

CHAPTER VII: MINISTRY OF SHIPPING

Chennai Port Trust

7.1 Implementation of Port Operation Management System (POMS) in Chennai Port Trust

Though the implementation of POMS was aimed at integrating business processes and exchanging messages with PCS, the system could not achieve the intended objectives in its entirety. Apart from delayed implementation, there were deficiencies in designing the database and user profiling, thereby rendering the system not completely reliable. The Port did not have an IT Security Policy and had not got the third party audit done of its IT infrastructure. The Port has yet to formulate a Business Continuity Plan.

7.1.1 Introduction

Chennai Port Trust (Port), functioning under administrative control of Ministry of Shipping (the Ministry) had already computerised many core functions such as Vessel Management, Cargo Management, Railway Management and Billing Management by using modules developed in-house by Information and Communication Technology (ICT) team. In order to develop the comprehensive ICT requirements and to align with Port Community System (PCS) established by Indian Ports Association (IPA), Port intended (2009) to integrate the electronic flow of trade related documents, information and functions.

The Port decided to adopt National Informatics Centre's (NIC) Enterprise Application Software including Port Operation Management System (POMS) developed by NIC which was already in use at Haldia, Kolkata and Ennore Ports. It was also decided that the application software to be developed and customised for Chennai Port shall have joint ownership of NIC and Port. A tripartite Memorandum of Understanding (MoU) was entered by Port, NIC and National Informatics Centre Services Inc. (a subsidiary company of NIC) for implementing POMS with the primary objective of integrating Port's business processes and exchanging of PCS messages between Port and its stakeholders in an effective manner. As per the terms and conditions of MoU:

- the vessel and cargo operations management systems had to be integrated with PCS with improved functionalities,
- the system would capture all billable activities of various berths and generate the bills automatically,
- the scale of rates in Port would be implemented in POMS for all the tariff and billing purposes, and

- the system would provide extensive reporting facilities to address the needs of the management.

7.1.2 Port Operation Management System in Chennai Port Trust

As part of development and implementation of POMS, Port had spent an amount of ₹96.80 lakh. POMS received basic inputs like berthing requests of Shipping Agents, advance paid by agents, Vessel's basic information like IMO number, GRT etc. from PCS. POMS basically is a transaction recording system covering areas such as vessels management, cargo management and stevedoring operations, for facilitating generation of bills and payments to port users etc. The entire workflow of the said departments was not automated in POMS and authentication of transactions was done outside the system. The Port found POMS to be an essential system to take care of the operational activities as well as revenue related functions. POMS has nine modules comprising five functional modules (cargo, revenue, railway, stevedoring and vessel management) and four technical modules (bankadmin, ediadmin, masadmin and pcsadmin).

7.1.3 Audit Findings

Audit observed that there were lapses in implementation of the system, designing the data base, user profiling, mapping of business rules etc. as detailed in the succeeding paragraphs.

7.1.3.1 Absence of IT Security Policy and Business Continuity Plan

As per the guidelines issued (2006) by the Ministry of Electronics and Information Technology, Government organisations should develop IT Security Policy and carry out third party audit of IT infrastructure. It was, however, observed that the Port had not developed an IT Security Policy and not carried out third party audit of IT infrastructure. Audit also noticed that Port was yet to formulate a Business Continuity Plan outlining the action to be taken in the event of a disaster so as to ensure that the information processing capability was restored at the earliest.

The Ministry/Port replied that action has already been initiated for engagement of vendor from empaneled auditors of CERT-In through tender process for framing of IT Policy & IT Security Policy along with conducting third party IT infrastructure audit.

7.1.3.2 Issues in Completion of POMS project

As per MoU, the project was to be completed within one year of signing the MoU (June 2011) which was followed by a warranty period of six months. The project was declared as completed in September 2013 with completion of seven modules on receipt of conditional acceptance by user departments. Further, remaining two modules i.e. Railway and Cargo modules were operationalised from February 2014. First AMC with NIC/NICSI commenced from 1 April 2014 with annual value of ₹43.46 lakh. Audit observed the following:

- All POMS modules were not operational when the project was declared as completed in September 2013.

- The acceptance of the user departments was not obtained before declaring the project completed.
- All Project deliverables were still not handed over to Port (March 2019).
- The free warranty period of six months from the date of completion of the project could not be availed due to belated completion of two modules in February 2014 which subsumed the warranty in the AMC period.

The Ministry/Port accepted that all modules were not operational at the time when it was declared go-live and also accepted that the Technical Architecture, Backup and Archive Documents were not handed over as the entire setup is being maintained by NIC till date. However, it was stated that the user acceptance was not considered since it was a customised product. The reply is not tenable as the Railway and Cargo modules were operationalised only from February 2014 and MoU specifically provided for the user acceptance and handing over of all project deliverables.

7.1.3.3 Design deficiencies in the Database columns

In order to have adequate input controls, each column in the data base structure was designed using specific data type (character, numeric, date etc.), length and nullability. Scrutiny of a table '*Column*' under the '*Information Schema*' of the POMS database revealed the following deficiencies:

- The column property of a column i.e. "*is_nullable*" in the data structure defines whether a particular column could be left blank or not. It should be defined either as '*yes*' or '*no*'. However, it was observed that the nullability factor for the same column_name was defined both as '*yes*' and '*no*' in 357 cases including certain critical column names such as cargo code, cargo description, cargo weight, container number, container type, etc.
- The column property of a column i.e. "*character_maximum_length*" defines the maximum length of the character if the data type was defined as character. It was observed that the said parameter was defined differently in 165 unique column names ranging from two to nine value types. The columns with the said deficiencies were created to store critical fields like container type, container number, container code, etc.
- The "*data_type*" column property defines the type of the data to be entered as character, numeric, date etc. It was observed that same column was defined with different data types at 30 instances, one as character and another as numeric.
- The data contained in the columns include significant data like container code, container type etc. which has direct linkage with the day to day operations of the Port, data captured through POMS is vulnerable and its reliability could not be ensured. It may also lead to the possibility of wrong/incomplete generation of MIS reports.
- It was also observed that the container traffic data as captured in the table *voyage_cargo_opn* was not matching with the data depicted in the Annual Report

during the period 2014-15 to 2016-17¹. It was further observed that POMS data was captured based on the provisional data provided by private operators as such the same could not be fully relied upon.

The Ministry/ Port replied that the issues had been taken up with NIC Kolkata.

7.1.3.4 Deficiencies in User Profiling

Effective input controls were essential for POMS which only permitted the authorised users to log in and also provide adequate audit trail. Log register for user profiles with privileges assigned to users was not maintained. Audit reviewed 513 user ids captured in the master table '*mas_user*' under the schema '*masadmin*' and observed that:

- The POMS did not have the system to automatically deactivate the inactive users. The events such as resignation, retirement, death, etc. of the users should be captured for instantaneous deactivation of their ids.
- The log in time stamp was blank in 50 user codes which indicated that they have never logged in to the system since their creation. Many user codes had not been logged in for more than 6 months and some were logged only once at the time of creation. There were instances in which 25, 56, 64, 54 and 63 user codes had not been logged in the system after 2013, 2014, 2015, 2016 and 2017 (upto September) respectively.
- There was log in trails in case of nine user codes after their retirement. Out of these, Audit found two user codes had been used to create 38 and 8 vessel call records respectively. The column 'entry by' was left blank in the case of 88 user codes. As such, the identity of creator of user ids could not be ensured.
- An effective password policy to ensure automatic controls in the system was essential for enforcing periodical changes to prevent unauthorised use of the POMS. There were instances in which 399 users had never changed their initial passwords.
- On a scrutiny of employee data of marine and traffic departments in comparison with users of POMS created in the system, it was noticed that the user data did not include many senior officials of Port. This indicated that the system was being managed only by middle or lower level officials of Port without the role of senior officials who were expected to authorise/approve the transactions.

The above deficiencies in the user profiling rendered the access controls vulnerable and may result in unauthorised usage of system without any audit trail and lack of robust MIS system.

The Ministry/Port while agreeing to take corrective action has stated that user ids will be created for senior officers.

¹ *Figures for F.Y. 2017-18 were not available.*

7.1.3.5 Defective Vessel Profiling

Maintaining a complete and updated vessel profiling was essential since it impact on the vessel related charges such as port dues, berth hire, pilotage etc. On a scrutiny of the table ‘Voyage’ consisting of 11,604 voyage records under the schema ‘vmsadmin’ since the inception of POMS and upto 31 March 2018, Audit observed that:

Gross Registered Tonnage (GRT) was the measure of overall size of a ship and Reduced Gross Registered Tonnage (RGRT) was the measure after excluding the ballast capacity from the GRT. Vessel related charges such as Port dues, Berth hire, Pilotage, etc., are levied as a *per cent* of GRT or RGRT as the case may be. Scrutiny of the data, however, showed that these parameters were incorrectly mapped and there was no automated system to check the data integrity other than manual checking. Instances were found wherein two out of 2,943 vessels were mapped to multiple GRT values.

The Ministry/Port stated that the PCS data for calculation of various port charges was relied and manual correction was done in case of omission of tonnage values.

The reply corroborated the audit observation that the system was not automated to check the Port charges and it necessitated manual intervention.

7.1.3.6 Incorrect reduction of GRT where there is no segregated ballast

The Port dues were collected based on the Gross Registered Tonnage (GRT) of the vessels. As per the approved scale of rates, in the case of oil tankers with segregated ballast, the reduced gross tonnage (RGRT) would be taken to be its gross tonnage for the purpose of levying Port Dues.

It was noticed that the column *sbt_yn* in the table *vessel* had been created to capture the information on whether a particular vessel had separate ballast or not and to record ‘yes or no’. Out of 6,334 records in the table, the column ‘sbt_yn’ was recorded as ‘N’ in 2,172 unique records indicating that the ships did not have segregated ballast. On a further scrutiny, it was revealed that RGRT was recorded in 36 out of 2,172 cases under the column ‘GRT_red’ making them eligible for lower Port Dues. The system did not have adequate controls to prevent such wrong entries.

The Ministry/Port accepted that it was not using the column for recording the separate ballast value and in case if the PCS message carried the same or different value for the Tanker vessels for both GRT and RGRT, the system calculated the charges based on RGRT. Thus the value stored in the “sbt_yn” did not have any relevance with the calculation of Port Dues. If the vessel was segregated ballast value, then based on the certificate produced by the port user, the RGRT was updated by NIC after receiving the same from the Marine Staff. While raising the final bill, it is ensured manually that RGRT concession is given only to eligible vessels.

The reply is not acceptable since a permanent master data base for vessel profiling with fundamental characteristics of vessels such as GRT/RGRT values, separate ballast, etc. was not maintained to verify the integrity of data flowing from PCS and it necessitated manual intervention.

7.1.3.7 Inadequate profiling of Port users data

As per the customer registration format for the port users, Steamer agents, Clearing and Forwarding agents, Cargo handling agents, etc. were required to register with the Port by furnishing basic details such as address, PAN, contact numbers/email, bank account number, etc. The financial transactions with the parties were being done through bank fund transfers. On a scrutiny of tables under Masadmin, and *Revadmin* schema where the master data of user details were captured, following issues were observed:

- PAN data was not captured in 659 out of 1,128 cases.
- Address of the port users in 379 cases and telephone /fax number and email id in 706 cases were not captured.

The Ministry/Port accepted to update the KYC norms for all the Port users.

7.1.3.8 Deficiencies in mapping Wharfage rate for Crude Oil –CPCL

The wharfage rate applicable for importing crude oil by Chennai Petroleum Corporation Limited (CPCL) through Port was regulated by an MoU entered (May 2003) between them with a validity period of thirty years. As per MoU, the wharfage was to be subjected to annual revision as per the change in All India Consumer Price Index Number for urban non-manual employees for the previous year and the revised rates were to be made effective from first April of every year.

Audit observed that the rate revisions for every year was approved with a delay of two to three months depending on the release of the price index for that year. On a scrutiny of POMS table '*Rev_data_crgwhrf*' under the Schema '*Revadmin*', it was observed that the rate revisions were not effected in POMS with effect from first April and instead the same were effected from the month in which the revised rate was communicated to EDP section. Due to delay in effecting the change in wharfage rates as per the agreement, there was delay in revenue collection and was done manually.

The Ministry/Port admitted that the system did not have the facility for calculation of rates retrospectively in the case of delayed mapping of revised wharfage rates, recovery is done manually.

The Port should make the system robust to take care of business rule and to mitigate manual intervention.

7.1.3.9 Control issues in billing

Billing process for various core operations of the Port namely, marine, cargo, stevedoring etc. is done in the billing module of the POMS. The bills once generated in the system are reflected as 'N' indicating their status as pending. The bills so generated in the system are forwarded for posting into financial accounting. After processing of bills, the status of these bills is converted from 'N' to 'Y' whereby bills are posted and transferred for consideration into accounts. If the bills are cancelled, the status is changed to 'C'.

The billing data were captured in the table *Rev_bill_header*, where the status of final bills were categorised under the column '*Bill_Freeze_YN*' as '*Y*,'*N*' or '*C*' indicating *Bill posted*, *Bill pending* and *Bill cancelled* respectively. In this regard, Audit observed that:

- (i) 1,376 records of various departments out of 1,07,688 final/supplementary bills generated during the period since inception of POMS, were not posted in the financial accounting and showing pending.
- (ii) There was delay in posting of bills in the system by bill generating departments of the Port. Instances were also noticed where bills were pending since 2013-14 onwards.
- (iii) 168 bills with a total value of ₹4.37 crore had been cancelled without any reason mentioned under the column 'bill remark' as it was blank.
- (iv) In 1,193 cases the reason given for cancellation was vague without specifying the exact reason which led to cancellation of the bills. There was no inbuilt system for coding the reasons for cancelling the bills with reference to parameters/elements of billing in terms of quantity, party to be billed, rate applied, etc. so as to give proper audit trail.

The Ministry/Port replied that they were collecting revenue through EDI and non-EDI mode and agreed to take action to bill on regular basis and posting of bills. Further, the Ministry/Port admitted the deficiency in the system of cancellation of bills and assured to include the valid reasons.

Accounting of revenue was impacted due to pendency in bill clearance through POMS. As revenue was automatically collected once bill had been generated the accounting of revenue should also have been concurrent. The system should have had adequate controls to ensure that the bills were posted immediately to reflect the correct financial position and to ensure that the cancellation of bills was taking place in a controlled environment with proper authenticity.

7.1.3.10 Non-capture of business rules for Main-line container concession

As part of marketing initiatives, Port had been extending concessions in vessel related charges (port dues, berth hire, pilotage, etc.) and wharfage to mainline container/cargo vessels since 2013.

Audit noticed that the calculation for these concessions was being done manually outside the purview of the POMS even though the parameters for arriving at the amount of concession such as Gross Registered Tonnage of the vessel, number of voyage, etc., exists in POMS. These concessions were finally paid to the parties in the form of refunds.

On a scrutiny of the table '*refund_note*' it was noticed that refunds to the tune of ₹112 crore were made through manual intervention for the period upto 31 March 2018.

The Ministry/Port while accepting the audit observation stated that action has been taken to give the concession in the Marine Final Bills through POMS.

The fact, however, remained that concession on vessel related charges had a direct impact on the revenue of the Port and should have been automated at the time of implementation of POMS by linking it to unique id of the vessel/voyage to ensure foolproof and transparent mechanism for extending concession.

7.1.4 Conclusion

Though the implementation of POMS was aimed at integrating business processes and exchanging messages with PCS, the system could not achieve the intended objectives in its entirety. Apart from delayed implementation, there were deficiencies in designing the database and user profiling, thereby rendering the system not completely reliable.

The Port did not have an IT Security Policy and had not got the third party audit done of its IT infrastructure. Port has yet to formulate a Business Continuity Plan.

7.1.5 Recommendations

- The Port should develop and maintain IT Policy and IT Security Policy.
- Data base structuring should be made robust to maintain its uniqueness. Adequate access controls should be established by framing effective user management and password policy.
- Master data base for vessel and Port user profile should be created with periodical updation to verify the data received through PCS.
- Full-fledged automation should be brought in billing of all operational activities by eliminating manual intervention. Business rules for container vessel concessions should be mapped into the system.

Visakhapatnam Port Trust

7.2 Non-recovery of liquidated damages from concessionaires for under-performance

Visakhapatnam Port Trust failed to evaluate the performance of projects awarded to three concessionaires and also did not compute the liquidated damages for shortfalls in achievement of Performance Standards, in line with the provisions of the Model Concession Agreement. Consequently, liquidated damages to the tune of ₹25.30 crore were pending for recovery from the concessionaires.

Visakhapatnam Port Trust (VPT) entered into (June 2010 to August 2010) concession agreements with three private parties (concessionaires) for development of cargo berths at Visakhapatnam Port on Design, Build, Finance, Operate and Transfer (DBFOT) basis, as per the details given in Table 7.1:

Table 7.1: Details of Concession Agreements entered into by VPT

Name of the Project	Name of the concessionaire	Date of signing of concession agreement	Handling Capacity (million metric tonne)	Date of commencement of commercial operations
Mechanisation of Coal handling facilities and up-gradation of General Cargo Berth (GCB) at outer harbour of Visakhapatnam Port	Vizag General Cargo Berth Private Limited (VGCBPL)	10.06.2010	10.18	08.04.2013
Development of West Quay-6 (WQ-6) Berth in the northern arm of inner harbour of Visakhapatnam Port	West Quay Multiport Private Limited (WQMPL)	31.07.2010	2.08	13.07.2015
Development of East Quay-10 (EQ-10) Berth in the northern arm of inner harbour of Visakhapatnam Port	AVR Infra Private Limited (AVRIPL)	16.08.2010	1.85	25.07.2017

The Department of Shipping under the erstwhile Ministry of Shipping, Road Transport & Highways prescribed (January 2008) a Model Concession Agreement (MCA) for Private Projects in Major Ports. Clause 7.3 of Article 7 of the MCA on ‘Liability for shortfall in performance’ provided that, in the event the Concessioning Authority, whether from the review of reports submitted by the Concessionaire in accordance with the provisions of this Agreement or otherwise, observes that the Project/Project Facilities and Services do not comply with the Performance Standards or fall short of the Performance Standards, the Concessioning Authority shall calculate the amount of liquidated damages payable by the Concessionaire in accordance with Appendix 15 of this Agreement. Further, to evaluate the performance of the Concessionaire, Appendix 15 of the MCA provided indicative norms for three Performance Standards i.e. (i) Gross Berth Output², (ii) Transit Storage Dwell Time³, and (iii) Turnaround Time for receipt/delivery operations⁴.

Audit reviewed the provisions of the three concession agreements (CAs) entered into by VPT with the Concessionaires and observed that though the three Performance Standards mentioned in MCA were included in the CA entered with WQMPL, the indicative norm in respect of Transit Storage Dwell Time was omitted. Similarly, out of the three Performance Standards mentioned *ibid*, the Turnaround Time for receipt/delivery operations was omitted altogether in CAs entered into with VGCBPL and AVRIPL for GCB and EQ-10 berths respectively.

² *The Gross Berth Output is calculated as the total cargo handled (either loaded/unloaded) from the ship during a month divided by the time spent by the ship at the terminal i.e. number of working days at the berth.*

³ *Transit Storage Dwell Time for bulk cargo is calculated as half of average parcel size of cargo vessels in a month divided by average disposal of cargo from the Port per day.*

⁴ *Turnaround Time for receipt/delivery operations is the sum of time taken for loading/unloading of cargo divided by the number of trucks/trailers/rakes deployed, as the case may be, in a month.*

Audit observed that:

- (i) VPT failed to collect month-wise information for evaluation of performance of the projects. As such, neither performance of the projects was evaluated nor liquidated damages were levied on the Concessionaires for under-performance.
- (ii) VPT noticed (June 2015) the missing parameter for evaluation of performance of the projects, in respect of the CA entered into with VGCBPL. However, it did not take any steps to get the CA amended.
- (iii) Indian Ports Association, engaged by VPT for the advisory services with regard to evaluation of performance parameters in case of missing Performance Standards in CAs, advised (March 2018) not to consider the implication of norm for Turnaround Time for calculation of liquidated damages as it was not prescribed in CA. They also advised that overall shortage in performance should be computed as a percentage of Gross Berth Output and Transit Storage Dwell Time available in CA. However, VPT did not take any steps to evaluate the performance of the projects with the available performance parameters to levy liquidated damages for shortfall in achievement of Performance Standards.

As per the data made available by VPT, Audit evaluated the performance of the projects with regard to Gross Berth Output only and worked out the liquidated damages to be levied on the three Concessionaires to the tune of ₹21.67 crore for the years 2013-14 to 2017-18 in respect of GCB, WQ-6 and EQ-10 berths (**Annexure-XI**).

While accepting the audit observations, VPT/Ministry of Shipping stated (December 2018/April 2019) that it had sent demand notices to two Concessionaires (viz. VGCBPL and WQMPL) in the month of November 2018, December 2018 and to one Concessionaire (viz. AVR IPL) in the month of February 2019 for the payment of liquidated damages amounting to ₹25.30 crore⁵. It also stated that VPT evaluated the Performance Standards and calculated liquidated damages and was in the process of realising the same without any backlogs.

Only after being pointed out by Audit (June 2018), VPT started (November/December 2018/February 2019) evaluating the Performance Standards and calculating the liquidated damages. Had VPT evaluated the Performance Standards and computed the liquidated damages for shortfalls in Performance Standards periodically in line with the Clause 7.3 of Article 7 and Appendix-15 of MCA, it could have realised the liquidated damages. VPT's failure to do so resulted in non-realisation of liquidated damages to the tune of ₹25.30 crore.

7.3 Loss of revenue due to non-inclusion of penalty clause in Concession Agreements

Visakhapatnam Port Trust did not include a safety clause in the Concession Agreements for two projects, for imposing penalty for non-achievement of Minimum Guaranteed Cargo by the Concessionaires, which resulted in loss of revenue of ₹4.18 crore.

⁵ VGCBPL: ₹22.47 crore + WQMPL: ₹2.65 crore + AVR IPL: ₹0.18 crore = ₹25.30 crore

Visakhapatnam Port Trust (VPT) entered into (July/August 2010) Concession Agreements with West Quay Multiport Private Limited (WQMPL) and AVR Infra Private Limited (AVRIPL) for awarding the work of development of West Quay-6 (WQ-6) berth and East Quay-10 (EQ-10) berth respectively in the northern arm of inner harbour of Visakhapatnam Port. The handling capacities of WQ-6 and EQ-10 berths were 2.08 million tonne (MT) and 1.85 MT respectively and their commercial operations commenced from 13 July 2015 and 25 July 2017 respectively.

As per Article 7.1(a)(xii) of the Concession Agreements, the Concessionaire unconditionally guaranteed the Concessions Authority annual cargo handling, of the levels set out in Appendix-14 (Minimum Guaranteed Cargo) and agreed that except as provided in the agreement, it shall not be entitled to any relaxation of its guarantee in this respect. As per Appendix-14 of the agreements, the Minimum Guaranteed Cargo was fixed as given in Table 7.2:

Table 7.2: Minimum Guaranteed Cargo for WQ-6 and EQ-10 Berths

WQ-6			EQ-10		
Period*	Minimum Guaranteed Cargo		Period*	Minimum Guaranteed Cargo	
1 to 3 years	25 per cent of 2.08 MT	0.52 MT	1 to 3 years	25 per cent of 1.85 MT	0.46 MT
4 to 5 years	40 per cent of 2.08 MT	0.83 MT	4 to 5 years	40 per cent of 1.85 MT	0.74 MT
Beyond 5 years	60 per cent of 2.08 MT	1.25 MT	Beyond 5 years	60 per cent of 1.85 MT	1.11 MT

* *Period is reckoned from the date of commercial operations*

Audit observed that VPT did not include any penalty clause in the above Concession Agreements stipulating that in case the Minimum Guaranteed Cargo was not achieved, the shortfall in income (royalty) would be recovered from the Concessionaire. It was also observed that such a clause was included in the license agreement entered into (September 2002) with Visakha Container Terminal Private Limited while awarding the work of establishment of container terminal. As the Concession Agreements for WQ-6 and EQ-10 berths were entered into at a later date than the aforesaid license agreement, it was imperative on the part of the Port Trust to include a similar clause in the Concession Agreements as well in order to safeguard its financial interests. If the penalty clause had been included in the Concession Agreements for WQ-6 and EQ-10 projects, VPT would have been able to impose a penalty of ₹4.18 crore on the concessionaires for non-achievement of Minimum Guaranteed Cargo, as shown in the **Annexure-XII**.

The Management stated (December 2018) that as per the standard Model Concession Agreement (MCA), there was no specific mention about the penalty to be imposed for the shortfall in achieving the Minimum Guaranteed Cargo (MGC) by the Concessionaire. It was also stated that there was a clause in the MCA for termination of agreement, if the Concessionaire failed to achieve Minimum Guaranteed Cargo for three consecutive years.

While reiterating the Management's reply, the Ministry of Shipping (the Ministry) stated (April 2019) that even though a penal clause exists in BoT project in respect of M/s. Visakha Container Private Limited, for the shortfall in meeting the MGC as per

Agreement, the shortfall in meeting the MGC in respect of PPP projects as per Concession Agreements is otherwise dealt with by imposing liquidated damages for the shortfall in performance standards.

The reply of the Ministry/Management is not tenable as the Concession Agreement stipulated that the Concessionaire was required to unconditionally guarantee the VPT annual cargo handling of the levels set out in Appendix-14 (i.e. Minimum Guaranteed Cargo) and Concessionaire was not entitled to any relaxation of its guarantee in this regard. It implies that the Concessionaire had to pay Royalty upto MGC, in case the cargo handled by the Concessionaire was lower than the MGC. Further, imposition of liquidated damages is based on performance of the Concessionaire in respect of stipulated standards whereas MGC clause assures minimum guaranteed revenue from the concessionaire. Hence, both the clauses are different and that cannot be linked with each other. It was in the interest of VPT to incorporate safety clauses, in addition to those prescribed in the MCA, to safeguard its financial interests. It is pertinent to mention here that Mormugao Port Trust had included (22 September 2009) a clause stipulating payment of royalty on higher of the MGC or the actual cargo handled by the Concessionaire to safeguard their interests. However, VPT failed to incorporate such a safety clause in its Concession Agreements.

Thus, due to non-inclusion of suitable penal clause in the Concession Agreements for WQ-6 and EQ-10 berths for the payment of royalty on higher of the MGC or the actual cargo handled by the Concessionaire, VPT could not claim royalty of ₹4.18 crore from the Concessionaires for non-achievement of MGC and suffered a loss to that extent.

Indian Maritime University

7.4 Avoidable expenditure on Project Management Consultancy charges

Indian Maritime University, Visakhapatnam allowed Project Management Consultancy charges to NBCC Limited in respect of the work not actually completed, which resulted in avoidable expenditure of ₹3.97 crore.

Indian Maritime University (IMU) entered into (November 2013) a Memorandum of Understanding (MoU) with NBCC (India) Limited (NBCC), New Delhi for the construction of various buildings at its new campus at Visakhapatnam on Project Management Consultancy basis on a total estimated cost of ₹66.08 crore. Subsequently, IMU also awarded (August 2014) the work of construction of boundary wall costing ₹4.24 crore to NBCC. As per the MoU, construction of main campus buildings was scheduled to be completed within 24 months (i.e. by November 2015) from the date of MoU.

In line with clause 20.2 of MoU, IMU released (November 2013) an initial deposit amount of ₹16.52 crore representing 25 *per cent* of the approved cost of ₹66.08 crore. Subsequently, IMU also made (January 2015) advance payment of ₹10.54 crore (which included ₹1.52 crore for the construction of boundary wall) to NBCC bringing the total advance paid to ₹27.06 crore. As on the scheduled date of completion (i.e., November 2015), NBCC had actually completed only 45 *per cent* of boundary wall valuing ₹1.71 crore, whereas the construction of main campus buildings of IMU, was yet to commence.

Owing to the poor performance, IMU terminated (December 2015) MoU with NBCC and entered (December 2015) into a fresh MoU with Central Public Works Department for the construction of main campus buildings and remaining work of compound wall. The grounds for termination as per the letter of termination issued by IMU highlighted, *inter alia*, that (a) IMU had secured all the necessary clearances for construction, though as per the MoU, this was the responsibility of NBCC, and (b) NBCC had failed to submit to IMU the structural drawings, construction drawings and detailed drawings vetted by a third party and also the fire approvals.

IMU arrived at (October 2016) a settlement agreement with NBCC for the refund of ₹21.11 crore after deducting the expenditure of ₹5.95 crore incurred by NBCC on the above works out of the deposits hitherto made amounting to ₹27.06 crore. The expenditure allowed to be deducted on account of the settlement included ₹3.79 crore towards Project Management Consultancy (PMC) charges being seven *per cent* of contract awarded value of ₹49.97 crore and ₹4.24 crore for the construction of main campus buildings and boundary wall work respectively, and service tax on PMC charges amounting to ₹0.33 crore. Accordingly, NBCC refunded (November 2016) ₹21.11 crore to IMU.

As per clause 20.1 of MoU, PMC charges payable to NBCC would be seven *per cent* of the actual final cost of the work plus service tax as applicable. It was observed that the decision of the Management to allow PMC charges at seven *per cent* of the contract awarded value without reference to the value of work actually executed was not in conformity with the aforesaid clause of the MoU and also went against the financial interests of the University. The decision of allowing the PMC charges in full was also not justifiable, as IMU had itself highlighted clear lapses on the part of NBCC in the letter of termination. As the total value of work done was ₹1.82 crore⁶ only, IMU should have agreed to pay ₹0.15 crore only towards PMC charges, instead of ₹4.12 crore as agreed during the course of settlement. Thus, the settlement agreement reached with NBCC was defective and resulted in avoidable extra expenditure of ₹3.97 crore⁷.

The Management stated (January 2019) that by entering into a mutually agreeable and amicable settlement with NBCC, IMU entered into MoU with CPWD for completion of the project and the same was in advanced stage of completion. IMU also avoided a long legal battle with NBCC and the direct and indirect opportunity cost of which would have been much higher.

⁶ *Comprising ₹1.71 crore towards construction work and ₹0.11 crore towards publication of tenders/ NITs in newspapers.*

⁷

<i>PMC charges for actual work done = ₹1.82 crore*7 per cent</i>	<i>₹0.13 crore</i>
<i>Service Tax on PMC @ 15 per cent</i>	<i>₹0.02 crore</i>
<i>Total</i>	<i>₹0.15 crore</i>
<i>Actually paid (₹3.79 crore + ₹0.33 crore being Service Tax)</i>	<i>₹4.12 crore</i>
<i>Less payable</i>	<i>₹0.15 crore</i>
<i>Avoidable extra payment</i>	<i>₹3.97 crore</i>

The reply of the Management is not acceptable. Upon termination of the contract with NBCC, IMU, Visakhapatnam adjusted PMC charges of ₹4.12 crore as against the actual PMC charges of ₹0.15 crore payable as per the value of work actually executed. Hence, mutual settlement reached between IMU and NBCC was against the financial interests of IMU and resulted in extra expenditure of ₹3.97 crore.

Thus, defective settlement agreement reached between IMU and NBCC allowing PMC charges to NBCC on the work not actually completed resulted in avoidable extra expenditure of ₹3.97 crore.

The matter was referred to the Ministry in March 2019; their reply was still awaited (September 2019).

Paradip Port Trust

7.5 Inadequate securitisation resulted in avoidable loss of ₹6.25 crore

Paradip Port Trust did not impose and collect service tax applicable on the wharfage charges equivalent to shortfall quantity of minimum guaranteed tonnage and penalties on contract. As a result, Paradip Port Trust had to suffer a loss of ₹6.25 crore towards payment of service tax and penalty thereon.

Paradip Port Trust (PPT) provided priority berthing facilities for import of certain categories of goods wherein vessels carrying such goods would have overriding priority of berthing over the other incoming vessels. Participants in the above facilities (Minimum Guaranteed Tonnage, MGT provider) would require to handle MGT of traffic to the extent of one Million Metric Tonne (MMT) per annum. PPT also allotted a plot for storage of dry bulk imported cargoes with the condition of handling of MGT of cargo equivalent to specified quantum for each plot on the basis of per square meter per annum. Both the MGT providers and the Allottees (beneficiaries) were required to submit Bank Guarantee (BG) equivalent to the wharfage charges for the MGT quantity.

Audit noticed that there were instances of non-fulfilment of MGT conditions by both the MGT providers as well as the Allottees and PPT in turn, recovered wharfage charges equivalent to the shortfall quantity of the MGT by encashing the BG. As per Section 66 E (e) of Service Tax Act (Finance Act 1994), imposition of wharfage charges for such shortfall quantity attracts Service Tax. However, PPT did not consider recovery of the Service Tax on the wharfage charges of shortfall quantity from the MGT providers/allottees in its invoice while encashing the BG, for depositing the same with the Service Tax Authority.

A demand notice was raised (August 2016) by the Service Tax Authority for payment of Service Tax of ₹5.00 crore (inclusive of cess) along with interest and penalty for the year 2014-15 for non-payment of Service Tax on the wharfage charges recovered from the beneficiaries for shortfall quantity of MGT.

PPT did not agree to pay the demanded amount on the plea that Service Tax was not applicable on such recovery and referred the matter to the office of the Principal Commissioner of GST, Central Excise and Customs, Bhubaneswar. The office of the Principal Commissioner of GST, Central Excise and Customs, Bhubaneswar, however,

turned down the appeal and ordered (October 2017) to pay Service Tax of ₹5.00 crore along with interest and penalty as applicable. PPT accordingly paid (November 2017) ₹6.25 crore towards Service Tax (₹5.00 crore) and penalty (₹1.25 crore).

Audit, however, observed that PPT did not also recover Service Tax on the wharfage charges for shortfall of MGT quantity during 2015-16 onwards when there were instances of encashing BG for non-fulfilment of MGT conditions by the beneficiaries because BG was only for wharfage charges. Therefore, PPT would have had to bear the financial liability for payment of Service Tax etc. in respect of wharfage charges on shortfall of MGT quantity for the subsequent period of 2015-16 onwards as the same was not recovered from the beneficiaries.

The Management contended (October 2018) that there was no possibility of recovery of Service Tax from the beneficiaries and further stated that PPT decided (April 2018) to include the applicable Goods & Services Tax (GST) on the wharfage charges of MGT quantity while collecting BG from the MGT providers/allottees with effect from April 2018.

The Management further added that PPT had earned substantial income towards shortfall in MGT quantity vis-a-vis the payment of Service Tax etc. Had the Management included service tax in conformity with Section 66 E (e) of Service Tax Act (Finance Act 1994) in the wharfage charges of MGT quantity while collecting BG from the MGT providers/allottees, the earnings of PPT would have been increased by ₹6.25 crore.

The Ministry while accepting that there was no chance of recovery of Service Tax from the beneficiaries stated (February 2019) that the matter had been referred to the Appellate Tribunal in November 2018 against the order of the Office of the Principal Commissioner of GST, Central Excise and Customs, Bhubaneswar.

The fact, however, remains that Service Tax was applicable on the shortfall quantity of MGT as per Section 66 E (e) of Service Tax Act (Finance Act 1994) and same is followed by other ports⁸. Further, the appeal was required to be made before the Appellate Tribunal within a period of three months from the date of order. However, the appeal was made after nine months from the expiry of the above stipulated period. Hence, the possibility of refund of Service Tax paid to the Tax Authority was remote.

Thus, inadequate securitisation by the PPT resulted in avoidable loss of ₹6.25 crore.

V.O. Chidambaranar Port Trust

7.6 Avoidable expenditure on hiring Bollard Pull Tug

V.O. Chidambaranar Port Trust, Tuticorin incurred avoidable expenditure of ₹3.49 crore for hiring Bollard Pull Tug due to irregularity in tender procedure.

The V.O. Chidambaranar Port Trust (Port) invited (January 2013) tenders for hiring 50 tonne or more Bollard Pull Tug (BPT) for four years which was extendable by one year. Terms and conditions of the tender inter alia stated that, the tenderer had to submit a 'No

⁸ *Kolkata Port Trust, Chennai Port Trust, Cochin Port Trust, VOC Port Trust, New Mangalore Port Trust, Deendayal Port Trust.*

Objection Certificate' (NOC) from the owner of the present hirer that the quoted tug would be relieved within fifteen days from date of receipt of request from the tenderer.

Three firms i.e. M/s. Ocean Sparkle Ltd (OSL), Hyderabad, Polestar Maritime Limited (PML), Mumbai and M/s. Tag Offshore Ltd, Mumbai (TOL) submitted (March 2013) the offers. Tender Committee (TC) of the Port pre-qualified the two offers (OSL and PML) and disqualified (May 2013) offer of TOL treating the NOC submitted as conditional.

TOL represented (6 May 2013) to the Port and Ministry of Shipping (the Ministry) against the Port's decision on disqualifying its offer. The Ministry (31 May 2013) stated that there was no ground for rejecting the bid of TOL, and that TOL be allowed to participate in the bidding process. However, the Port did not consider the same and sought consent of OSL (L1 bidder) to open the price bid of TOL. OSL did not agree and the Port cancelled (July 2013) the tender and a re-tender was made in August 2013. In response, the Port received a single bid from OSL and Port awarded the contract to OSL for ₹1,94,400 per day which was higher by ₹21,330 per day than the previous rate quoted by OSL.

Audit observed that Port did not consider the offer of TOL on the plea that NOC submitted by TOL was conditional⁹, whereas it accepted the NOC of PML which was also not absolute¹⁰. Further, the Port against the opinion of the Ministry, unwarrantedly sought the consent of OSL for opening the price bid of TOL, even though there was no such clause in the tender document.

Port replied (July 2018) that the NOC submitted by TOL was rejected as it was a conditional one and initial tender was cancelled as per existing practice after considering the Ministry's directives, legal opinion and tender procedure. Further, the price bids of other two bidders were already opened, the consent of L-1 bidder was sought to open the price bid of TOL, as per legal opinion. Port further replied (July 2019) that it had accepted the rate quoted by OSL since it was lower than the estimated rate¹¹ quoted for another port i.e. New Mangalore Port Trust. Thus, there was profit of ₹10,840 per day to the Port. The Ministry endorsed (December 2018/July 2019) the views of the Port.

The reply of the Management is not acceptable as the Port did not consider the offer of TOL on the plea that NOC was conditional whereas the Ministry, subsequently, categorically stated that TOL submitted a valid NOC. From the available records, it was also revealed that the Port received two different legal opinions from one legal firm on the same date which *inter alia* opined (i) to open the price bid of TOL and inform to L-1 bidder (OSL) to avoid delay in the project and (ii) to call for a fresh tender. However, neither of the two opinions indicated requirement to take the consent of L-1 bidder (OSL) to open the price bid of TOL. Moreover, in case there was any dispute on NOC, Port should have sought the Ministry's clarification before opening the price bids of other

⁹ *NOC issued by Jawaharlal Nehru Port Trust (JNPT), then existing hirer of the tug of TOL, read as "tug will be released after expiry of the contract period, i.e. on 18 May 2013, subject to satisfactory completion of all your obligations and conditions as per contract".*

¹⁰ *NOC issued by the existing hirer of the tug offered by PML, read as "We have no objection to our tug boat Svitzer Surat being offered for tender to VOC Port Trust by Polestar Maritime Ltd subject to the terms and conditions of our charter party".*

¹¹ *₹2,05,240 per day per Bollard Pull Tug.*

bidders. Further, the statement of the Port regarding making profit is also not acceptable as it is an afterthought. What is relevant is that the Port finalised its tender process in October 2013 whereas rate quoted for another Port was during April 2014.

Thus discharging of first tender by the Port without any justifiable ground resulted in avoidable expenditure of ₹21,330 per day which works out to ₹3.49 crore during the period October 2013 to March 2018. The Port may, therefore, ensure that all the works allotted through tendering process are done with utmost care and after following the due tender procedure to obviate the possibility of similar irregularity in future.