges recoverable as worked out by Audit comes out to ₹ 40.39 crore. This led to short recovery of ₹ 20.91 crore.

The Government stated (December 2013) that the matter was under consideration regarding the correct applicability of rate in the HMPL SBM. The fact remains that a reference was not warranted as the terms of the agreement were clear. The amount of ₹ 20.91 crore may be recovered with interest at the earliest.

2.13.7 Favour to GAPL in recovery of WFR and granting extensions of time

Pursuant to selection of Mundra for the setting up Ultra Mega Power project (UMPP), GAPL offered (August 2006) to provide coal handling facility (CHF) for the UMPP to Power Finance Corporation Limited/ Central Electricity Authority. Under the CA between GAPL and GMB, the GAPL was required to obtain the approval of GMB for entering into any Port Service

Agreement (PSA). However, pending the approval of GMB, GAPL entered into PSA (22 April 2007) with Coastal Gujarat Power Limited for the above UMPP for 25 year term from the start of operation of UMPP but expiring not later than 31 March 2040.

Further, as the location proposed for the CHF was outside the existing Mundra Port limit, the GoG extended (12 November 2008) the port limit (called Vandh West Port) on the condition that only CHF be setup. The approval was subject to payment of full WFR by GAPL on the cargo handled in the selected port limit, extension of BOOT period for CHF only up to 2040 (against the BOOT period up to January 2031 in respect of Mundra Port) and no compensation of DRC/ DHC for contracted assets of Vandh West Port was to be granted. In this regard, a supplementary agreement was required to be signed by GAPL. The GMB approved (12 December 2008) the DPR of Vandh West Port for ₹ 4,532 crore for four berths for CHF.

GAPL received EC clearance on 12 January 2009 and approval of GMB for commencement of construction on 26 February 2009. As the construction was not completed by the scheduled date (11 January 2012), GMB granted (7 August 2012) extension of time till March 2013, though this extension has not been approved by GoG (September 2013). In the meanwhile, GAPL requested (30 May 2013) GMB for further extension in construction period till March 2015. GMB had neither granted further extension (June 2013) nor invoked the construction guarantee of ₹ five crore.

Audit observed that the supplementary agreement for CHP had not yet been executed as the clarifications on base rate for recovery of full WFR and recovery of lease rent on reclaimed land sought by GAPL was pending with the GoG (September 2013).

Audit also observed (June 2013) that GAPL commenced the operation of CHF from December 2010 and handled 30.19 MMT coal until March 2013. GMB recovered full WFR at ₹ 30 *per* MT (being the base rate for 2003) amounting to ₹ 90.57 crore. The prevailing full WFR rate (escalated at 20 *per cent* every three years as per SoPC 2003) was ₹ 62.20 *per* MT between December 2010 and March 2013. The application of wrong rates of full WFR resulted in short recovery of ₹ 97.21 crore⁵² from GAPL.

The Government stated (December 2013) that the issue of levy of WFR either at base rate or at escalated rate was under consideration and pending decision, the SCA had not been signed. The reference to GoG was not warranted as the terms of the agreement were clear. The amount of ₹ 97.21 crore may be recovered with interest at the earliest.

2.13.8 Levy of port dues above prescribed limit

The port dues as notified by the GoG in the SoPC under the Indian Ports (IP) Act, 1908 were applicable to GMB ports and to all the private ports. Private

⁵² 30.19 MMT cargo handled between December 2010 and March 2013 × ₹ 32.20 *per* MT being erroneous calculation of full WFR (₹ 62.20 *per* MT less ₹ 30 *per* MT) = ₹ 97.20 crore.

Ports mentioned in the SoPC had to restrict their port dues recovery within the maximum limit fixed. However, at Mundra Port, GAPL levied port dues⁵³ higher than the limit fixed in SoPC 2003 and SoPC 2012 during 2011-12, which was in violation of the provisions of IP Act. As GAPL did not provide information to GMB on the number of entries per vessel with its GRT, Audit could not assess the financial benefit availed by recovery of higher port dues by GAPL. It was further observed that GMB did not take any action to prevent the violation of the IP Act by GAPL.

The Government stated (December 2013) that the port dues notified under IP Act were not applicable to the private ports and that the Concession Agreement with such ports gave them the flexibility to structure their own tariff. The reply was not acceptable as the GoG specified through a notification the limits for recovery of port dues as per the provisions of the Indian Ports Act, 1908.

2.13.9 Loss due to non-inclusion of specific tariff heads

The SoPC 2003 classified cargo under four categories of solid, liquid (including LNG), crude and container only. The SoPC 2012 further classified liquid into three categories *viz.*, Petrol, LNG and Liquid other than POL and introduced cars as a separate category as discussed in **paragraph 2.7.5**. However, this revised categorisation was not made applicable to existing private ports and private ports wherein LoI had already been issued. In absence of any special rate available for cars to be handled at the existing private ports, GMB billed full WFR of ₹ 36.00 *per car* (up to July 2009) and ₹ 43.20 *per car* (after July 2009) for 4.26 lakh cars shipped (2008-09 to 2012-13) by GAPL at its Mundra Port as the car was treated as solid cargo and normally weighed less than one MT.

In comparison to this, Jawaharlal Nehru Port Terminal, Mumbai collects 0.5 *per cent* of the Free on Board (FoB)/ Cost Insurance Freight (CIF) value of the car. Considering, a conservative FoB value of each car at ₹ 3 lakh the WFR payable works out to minimum ₹ 1,500 *per car*. As such, due to non-inclusion of cars as a separate classification, GoG was deprived of revenue on this account.

The Government stated (December 2013) that the revised categorisation was not made applicable to existing ports because of the terms and conditions in their agreement and the application of new SoPC rates to existing ports would result in huge loss of revenue. The reply was not acceptable as the CA did not prevent introduction of new categories in the SoPC. As a new liquid category of crude was introduced for all the existing private ports in 2005, a separate classification for car should have been introduced as a category for the existing ports.

⁵³ US \$ 0.17 for all vessels calling at SBM terminal and ₹ 7 *per GRT per entry* for all other vessels against the rate of US \$ 0.12 and ₹ 2.40 *per GRT per entry* respectively in SoPC 2003 and GAPL revised the rates from 1 October 2012 as US \$ 0.24 for all vessels calling at SBM terminal and ₹ 10 *per GRT per entry* for all other vessels against the rate of US \$ 0.20 and ₹ 4.70 *per GRT per entry* respectively in SoPC 2003.

In conclusion, though Mundra Port was developed as the largest private port of Gujarat, GoG had extended undue favours to GAPL as discussed in preceding paragraphs. Because of all these concessions and altering contract conditions, the GoG lost ₹ 118.12 crore as revenue.

2.14 Development of Hazira Port

The GMB had entered into CA with Hazira Port Private Limited (HPPL) (April 2002) through a bidding process for development of Liquefied Natural Gas (LNG) Terminal and Bulk General Cargo Terminal (BGCT) at Hazira. The concessionaire had an option to bring in experienced parties as sub-concessionaires. The observations related to the same are discussed below:

2.14.1 Undue favour in sub-concession agreements of HPPL

HPPL under the bidding process opted for the straight-line option⁵⁴ for payment of WFR with a concession period of only one year. Accordingly, HPPL was billed at full WFR after the end of the first year.

HPPL entered into (November 2010) a sub-concession agreement (SCA) for development of BGCT with Adani Hazira Port Private Limited (AHPPL) to which GMB was also a party. In the SCA with AHPPL, the rate for WFR, base date, first escalation date and the period of concession in the SCA were not mentioned but AHPPL started its cargo operation from May 2012. The GoG belatedly appointed (5 March 2013) a committee to finalise the terms related to WFR. Pending the decision of the committee, AHPPL was paying concessional WFR on the cargo handled at BGCT as against the full WFR being paid by its concessionaire HPPL to GMB for the cargo handled by it at LNG terminal. Audit observed that these important terms were required to be finalised in the SCA or at least before the start of cargo operations. Non-finalisation of the same has jeopardized the interest of GMB/ the GoG.

The Government stated (December 2013) that decision in respect of AHPPL was under consideration.

2.14.2 Non-recovery of sand scooping charges from HPPL

The 2003 SoPC stipulated the recovery of sand scooping charges at ₹ three *per* ton for sand scooped out of sea within the GMB port limits.

GMB, GoG and HPPL entered into a CA (22 April 2002) for development of Hazira Port Project on BOOT basis. As per the CA, the declaration of Hazira as a separate port with port limits should have been completed within 18 months (*i.e.*, by October 2003). However, during November 2003 to May 2004, for reclamation of land for development of Hazira Port, HPPL scooped sand from sea. The GoG notified the port limits for Hazira on 20 October 2004. The Port Officer, Magdalla issued (31 May 2004) a demand of ₹ 5.12 crore for 15.79 MMT of sand scooped (including service tax) since

⁵⁴ Under this option, no set-off is allowed against the Approved Capital Cost. However, the licensee had to pay concessional WFR during the concession period agreed to with licensor and for the remaining BOOT period, he had to pay the full WFR.

at the time of sand scooping it was within the GMB port limits and was not declared to be Hazira Port.

HPPL stated (5 August 2005) that the declaration of Hazira as a separate port should have taken place within 18 months (*i.e.*, by October 2003) as stipulated in CA. Had the port been declared as per terms of CA, it would have come under the control of HPPL while taking up the dredging operation and it would not have been required to pay the scooping charges. Accordingly, HPPL requested (August 2005) GMB to reconsider the claim for the scooping charges. It also stated that with the objective of containing cost, they commenced dredging for creation of approach channel in November 2003 (being the last agreed date for declaration by GMB of Hazira as a Port separate from Magdalla).

As HPPL did not agree to pay the charges, GMB referred (12 August 2009) the matter to Maritime Development Committee (MDC), which also endorsed the decision of GMB for recovering the charges. However, the recovery of ₹ 5.12 crore was pending (September 2013) receipt by GMB.

The Government stated (December 2013) that though demand for payment had been raised based on MDC's decision, HPPL was not paying the amount and that GMB was considering taking legal opinion in this regard or as a last resort opting for arbitration.

2.15 Monitoring and control

The following deficiencies were noticed in the internal control and monitoring mechanism of GMB:

- The work of Internal Audit Wing (IAW) was restricted to audit of only Receipts and Expenditure of the GMB. The IAW conducted quarterly audit of Port offices and had conducted the audit until 2012-13. IAW consists of five officials headed by an Accounts Officer (Audit). Audit observed that it did not cover the works relating to pre-audit of tender documents, agreements entered into by GMB with developers, licensees, contractors, *etc.* IAW did not have an internal audit manual and the reports of Internal Audit were submitted to the Financial Controller and Chief Accounts Officer and not to the Board of Directors.
- The implementation of SoPC, which formed the basis for the GMB's revenue, was done at the Port Office level. However, instances of erroneous application of tariff leading to loss of revenue as discussed earlier were indicative of the deficient functioning of IAW.
- There was no mechanism at the HO of GMB to interpret and clarify the port offices on various provisions of the agreements and the SoPC by issuing suitable instructions.
- There was no system in place to regularly monitor the activities of developers operating private/captive jetties and private ports.

Consequently, private port operators undertook constructions in their port limits without the approval of the GMB/knowledge of the port offices.

- The MIS at the head office was deficient as it did not have the details on the performance of each jetty/ port in terms of quantity and value of cargo handled the arrears of recovery from each party, indents/orders issued for purchases by the Port Officer, *etc.*
- The concession agreements entered into with various port developers require various returns to be submitted by the private ports on a regular basis to the GMB for effective monitoring and control. Audit observed that the required returns were not being submitted by the private ports and neither was the same being insisted upon by the GMB.

2.16 Conclusion

Due to non-fixation of time limit in the Port Policy and BOOT Principles and due to deficient planning, the important commitments made in the policies were not implemented even after lapse of more than 15 years since declaration of the policies. Tariff was revised with delay, without equality, and new classification in cargo categories was inapplicable to existing private ports and recovery of certain charges notified under SoPC were ambiguous. Further, no system for timely verification of construction cost of assets, monitoring the activities of the private developers was in place. The penal provisions for violation by developer were ineffective. The internal control and monitoring system was deficient.

2.17 Recommendations

The GoG/GMB may consider:

- **Adequate planning to enhance GMB's share in total port traffic;**
- **Ensuring proper and timely revision of the tariff;**
- **Evolving a system for timely verification of construction cost of assets and monitoring the activities of the developers of private ports;**
- **Ensuring that the contract provisions (including penal provisions) are effectively implemented; and**
- **Revamping the internal control and monitoring system.**