

आलोक Aloke



Vigilance Department
Kolkata Port Trust
6, Fairlie Warehouse Building (Ground Floor)
Stand Road, Kolkata - 700 001



Glorious Past - Vibrant Future



Vigilance
Kolkata Port Trust
2019



Integrity Pledge for Organisations

We believe that corruption has been one of the major obstacles to economic, political and social progress of our country. We believe that all stakeholders such as Government, citizens and private sector need to work together to eradicate corruption.

We acknowledge our responsibility to lead by example and the need to put in place safeguards, integrity frameworks and code of ethics to ensure that we are not part of any corrupt practice and we tackle instances of corruption with utmost strictness.

We realize that as an Organisation, we need to lead from the front in eradicating corruption and in maintaining highest standards of integrity, transparency and good governance in all aspects of our operations.

We, therefore, pledge that:

- We shall promote ethical business practices and foster a culture of honesty and integrity;
- We shall not offer or accept bribes;
- We commit to good corporate governance based on transparency, accountability and fairness;
- We shall adhere to relevant laws, rules and compliance mechanisms in the conduct of business;
- We shall adopt a code of ethics for all our employees; We shall sensitise our employees of laws, regulations, etc. relevant to their work for honest discharge of their duties;
- We shall provide grievance redressal and Whistle Blower mechanism for reporting grievances and fraudulent activities;
- We shall protect the rights and interests of stakeholders and the society at large.



Telegraphic Address :
"SATARKTA: New Delhi

E-Mail Address
cenvigil@nic.in

Website
www.cvc.nic.in

EPABX
011-24600200

फैक्स / Fax :
011-24651186



केन्द्रीय सतर्कता आयोग
CENTRAL VIGILANCE COMMISSION



सतर्कता भवन, जी.पी.ओ. कॉम्प्लेक्स,
ब्लॉक-ए, आई.एन.ए., नई दिल्ली-110023
Satarkta Bhawan, G.P.O. Complex,
Block A, INA, New Delhi-110023
019/VGL/029

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दिनांक / Dated...16.10.2019.....

MESSAGE

The Vigilance Awareness Week observed each year by the Central Vigilance Commission affirms Commission's commitment to promotion of integrity and probity in public life through citizen participation.

"Integrity- A way of life" has been chosen as the theme for the Vigilance Awareness Week this year by the Commission. Integrity and Ethics form the foundational pillars of a nation and national development takes place when individuals and organisations are committed to integrity as a core value. Combating corruption is not just a matter of making laws and creating institutions, but is deeply rooted in human values and morals of individuals. Cultivating ethical values is essential for building a New India.

The Commission believes that this theme would help draw the attention of all sections of society especially the youth of the significance of ethical conduct in the building of an honest, non-discriminatory and corruption-free society.

The Commission's initiatives like the taking of voluntary Integrity Pledge, Integrity Clubs in schools and colleges, mass awareness campaigns are efforts to motivate/ people to observe ethical behaviour in everyday life.

The Commission appeals to all to inculcate integrity as a way of life for the realisation of the full potential of the individual and progress of the nation.

(Sharad Kumar)
Central Vigilance Commissioner



विनीत कुमार, भा.रे.वि.ई.से.
अध्यक्ष

Vinit Kumar, I.R.S.E.E.
Chairman

कोलकाता पत्तन न्यास
15, स्ट्रैंड रोड
कोलकाता-700 001
दूरभाष
दफतर 2230 5370
फैक्स 2230 4901

Kolkata Port Trust
15, Strand Road
Kolkata-700 001
Phone
Office : 22305370
Fax 2230 4901



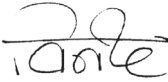
MESSAGE

I am happy to learn that Vigilance Awareness Week-2019 is going to be observed at Kolkata Port Trust from 28th October to 2nd November, 2019. The theme of this year Vigilance Awareness Week is "Integrity – A Way of Life". Vigilance Department of Kolkata Port Trust is bringing out 3rd edition of "ALOE" to commemorate the occasion.

Vigilance is a managerial function and an integral part of duties of an executive. The object of Vigilance is to ensure transparent and prompt action for achieving efficiency and effectiveness of an organisation and of its employees.

I whole-heartedly congratulate the Vigilance Department for the above effort and wish them all the best in their activities.

Date : 18th October, 2019


(Vinit Kumar)
Chairman

Dr. Preeti Mahto, IP & TAFS,
Chief Vigilance Officer,
Kolkata Port Trust.

FROM THE EDITOR'S DESK

It gives me immense pleasure to announce to our friends in Kolkata Port Trust (KoPT) that Vigilance Department has been able to bring out the 3rd edition of "ALOKE", a wonderful initiative that had been materialized by Shri S. K. Sadangi, Ex-CVO, KoPT. It contains articles, analytical studies, systemic suggestions and important circulars & guidelines, which would help everyone contribute, in their own little ways, to realize the thematic goal behind Vigilance Awareness Week - 2019 : "*Integrity - A way of life*". The theme assumes all the more importance since this year also marks the 150th birth anniversary of Mahatma Gandhi, an epitome of integrity. I would especially like to thank those individuals, from Department(s)/Division(s) other than Vigilance, who have managed to find time from their hectic work schedules and responsibilities to contribute valuable articles for this edition of "ALOKE".



During the little time span of around a couple of months that I have spent as CVO of KoPT, I have been fascinated by the extremely rich heritage of this historic Port. I have also been enthralled by the fact that 63.7 million MT cargo has been handled by Kolkata Port Trust in 2018-19, achieving a substantial growth of around 10% over 2017-18, even in the face of the natural constraint of draft restrictions that this Port encounters. This year, KoPT is arranging for sesquicentenary celebrations, marking the Port's journey from a glorious past to a vibrant future. I am confident that optimal utilisation of the rich human resource of this Port, coupled with realization of its revenue potential, would open up new horizons for KoPT and nothing can restrict this organization from scaling new heights in the future.

Coming back to the theme of "Integrity - A way of life", the enormous importance of the same in India becomes evident when we find that as per the "Corruption Perceptions Index 2018" (an indicator of perceived levels of public sector corruption) of Transparency International, India ranks 78 amongst 180 countries all over the world, being able to secure only 41 on a scale of 0 to 100 (0 is highly corrupt and 100 is very clean). It reveals that in India, we are still far from making serious inroads against corruption. In the present times, when it has become very common to see people blaming corruption for every ill of our country, let us strive to contribute our bit in our own organization. It is extremely important that KoPT continues to encourage its employees to do their bit in their own organization, maintaining absolute integrity in every sphere of their functioning.

Roger Jenkins explains integrity as "The ability to do the right thing or choosing to do the right thing when you could get away with doing the wrong things." In the above backdrop, nothing is perhaps more important to the organization than having its employees embrace integrity as a way of life. When one is able to achieve the same, he/she begins to make valuable contributions to the betterment of his/her life - both in the personal domain and in the official sphere. Just imagine what would happen if every individual of the organization strives to achieve real integrity in each and every aspect of his/her official functioning - the organization would be transformed into an institution.

Dr. Preeti Mahto
Chief Vigilance Officer, KoPT

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No, not a holiday! It's a full working day. But some are in police custody, some under suspension and some...

Swachhta initiatives at Haldia Dock Complex

G. Senthilvel

Dy. Chairman (Haldia Dock Complex)

One must be wondering why I am writing on Swachhta initiatives in the Vigilance magazine. I believe that Gandhiji, when he wanted a “Clean India”, he wouldn’t have referred to only the external cleanliness. No doubt that external cleanliness is important and I understand that the external cleanliness leads to good habits, which, in turn, lead to good character. I am sure that our Mahatma had internal purity in mind through external cleanliness. Clean outside atmosphere leads to clean internal mind.

When the inner self of a person is clean where is the question of corruption?

We have seen so many senior Officers having a purity internally setting a personal example which motivates to be honest and straight.

Saint Poet Thiruvalluvar in one verse describes the importance of both external and internal cleanliness.

*“As the water cleanses the body external
Truthfulness cleanses the soul internal”*

One needs both forms of cleanliness and hence, both forms of cleanliness have been mentioned here, citing one as an example of the other.

Also the Saint poet emphasises that *“From propriety of conduct men obtain greatness; from impropriety comes insufferable disgrace.”*

I would like to add in Hindi

ईमानदारी वह चीज है जिस पर मनुष्य की प्रतिष्ठा निर्भर करती है। वह व्यक्ति जो अपने खूनपसीने की कमाई से रोजी हासिल करता है, और जो भी वह कमाता है, उसमें दूसरों को हिस्सा देता है, ऐसे व्यक्ति को ईमानदार कहना चाहिए।

In this connection, it is important to mention that our organisation, Haldia Dock Complex, KoPT believes in preventive Vigilance, where transparency measures plays a key role. A few of them are worth mentioning:

1. **Independence in decision making and performance:** The Officers at HDC work in a free and independent environment, where they are allowed to express their views freely. This is encouraged not only in discussions but in file noting also.

2. E-tendering and systematic evaluation of tenders: This provides equal opportunity and access to all the bidders nation-wide. Besides, it prevents any restriction and cartel formation, thereby leading to better participation and cost reduction. Various System Improvement Measures issued by Chairman gives clarity on evaluation of the tenders, which has resulted in a fair award of contracts.
3. Grievance redressal of employees: There is a well laid mechanism of grievances redressal of employees on time bound manner within the framework of rules. There is a specified day and time when the HDC employees and other stake holders can express their grievances/ suggestion to the highest Management level.
4. Periodical meeting with Unions: The unions undoubtedly play an important role in maintaining of favourable organisational environment. Therefore, regular interactions with the unions are made to resolve differences, if any, rectify unfair labour practices and to resolve any grievances thereof.
5. Stakeholders meetings: HDC recognises the role of various stake holders associated with Port functioning and accordingly, have been given access to interact with officials across all levels to facilitate Port performance.
6. Monitoring contract performance and timely settlement of bills: In the present economic environment, the vendors and contractors are treated as Port partners because their performance has reflection on HDC's growth. Accordingly, sincere efforts are taken to monitor the contract performance on continual basis and care is also taken regarding timely settlement of bills.
7. Increased use of information technology: Since information technology ensures smooth exchange of information, transparency, in time performance, efficiency, cost effectiveness, cash less digital transactions, etc., HDC has embarked on continual implementation of information technology.

Finally, initiatives have been made for collective Vigilance, which is possible through awareness, empowerment and freedom of the employees and the stake holders through ethico-moral transformation with the motto:

“Asato Maa Sadgamaya
Tamaso Maa Jyotirgamaya
Mrityormaa Amritam Gamaya”

Catch Them Young

Suman Chatterjee
Dy. Chief Vigilance Officer

The theme for this year's Vigilance Awareness Week, "Integrity – A Way of Life", could not have come at a better time for us. It is not only that we Indians view ourselves as highly corrupt, what should be a cause for grave sorrow is the fact that even the world perceives us as corrupt. The latest, i.e., 2018 issue of Transparency International, which ranks countries on the basis of a Corruption Perception Index, ranks India at 78 out of 180 countries, with a score of 41 out of 100.

Even though our succeeding Governments have been spending enormous amounts of money towards development of the country's health, roads, bridges, education, agriculture, etc., we find that the actual situation in the ground level has been changing very slowly, but definitely not in proportion to the quantum of money spent by the Government. Each and every one of us is aware of the huge amount of money that is siphoned off, each time any work is being undertaken with Government money. As a result, we are left with incomplete projects, bridges collapsing during construction period, equipment in Government Hospitals (purchased at huge cost) lying unutilized and many such other examples.

While siphoning off money from Government projects is a visible aspect of corruption and hence, lack of integrity, there are many other aspects which are not so visible.

More or less, each of us in India exhibit a lack of integrity every time we are late for our office, jump queues, offer bribes to any authority for getting something done that is normally not permissible, not obeying instructions, rules, regulations, etc. The most disturbing aspect of this lack of integrity comes to the fore when we try to justify each act of wrong doing on our part by comparing it with some other act of wrong doing. We seek solace in the self-assigned degree of such acts being greater than or lesser to in intensity or malice or viciousness to something else.

A perusal of the list published by Transparency International will reveal that the countries of Western Europe and New Zealand have consistently ranked among the top 10 countries and perceived to be the least corrupt countries. I will recount my personal experience of an incident that happened in the International Border between Cambodia and Thailand. While waiting in a queue for immigrating out of Cambodia, I noticed that a Policeman of Siem Reap Police was collecting some

documents, including passports, going into the office and after some time coming out and handing over the documents to the person concerned. Being used to such suspicious activities in India, I immediately realized what was happening and approached the Police personnel. He told me that he would get my immigration done from inside for a fee of USD 10 per person. I negotiated with him and handed him our passports for a total fee of USD 15. He completed the formalities and handed back the passports within 3 - 4 minutes. In between, the queue had not moved. Finding this faster method, I informed the European person standing before me in the queue of the method before leaving. I was extremely embarrassed when he told me that he was not interested and preferred to stand in queue and wait his turn.

I will not claim that I have totally forgone my impulse to move faster, but it is a fact that this incident has actually helped to calm me into waiting in queue for longer periods and respect the rights of others similarly waiting before me.

It is this disregard for other people's rights and their privileges that is also symptomatic of the lack of integrity prevalent in our country. There is no point in trying to foolishly claim that corruption can be completely wiped out by adopting this method or that, because greed cannot be wiped out completely. Even the countries ranked at the very top have not managed to achieve the score of 10 out of 10 in the corruption parameter. But, what we can definitely achieve is tolerance and more importantly, respect and regard for other people's rights and privileges. We should be able to also recognize the ill effects of corruption as such, and not ascribe degrees or motives to such actions. Also, most importantly, we must have zero tolerance for corrupt practices, as well as dealing with corrupt persons.

I was educated in a Christian Missionary School, where we had a subject called Moral Science, where lessons in ethics and morality used to be taught. I strongly believe and advocate that Moral Science, including lessons in ethics and integrity, be included as a subject in all schools of the country, from Class-IV to Class-VIII, and passing this subject be made compulsory for promotion to the next higher class. Learning this subject for passing an examination will ensure that the young minds grow up on a dose of ethics, integrity and morality, along with other necessary subjects. This could at least ensure a far better, ethical and morally superior generation that will come to survive us.

Archipelago of irregularities

A case study on construction of a RCC Jetty and Navigational Aids.

S. Bandyopadhyay

One of the key areas of governance that has always attracted attention of Central Vigilance Commission (CVC) is procurement of Goods, Works and Services by the State and its instrumentalities. This, in itself, is not surprising, since developing countries like India spend 25 - 30% of GDP annually through procurement, which is much more than the volume of their tax collection. The emphasis of Central Vigilance Commission has been to consistently alert those in charges of procurement about potential pitfalls in the process. Learning from a rich repository of preventive and punitive actions undertaken by various Vigilance units in the country, CVC had even compiled sets of common pitfalls and irregularities in the form of separate Compendia. In addition to CVC, Manuals for procurement and General Financial Rules (GFR) issued by the Department of Expenditure are expected to serve as a guidance system for procurement. Due to a detailed cataloguing of instructions and guidelines for years together, this particular area of Governance, i.e., procurement sector, can arguably be said to be most alerted and best educated on its potential vulnerability. In other words, there are adequate number of road signs and red alerts for a practicing procurement manager to be aware of these pitfalls and avoid them.

However, contrary to wide dissemination of procurement guidelines published by diverse government authorities, what can one say when the identical irregularities and distortions occur repeatedly in tendering/contracting activities of many organizations? In fact, if we make an analysis of procurement related cases, whether taken up by Vigilance or Audit, one gets much to see the same type of mistakes and distortions continuing to occur year after year. Does it mean that the availability of detailed instructions and case studies by diverse oversight-bodies are not having necessary impact on errant officials?

The following case study of a tender/contract of an organization located in a remote Island of India might help in illustrating the aforementioned questions.

A Government organization had been advised by its controlling authority to undertake construction of a RCC Jetty and Navigational Aids, through PPP mode. Consequent to receipt of complaint from some reliable sources regarding gross irregularities/lapses with respect to execution of the said work, the Vigilance Department of the organization decided to carry out a preliminary examination,

to ascertain the veracity of such complaint. The extent of irregularities/lapses that emanated from a mere preliminary examination of the captioned work was enough to startle the officials of the Vigilance Department.

During preliminary discussions with the officials involved in the aforesaid project, almost each and every official of the executing department tried to emphasize that whatever procedures that had been followed in the instant case were all by the book, and accordingly, there was no question of any irregularities/lapses at any stage of the project. Some officials of the executing department even tried to assert that this was perhaps one of the ideal project works executed by them.

Upon hearing such a glorified version, i.e., of a “model project”, from the officials of the executing department, the officials of Vigilance Department relied upon a rather unconventional method of preliminary examination. When queried by the Vigilance Department whether any Arbitration proceedings had taken place/were underway related to the said project, the dealing officer of the executing department informed that indeed an Arbitration was going on between the organization and the contractor. It was also mentioned by the dealing officer that such Arbitration had been invoked by the contractor, mainly over disputes pertaining to payment. Immediately, the Arbitration-related file with respect to the captioned project was collected by the Vigilance Department. To the astonishment of the officials of the Vigilance Department, a single letter by the contractor, addressed to the organization, revealed that majority of the disputes were related to additional/extra and excess payments claimed by the contractor and indicated towards major irregularities in such matters. The Vigilance Department lost no time in collecting all the files related to the project, i.e., from inception to the ongoing Arbitration. The said files virtually opened a Pandora’s Box of irregularities/lapses in execution of the said project. Amongst the same, few salient irregularities/lapses are enumerated hereunder:

1. As already mentioned earlier, the organization had been advised by its controlling authority to undertake construction of the said RCC Jetty and Navigational Aids, through PPP mode. Although the organization had clarified to the controlling authority, with justification, that the said work was actually required to be carried out on “Turn Key” basis and not through PPP mode, the RFQ/RFP still contained the provisions of a long term “Concession Agreement”, which is a characteristic of PPP projects. Although it had been clarified by the organization, during the 1st Pre-bid Techno-commercial Conference, that Operation & Maintenance of the RCC Jetty and Navigational Aids were not relevant to the said “Concession Agreement”, the contractor continued to claim the right to impose toll for

movement of passenger vessels to and from the said Jetty during the concession period mentioned in the "Concession Agreement". Had the bidding documents been prepared for a "Turn Key" contract, such confusion regarding concession period as well as the resulting claim of the contractor for collection of toll would not have arisen at all.



2. Two (2) bids had been received within the stipulated last date of submission and opening of bids. Another 2 (two) bids had been received after a couple of days, i.e., after the closing date of submission of bids. In a strange and unique fashion, the date of opening of the bids had been extended for another couple of days from the scheduled date of opening of bids and in an even stranger manner, such extension of date of opening had been informed to the 4 (four) participating bidders only.
3. Out of the 4 (four) participating bidders, 3 (three) bidders did not submit relevant documents pertaining to a particular aspect of technical pre-qualification criteria. Although the above shortfall of the 3 (three) bidders had been recorded in the techno-commercial comparative statement, all the 4 (four) participating bidders had been declared by the Tender Committee as techno-commercially qualified, without furnishing any justification, whatsoever, towards the same.
4. Live load consideration of say $2y \text{ T/m}^2$, instead of $y \text{ T/m}^2$, had been categorically mentioned in the 2nd Pre-bid Techno-commercial Conference and the same had duly been recorded and made available to all the participating bidders. In spite of the same, the contractor had claimed an enormous extra payment on account of such increase in live load, which, however, was not at all admissible, since the same had already been known to the bidders prior to submission of their bids. Astonishingly, out of the total additional amount claimed by the contractor on this account, the organization had already paid an additional amount in the range of Twenties of Lakhs to the contractor, based upon the opinions of the Independent Engineer and the Dispute Resolution Expert.
5. There had been yet another instance of additional payment, based upon the opinions of the Independent Engineer and the Dispute Resolution Expert. The drawings submitted by the contractor, along with the bid, clearly mentioned a change in gradient from say $+z.00 \text{ m}$ to $+(z+1).00 \text{ m}$, for a particular span of the new Jetty, for connecting the new Jetty to the adjacent old Jetty. Although this was in line with the scope of work of the bidding documents, the contractor claimed the same as additional work, when it was definitely not the case and no extra payment on this account

was admissible. In a strange turn of events, the organization shelled out an additional payment in the range of Twenties of Lakhs to the contractor on this ground.

6. Interestingly, the Independent Engineer as well as the Dispute Resolution Expert had been appointed on nomination basis, without going for open tendering.
7. An interest-free Mobilization Advance had been paid to the contractor, in a single instalment, and that too, without any back-up Bank Guarantee.
8. There had been post award finalization of the payment schedule. However, no document could be found as to which authority had accorded approval to such post contract finalization of payment schedule.
9. Two (2) Navigational Aids had been substituted by Floating Buoys in place of RCC piled structure, as mentioned in the bidding documents. Although these Floating Buoys had been much cheaper than RCC piled structure, the cost difference had neither been recovered from the contractor nor had the contractor been informed that such cost difference would be recoverable from the final bill.
10. During execution of the instant project, the contractor had submitted a proposal to the Engineer of the contract for construction of passenger amenities on the captioned Jetty, at a total cost in the range of Tens of Crores. The said proposal had been entertained by the Engineer of the contract and in fact, the same had been recommended and sent to the controlling authority for approval, despite having no provision, whatsoever, in the Agreement for construction of such passenger amenities on the said Jetty.

The above are only a few illustrative irregularities/lapses in construction of a RCC Jetty and Navigational Aids from Government funds. It is evident from the above that majority of the above-mentioned irregularities/lapses cannot be attributed to inadvertent errors on the part of the officials of the executing department, but intentional actions taken by such officials. The same have adversely affected the organization in at least 2 (two) ways. Firstly, there has been huge financial loss to the organization in the form of additional payments to the contractor, which were clearly inadmissible under any circumstances, whatsoever. Secondly, the organization is suffering from financial loss in the form of Arbitration expenses, on grounds which should not have arisen in the first place, had appropriate actions been taken by the officials concerned, at the appropriate time.

Some perceive Rules, Procedures and Guidelines to be a stumbling block in the path of expeditious executive decision making. Actually, such rules and regulations have been introduced over time, especially in procurement sector, to create a robust tendering environment that has long-term stability and ethics, which, in turn, helps eliminate proliferation of local short-cuts and distortion. Established systems and procedures in governance aim for long term stability and solidity in preference to short term gain achieved through discretionary pathways. If such short-cuts are allowed in the name of faster decision making, they would be replicated and multiplied, promoting rent seeking behavior among the stake holders, ultimately overwhelming the system as a whole. Closer scrutiny of past procurement distortions by Vigilance units of the country and other oversight organization like CAG amply testifies this fact.



Corruption is a cancer, a cancer that eats away at a citizen's faith in democracy, diminishes the instinct for innovation and creativity.

Joe Biden, former Vice President of the United States





Countering Corruption in India - A different thought-process

Arnab Basu

Estate Manager (R&R)



Quite a few of the respected readers of this article might have come across the following joke, widely circulated through Whatsapp:

The authority, in a public procurement machinery, being committed, by the prospective contractor, of a hefty bribe, had hurriedly put his endorsement in the file as **APPROVED**. After that, considerable delay had occurred, for the bribe to reach to the authority. Hence, the authority lost patience and in connivance with the dealing clerk and peon/messenger, modified his own endorsement in the file as **NOT APPROVED**. That information, as anticipated by the authority, immediately reached the contractor and without any further delay, the bribe amount, through the channel, reached the authority. Now, the authority got into a fix, regarding ways and means to salvage his modified endorsement in the file, without any cutting/penning through (which may attract queries in the future). Then came the ready answer of the peon/messenger and the authority being amply satisfied, further modified his endorsement in the file as **NOTE APPROVED**.

The above, as already stated, is a joke (circulated through Whatsapp), and hence, the content may be far-off from actual reality. But, it goes on to spread a clear and loud message that corruption runs down various strata of the hierarchy and, inter-alia, society. One can always argue that, to prevent such wide spreading of corruption, there are whistle-blowers, i.e., persons who expose any kind of information or activity that is deemed illegal, unethical or not correct, who can act as deterrent in such cases. But, the fact remains, in spite of existence of a number of laws to protect whistle-blowers, they (whistle-blowers) generally face stiff reprisal and retaliation from those, who are accused or alleged of wrong-doing. Moreover, whistle-blowing is a topic of ongoing ethical debate. Leading argument is that whistle-blowing is a form of civil disobedience and aims to protect the public from wrong -doing. In the opposite camp, some see whistle-blowing as unethical for breaching confidentiality. In this scenario, whistleblowers are vulnerable to retaliation in various forms and sometimes are confronted with legal action. All these lead to a situation that whistle-blowing, a tool thought to be deterrent in spreading of corruption, is almost defunct in Indian scenario. This, along with many other factors, has created such a situation, which resulted in India ranking poorly in the scale of Transparency International, an international body associated with ranking various countries in the anti-corruption scale.

Here comes the utmost importance of proper parental upbringing. One has to remember that bribes may be demanded by any official to do something, which (s)he is already paid to do. Bribes may be demanded by an official to bypass laws and regulations. In both the cases, one may analyze what goes on in the mind of the bribe-giver and the bribe-taker. The bribe-giver, since his (her) upbringing has seen that it has been a phenomenon associated with his (her) parents in every walk of life, does not feel uncomfortable to adopt the same corrupt practice. The bribe-taker, generally public officials holding position, emulates his (her) predecessors in continuing the legacy of corruption. Thus, it is seen that corruption has got deep-rooted in our Indian society and hence, downsizing the extent of corruption, is felt to be largely effective through proper upbringing from childhood stage. Here comes the role of each and every parent, to impart proper education to their children. In this competitive age, children must be told to be competitive, but they must also be told not to try to achieve success, by adopting unfair means. Children must also be given a clear and loud message that they must be law-abiding citizens, when they grow up.

Such parental upbringing, in my opinion, may bring an effective change in the rampant corruption, prevalent in all walks of life in India, and thus, improve the ranking of India in the international anti-corruption scale.



Integrity, transparency and the fight against corruption have to be part of the culture. They have to be taught as fundamental values.

Angel Gurría, OECD Secretary General



The Invisible Sting

The scenario of Sting Operations in India.

Sandip Banerjee

Asst. Manager, Vigilance Department

Democracy is said to rest on the venerable 4 (four) pillars of - (i) the legislature, (ii) the executive, (iii) the judiciary, and (iv) the press. In present times, the term “press” can very well be replaced by the term “media”, coming out from the confines of the print media to encompass a much wider array – the television and the net. This has also enhanced the reach of the media exponentially, with news available to virtually anybody having access to a mobile phone with internet connection. “With great power comes great responsibility” – runs the adage. As such, with the media wielding an ever-increasing power in today’s world, its responsibility has also increased manifold.

One of the salient and intriguing facets of the media world has been investigative journalism. Wikipedia defines investigative journalism as a form of journalism in which reporters deeply investigate a single topic of interest, such as serious crimes, political corruption or corporate wrongdoing. A classic example of the same is a 2017 American historical political thriller film “The Post”, directed and produced by Steven Spielberg, wherein publisher Katharine (Meryl Streep) and her Editor-in-chief Ben (Tom Hanks) put their careers and freedom at risk to uncover a scandalous decades-long secret (The Pentagon Papers) about the Vietnam War. Another example of investigative journalism is a 2009 film “State of Play”, which depicts that when a Congressman’s assistant is murdered, a team of reporters join forces with the police to get to the bottom of the case. They delve into the politician’s past and walks headlong into a massive cover-up, involving some of the nation’s most promising political and corporate figures.

Investigative journalism also goes a long way in unearthing corruption. However, let us look into one of the rather unconventional tools employed by media houses/journalists in unravelling corruption – sting operation (also termed as undercover journalism). However, it is to be borne in mind that sting operations are not necessarily carried out exclusively by media houses. There have been instances when a common man or even some aware villagers have undertaken sting operations, powered by a mobile phone only.

By definition, a sting operation is a deceptive operation designed to catch a person committing a crime. Sting operation is not at all an alien concept in India, since the country has seen a number of sensational ones over the past 2 (two)

decades. However, such sting operations have almost always been mired in controversies – right from the legal point of view to the moral/ethical perspective. The answers to various questions raised regarding sting operations are not so simple.

Types of sting operations

Based upon their purpose, sting operations can be classified into 2 (two) types – (i) Positive and (ii) Negative.

Positive sting operation takes place in the interest of the society at large. It can be one that is carried out with genuine intent to expose rampant corruption and compel the law enforcement agencies as well as the judiciary to take notice and spring into action, many a times suo motu. This may further facilitate in increasing accountability and responsibility at every echelon of the Government.

Negative sting operation does harm to the society and its individuals by unnecessarily violating the privacy of the citizens, without any tangible benefit to the society. They are generally aimed at profit making and spreading sensationalism, with the sole objective to gain popularity.

From the legal point of view, sting operations can further be classified into 2 (two) categories – (i) legal entrapment and (ii) illegal entrapment.

Most of us have surely heard the term legal entrapment/trap case. In certain cases, when a person has demanded bribe/illegal gratification from another person, the second person goes to law enforcement agencies like police or CBI. A trap is laid by the law enforcement agency to catch the person, who has demanded the bribe/illegal gratification, red-handed, i.e., while accepting bribe/illegal gratification from the person it has been demanded from. Such legal entrapment or a legitimate trap essentially has the approval of the competent authority of the law enforcement agency and arrangements are made so that the same can be produced as evidence in the court of law for prosecuting and convicting the person accepting bribe/illegal gratification.

However, illegal entrapment is one in which a person has not actually demanded a bribe/illegal gratification, but is suspected to be in the habit of accepting bribes/illegal gratification, and is enticed into taking a bribe/illegal gratification, just to see whether the person would actually fall into the trap. Such an act is illegitimate, unless authorized by the authority competent to do so.

All said and done, in absence of any specific law in India pertaining to the validity of sting operations, there is ample confusion between what constitutes a legal sting operation and what doesn't.

Sting operations and freedom of the press

A question arises as to whether the media houses deliberately misuse freedom of the press in conducting sting operations. Similarly, there is yet another question

as to whether the grounds set out in Article 19(2) of the Constitution of India can be enough to impose restrictions on media houses from undertaking sting operations.

Article 19(1)(a) of the Constitution of India says that all citizens shall have the right to freedom of speech and expression. In India, freedom of press is implied from the freedom of speech and expression guaranteed under Article 19(1)(a). The same has been corroborated by numerous observations made by the Hon'ble Supreme Court of India in various judgments and the views expressed by eminent jurists.

It is absolutely necessary to guarantee, maintain and preserve freedom of speech & expression in a democracy. At the same time, it is also necessary to place some restrictions on this freedom for maintenance of social order, because no freedom can be absolute or completely unrestricted. Such restrictions on freedom of speech & expression have been laid down in Article 19(2) of the Constitution of India. It is pertinent to mention herein that the grounds contained in Article 19(2) show that they are all concerned with the national interest or in the interest of the society.

Press stands on no higher footing than any other citizen and cannot claim any privilege (unless conferred specifically by law), as such, as distinct from those of any other citizen. The press cannot be subjected to any special restrictions, which could not be imposed on any citizen of the country.

In view of the foregoing, we can say that restrictions imposed by Article 19(2) upon the freedom of speech and expression guaranteed by Article 19(1)(a), including the freedom of press, serve a two-fold purpose, viz., on the one hand, they specify that this freedom is not absolute, but are subject to regulation and on the other hand, they put a limitation on the power of a legislature to restrict this freedom of press/media. But, the legislature cannot restrict this freedom beyond the requirements of Article 19(2) and each of the restrictions must be reasonable and can be imposed only by or under the authority of a law, not by executive action alone.

In *Indian Express Newspapers (Bombay) Pvt. Ltd. and Ors. vs Union of India*, the Supreme Court had emphasized that "freedom of speech, of the press, of information and of assembly are vital for the realization of human rights" and relied upon Article 19 of Universal Declaration of Human Rights (UDHR), 1948, which declares that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

View above, the most pertinent question is perhaps to what extent can/should the media go?

One can always argue that the media does not violate its freedom by carrying out sting operations, since most of the time such sting operations expose cases of corruption, corporate wrongdoing, crime, etc., which is in the larger interest of the society and as such, grounds of restriction contained in Article 19(2) do not apply in such cases. There are counter arguments too.

Sting operations and right to privacy

Every Indian citizen has the fundamental right to live with dignity & respect and a right to privacy guaranteed to him/her under Article 21 (Protection of life and personal liberty) of the Constitution of India, which reads as: “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

A salient question arises from the above, i.e., whether a sting operation violates the right to privacy of an individual. This assumes all the more importance since an individual, who has been captured in the act of a wrongdoing during a sting operation, has his/her personality, reputation and career shattered to smithereens, after featuring in such a media expose. It can always be argued that by indulging in an illegitimate act, may it be accepting bribe/illegal gratification or committing a crime or any other wrongdoing, the individual himself/herself destroys his/her right to live with dignity and respect. Does being engaged in a wrongdoing still ensure an individual of his/her right to privacy, even if the individual does not get caught by means of a sting operation?

The classic ethical dilemma surrounding all sting operations is whether we can hold somebody liable for a crime that he would not have otherwise committed, if not lured into it. Here comes the question of integrity. Real integrity is doing the right thing, knowing that nobody's going to know whether you did it or not. The fact that a person accepts bribe/illegal gratification or commits a crime or any other wrongdoing, unaware of the existence of an ongoing sting operation, questions the very integrity of the individual. As such, the argument that the person would not have otherwise committed the crime, unless he was lured into it by means of a sting operation, does not appear to hold much water.

Sting operations and their admissibility as evidence

This is, perhaps, one of the salient issues pertaining to sting operations.

There is one school of thought that since evidence obtained by means of a sting operation is, in a way, acquired through deception or fraud, such evidence is not admissible in the court of law for prosecuting and convicting an individual. In fact, it is often argued that the person/persons carrying out such sting operations are themselves culpable, since they do not follow legitimate procedures in collecting such evidence.

There is yet another school of thought that the end justifies the means. As such, whatever be the means through which the evidence has been obtained, regarding an individual accepting bribe/illegal gratification or committing a crime or any other wrongdoing, such evidence should be admissible, since it exposes and establishes the wrongdoing.

However, Indian courts have adopted divergent views with respect to admissibility of sting operations as evidence in prosecuting and convicting an individual. There have been cases where evidence obtained through sting operations has been disregarded, citing that the same has been obtained through enticing an individual into incriminating himself/herself. On the other hand, there have also been cases where evidence acquired through sting operations has been admitted, keeping in view the greater interest of the society at large. There have yet other cases where evidence collected by way of sting operations has been considered as extra-judicial confession and hence, admissible. However, in such cases, other surrounding circumstances, material witness(es) and materials available on record have also been taken into consideration while deciding upon conviction of an individual.

View above, it cannot be said that in India, there exists sufficient clarity about admissibility of sting operations as evidence in prosecuting and convicting an individual.

Conclusion

As has already been explained in the beginning, responsible journalism is always aimed at serving the greater interest of the public and the society. In doing so, it justifies its position as one of the pillars of democracy. It is hardly possible to deny that a sting operation, undertaken with genuine intention to expose corruption, serves public interest and that of the society at large. As such, there appears to be no valid justification of prohibiting such sting operations. Having said so, it is felt that definite statutes need to be enacted, setting out parameters/course of action to be followed in sting operations, admissibility of evidence obtained through such sting operations and other related matters.



আত্মদীপ

সূদীপ্ত ব্যানার্জী

ডেপুটি ম্যানেজার

ট্রাফিক অপারেশনস (শিপিং ও কার্গো হ্যাণ্ডলিং) ডিভিশন

হলদিয়া ডক কমপ্লেক্স, কলকাতা পোর্ট ট্রাস্ট

কথায় বলে, সততা হল পরম ধর্ম। মজাটা এই যে, হিন্দু, ইসলাম, বৌদ্ধ, শিখ, পারসিক, খ্রীষ্ট ইত্যাদি সব ধর্মেই সততাকে বিশেষ গুরুত্ব দেওয়া হয়েছে। আর বেশির ভাগ মানুষই, যদিও ধর্মপ্রাণ, জীবনের বহু ক্ষেত্রে নিজের ধর্মের কথা তথা সততার কথা বেমানান ভুলে যান। নৈতিক আদর্শের কথা সঙ্কলে জানেন, কিন্তু নিজের জীবনে সেই আদর্শের প্রয়োগ বড় শক্ত হয়ে দাঁড়ায়। মুখে সততাকে সাধুবাদ জানাচ্ছেন অথচ নিজের কর্মক্ষেত্রে অনৈতিক, অন্যায় কাজকর্মে আকণ্ঠ ডুবে আছেন, এমন মানুষের সংখ্যাও কিছু কম নয়।

প্রকৃতি বৈচিত্র্য পছন্দ করে। তাই সব মানুষের স্বভাব আলাদা, অভ্যাস আলাদা, উপলব্ধি আর চিন্তা আলাদা। সততা মানুষের একটি স্বভাব, একটি অভ্যাসও বটে। যার এই স্বভাবটি আছে, বা যিনি এই অভ্যাসটি আয়ত্ত করেছেন, ঘরে বাইরে সর্বত্রই কঠিন ও জটিল পরিস্থিতির মোকাবিলা তিনি দৃঢ়তার সঙ্গে করতে পারেন। প্রকৃতির বহু বিস্ময়ের মতো, আরেক বিস্ময় হল সততা গুণটির পিছু পিছু বেশিরভাগ ক্ষেত্রেই জ্ঞান আর ঔদার্য গুণ দুটিকে চলতে ফিরতে দেখা যায়।

ধর্মের লেজুড় হিসেবে যে শব্দটি এসেই পড়ে, তা হল কর্ম। আমরা একসঙ্গে বলি ‘ধর্মকর্ম’। নানা ভাষা, নানা মত, নানা পরিধানের মতো, কর্মেরও বহু বিচিত্র গতি। কিন্তু সব কর্মের ক্ষেত্রেই যা বলা ভালো, সব কর্মক্ষেত্রেই যুগে যুগে কালে কালে দেশে দেশে সততা আর ন্যায়নিষ্ঠতা গুণ দুটি শ্রেষ্ঠত্বের শিরোপা পেয়ে আসছে। যে কোনো কর্মপ্রতিষ্ঠান তার সং কর্মীর ওপর নির্ভরশীল হয়। যে কোনো বড় দায়িত্বভার কাউকে অর্পণ করার আগে যেকোনো প্রতিষ্ঠান যে বৈশিষ্ট্যগুলি খোঁজে, তা হল ১। দক্ষতা ও অভিজ্ঞতা, ২। নিষ্ঠা ও সততা। আর নিষ্ঠা ও সততা থাকলে দক্ষতা ও অভিজ্ঞতা অর্জন করা শুধুমাত্র কিছু সময়ের ব্যাপার হয়ে দাঁড়ায়।

আস্থা আর বিশ্বাস যেন এই সততার আপন ভাইবোন। কর্মীর সততাই তাকে প্রতিষ্ঠানের প্রতি আস্থাভাজন করে তোলে। আর এই সততা আর আস্থার রসায়নে যখন সদিচ্ছার অনুঘটক এসে মেলে, তখন প্রতিষ্ঠানের সাফল্য আপনি এসে ধরা দেয়। ন্যায়নিষ্ঠতার আরেকটি মস্ত সুবিধা আছে। নিজের ভুল বুঝতে পারা, অন্য কেউ ভুল ধরিয়ে দিলে তা স্বীকার করতে পারা এবং সেই ভুল সংশোধনের আন্তরিক চেষ্টা ন্যায়নিষ্ঠ মানুষের মধ্যে দেখা যায়। এ এক দুর্লভ গুণ। নিজের কাজে স্বচ্ছ থাকার এবং নিজের সেরাটুকু দেওয়ার অনুভব এঁদের মধ্যে সবসময় কাজ করে। সঙ্গদোষে স্বভাব যেমন নষ্ট হয়, সঙ্গগুণে

ভালো স্বভাব সৃষ্টিও তো হয়। একজন সৎ ও ন্যায়পরায়ণ কর্মী সহকর্মীদের সমীহই শুধু পান না, তিনি কীভাবে যেন অনেকের আদর্শও হয়ে ওঠেন। ফলে কাজের জায়গায় একটা সুস্থ সংস্কৃতি তৈরি হয়। তৈরি হয় সুস্থ প্রতিযোগিতার আর পরস্পরকে সাহায্য করার আবহাওয়া।

কর্মস্থলে সততা বজায় থাকে তখনই যখন কর্মীরা

১। অবৈধ আর্থিক লেনদেন থেকে বিরত থাকেন।

২। প্রতিষ্ঠানের প্রতি দায়বদ্ধ থাকেন এবং সময়ের অপচয় বন্ধ করেন।

৩। প্রতিশ্রুতি রক্ষায় সচেষ্ট হন।

৪। ব্যক্তিগত জীবনকে কর্মক্ষেত্রের সঙ্গে গুলিয়ে না ফেলেন।

৫। নিজের জ্ঞান, মেধা, বুদ্ধি ও চিন্তা দিয়ে সামাজিক কল্যাণ করার চেষ্টা করেন।

যে মানুষের হৃদয় এবং মগজ সততা আর আন্তরিকতা, ন্যায় আর ঔদার্যের রসে জারিত, তিনি নিজের অজান্তেই এক আশ্চর্য মশাল হয়ে ওঠেন। তাঁকে আর পরাজিত করা যায় না। তিনি নিজের দীপ্তিতে অন্যদের আলোকিত করে তোলেন।

Without strong watchdog institutions, impunity becomes the very foundation upon which systems of corruption are built. And if impunity is not demolished, all efforts to bring an end to corruption are in vain.

Rigoberta Menchú, Nobel Prize Laureate

Raison d'être of Vigilance activity

Miss Mitali Ghose

Member - VSC Kolkata Chapter

1. **Introduction :**

The Vigilance Manual of CVC observes that the raison d'être of Vigilance activity is not to reduce, but to enhance the level of managerial efficiency and effectiveness in the organization. Often irregularities occur due to lack of monitoring, lack of transparency and absence of checks & balances. Vigilance investigations lead to detection of irregularities. The loopholes which facilitated the occurrence of irregularity have to be plugged, failing which, the Vigilance investigation and punitive action is fruitless.

2. **A short Case Study on how an irregularity occurs:**

2.1 A PSU was engaged in various maritime activities on shore and at sea. Several types of Marine jobs were done by its personnel, on board Marine Crafts. A complaint against some Marine personnel was investigated by the PSU's Vigilance Wing. The complainant had alleged that some Marine employees had drawn allowances for operational maritime work, though they did not engage in any such activity in the particular period mentioned in the complaint.

2.2 **Observation during investigation:**

The concerned employees claimed that they had drawn the allowance because it was admissible to them, as they were posted on a Marine Craft and were engaged in operational activities. They said that they had drawn the allowance for a particular period, as they were attached to the Marine Craft 'ABCD'.

The initial fact-finding investigation by Vigilance indicated that the Marine Craft 'ABCD' was not in commission for 24 months, out of a particular three-year period under scrutiny. Yet, the concerned employees had drawn the allowance in that 24 months period, though there was hardly any assignment of operational Marine activity to them. The PSU office did not respond to requests for producing documentary evidence, showing work particulars of its personnel for attending to operational maritime activities for this period,

though repeated requests were made. Therefore, a surprise check was held at the office, by the Vigilance Wing, to collect certain documents.

The documents collected in surprise check were examined. Records of the salary bills of the personnel for the 24 months period, when 'ABCD' was not in commission, were scrutinized. The bills showed that maritime allowances were drawn by certain employees even when 'ABCD' was not in commission. Manual salary registers maintained in the office for the aforesaid two-year period also showed drawing of allowances in the relevant period by the same employees.

Registers maintained calendar year wise, showing posting particulars of personnel in the relevant period, were examined. The register had maintained records of dates on which actual maritime work was done by the Marine personnel. As per these records, some employees had done operational maritime work for a few days only, in another Marine Craft 'XYZ' in the 24 months period, but still had drawn allowance for excess days each month for maritime work in 'ABCD', which was not in commission.

2.3 Facts analyzed:

An allowance was admissible to the Marine personnel of the PSU when posted on board operational Marine Crafts, for specific periods, to carry out certain types of Marine jobs only. During other periods, they were posted on shore and did no operational maritime activity. Therefore, the employees were entitled to the allowance for the period when the Marine Craft 'ABCD' was in commission and they were engaged in operational maritime activities. When 'ABCD' was not in commission, the Marine personnel could also claim allowances, if deployed in operational maritime work on board other Marine Crafts such as 'XYZ'. However, they were not entitled to allowance for the period 'ABCD' was not in commission in the 24 month period, if they did not actually do operational maritime jobs on board other Marine Crafts, such as 'XYZ'.

The attendance records collected during the surprise check showed they had done operational maritime work, on board 'XYZ', for a few days only, when 'ABCD' was not in commission, yet had drawn allowance for excess days each month.

Log book of 'ABCD' or 'XYZ' could not be produced by the office. No documentary evidence, direct or related, was produced in support of the

claim that the allowances were drawn because the concerned employees were working on board 'ABCD' in the period under investigation. Moreover, there was no scope to do Marine work with 'ABCD' for 24 months, because the vessel was laid-up.

No documentary evidence, either direct or related, was produced in support of the subsequent claim that Marine employees had drawn the allowance because they had worked on board other crafts, as per verbal orders of superiors, because 'ABCD' was not in commission. The claim that no records were maintained did not appear logical because invariably some related records were always generated in all marine activities.

2.4 **Result of investigation:**

The investigation had revealed that maritime allowances were unauthorizedly drawn by some employee, which could have been easily prevented with effective monitoring. There were loop-holes in salary billing, record maintenance, which had led to the irregularity, until someone had blown the whistle. The PSU authorities took appropriate preventive and punitive measures.

3. **Some important tools to prevent occurrence of irregularities:**

- 3.1 Every department or division in a public authority has areas with scope for corruption. The organization should always strive to prevent dishonesty, through transparent and well laid down office processes. Some of the tools for preventive Vigilance are mentioned below.
- 3.2 **Fixing accountability** - Office manuals should have clear job definitions, mentioning the powers, duties and responsibilities for every post in the organization, so that every employee discharges his duty within his job parameters. This acts as a preventive for abuse of power.
- 3.3 **Internal & External Audit** - A standard tool for preventive Vigilance. Public servants are invariably wary about Government Audit. Internal or External Audit of public authorities' accounts, procedures, works, etc. check or reveal corruption and loopholes in the system.
- 3.4 **Electronic Technology** - E-technology promotes transparency and virtually reduces the scope for corruption to nil. If all processes in the organization are linked by e-technology, nothing can be hidden.

3.5 **Right To Information Act 2005** - The RTI Act is for transparency in public interest for public purpose and larger public activity and has become the strongest arm of preventive Vigilance. Frequently, replies to RTI queries bring to light lapses or lacunae committed by public servants. Such revelations should be taken in a positive spirit and systemic improvement measures developed.

4. **Conclusion:**

4.1 Working for systemic improvement and developing tools for preventive Vigilance is an important function of Vigilance. The processes within the organization should be transparent, with adequate monitoring and checks & balances, so that there is no temptation to commit an indiscretion. I conclude with some famous sayings and proverbs on the importance of prevention, viz. - *An ounce of prevention is worth a pound of cure* - *A stitch in time saves nine* - and that most quoted proverbial saying of early 17th century - *Prevention is better than cure*.



To prevent evil is the great end of government, the end for which vigilance and severity are properly employed.

Samuel Johnson



ईमानदारी - एक जीवन शैली

अशोक कुमार ठाकुर

वरिष्ठ सहायक सचिव (राजभाषा)

ईमानदारी को सबसे अच्छी नीति माना जाता है। हालांकि, इसका पालन करना और विकसित करना बहुत आसान नहीं है। हर व्यक्ति इसे अभ्यास से विकसित कर सकता है और प्रत्येक व्यक्ति को अपने अंदर इस गुण को अवश्य ही विकसित करना चाहिए। यह परिवार, समाज और राष्ट्र-हित के लिए मानवता तथा माननीय मूल्यों के संरक्षण के लिए अत्यंत ही आवश्यक है। यह समाज और देश में फैली विकृतियों को शमित करने के लिए आवश्यक है, या यूं कहें कि राम-राज्य की स्थापना भी तभी संभव है। तो आइए, ईमानदारी को हम अपने जीवन में उतार लें, अपना जीवन-शैली बना लें। इसके लिए हमें अपने जीवन में सत्य के प्रति तटस्थता बनाए रखनी होगी। जीवन में सात्विकता को विकसित करना होगा। लोभ का निग्रह करना होगा। अर्थात्, हमारा चरित्र उदात्त और निर्विकार होगा।

तो आइए, इसकी उपादेयता पर गौर करे, वह व्यक्ति जो अपने जीवन में इसे आत्मसात कर लिया है उसे आत्मिक सुख-शांति प्राप्त होती है। तनाव और भय से रहित जीवन यापन कर सकता है जो उसके स्वस्थ जीवन के लिए भी परम आवश्यक है। आज के समय में ईमानदारी की कमी के फलस्वरूप व्यक्ति में तनाव और अनिद्रा नामक व्याधि घर करती जा रही है जो हृदयघात, पक्षाघात, रक्त शर्करा, रक्तदाब सहित विभिन्न बीमारियों को जन्म दे रही है। जीवन कठिन बनता जा रहा है। पारिवारिक आर्थिक स्थिति चरमरा जाती है और परिवार को दारुण कष्ट के सम्मुखिन होना पड़ता है। बेईमानी और लोभ एक ऐसी व्याधि है जो दूसरों के हक पर, दूसरों के संसाधन और संपदा पर अवैध कब्जा, हरण या दखल करने को प्रेरित करती है। फलस्वरूप परिवार और समाज में अशांति का वातावरण पैदा होता है और वैमनस्य बढ़ता है।

यदि प्रत्येक व्यक्ति अपने कर्तव्यों के प्रति ईमानदार रहे और पूरी ईमानदारी के साथ इसका निर्वहन करे तो हमारे समाज और राष्ट्र की अधिकतर समस्याएं यों ही समाप्त हो जाएगी। सहकारी योजनाओं को अमली जामा पहनाने में और योजनाओं का लाभ वांछित वर्ग या व्यक्ति तक पहुंचाने में सुविधा होगी। यदि ईमानदारी, व्यक्ति की जीवन-शैली बन जाए तो देश के संसाधनों की लूट नहीं होगी। जंगलों की बेतहाशा कटाई रुक जाएगी। हमें वनों के संरक्षण के प्रति सजग रहना है। वन किसी भी राष्ट्र का फेफड़ा (Lungs) होता है। यह ऑक्सिजन का पावर हाउस है। अतएव, राष्ट्र के कुल क्षेत्रफल का कम-से-कम 33% पर वन का होना आवश्यक है, जबकि, हमारे देश में लगभग 20% क्षेत्र पर ही वन बचे हुए है। यह एक चिंता का विषय है। अवैध खनन बंद हो जाएंगे, अवैध निर्माण और कंक्रीट के जंगलों पर लगाम लग पाएगी। आदिवासी, गरीब और दलितों के जीवन में खुशहाली

आएगी। पर्यावरण संरक्षित होगा। प्रदूषण में कमी आएगी, वातावरण स्वच्छ होगा और पारिस्थितिक-तंत्र पुष्ट होगा। धरती खुशहाल होगी।

एक बात और, जनसंख्या विस्फोट के बारे में भी कुछ बातें की जाए क्योंकि बेईमानी नामक रोग का इससे भी कुछ हद तक संबंध है। देश की बेतहाशा बढ़ती जनसंख्या के लिए संसाधनों की आवश्यकता होती है और उन आवश्यकताओं की पूर्ति करने की पर्याप्त व्यवस्था के अभाव में जीवन में ईमानदारी का हास होता है। अनैतिकता बेतहाशा बढ़ती जनसंख्या का दुष्परिणाम है। इससे बेरोजगारी की समस्या उत्पन्न होती है। समाज में चोरी, मिथ्याचार सहित अनेकों सामाजिक बुराईयां जन्म लेती है। इसके फलस्वरूप संसाधनों का बेतहाशा दोहन हो रहा है। सीमित संसाधनों की लूट हो रही है, माफियाओं द्वारा उन पर कब्जा किया जा रहा है और यहां तक कि सरकारी तंत्र और सरकारी अमला भी हाथ-पर-हाथ धरे बैठा हुआ है, शायद ईमानदारी का अभाव ही इसका मुख्य कारण है।

जिस राष्ट्र के नागरिक जितना ईमानदार होंगे अपने कर्तव्य के प्रति प्रतिबद्ध होंगे और जागरूक होंगे वह राष्ट्र उतना ही अधिक मजबूत और संपन्न होगा। आज भारत तेज गति से विकास करने वाला राष्ट्र की श्रेणी में आ रहा है और इस पावन पर्व में देश के नागरिकों का भी परम कर्तव्य होता है कि अपने अंदर ईमानदारी नामक गुण को ग्रहण कर अपनी ईमानदार कोशिशों केसे देश की अग्रगति में अपना योगदान दें। यह हमारी आने वाली पीढ़ियों के लिए भी आवश्यक है। हम एक सबल और संपन्न राष्ट्र उन्हें सौंप सकते हैं। अभी भी समय है, राष्ट्र के निर्माण के लिए, एक भारत श्रेष्ठ भारत और अतुल्य भारत के लिए हम अपने कर्तव्यों का निष्ठा पूर्वक ईमानदारी से निर्वहन करें।

राजनेताओं और अन्य व्यक्तियों के प्रति अंगुलि उठाने से पहले ईमानदारी को स्वयं पहले आत्मसात करें। देश अवश्य बदलेगा। आज आवश्यकता है कि यह गुण बचपन से ही देश के भावी कर्णधारों में वपन किया जाए। पंचशील की कहानियों के जरिए, नाटकों के जरिए उनमें यह भावना भरी जाए। हम लकड़हारा की वह कहानी बताएं जिसमें जल देवता ने उसकी ईमानदारी की परीक्षा के लिए सोने की कुलहाड़ी दिखाई, किन्तु उसका ईमान नहीं डिगा और पुरस्कार का भागी बना। उस गवाले की कहानी बच्चों को बताएं जिसका बटुआ बंदर लेकर पेड़ पर चढ़ गया और एक सिक्का नदी में और एक सिक्का जमीन पर फेंकते गया जब तक पूरा समाप्त नहीं हो गया अर्थात् दूध का वास्तविक दाम ही उसे मिल पाया और मिलावटी पानी का दाम पानी में गया। इस प्रकार की उपदेशात्मक कहानियों का भी चयन पाठयक्रम में करके बच्चों के प्रोत्साहित कर सकते हैं। एकांकी का भी आयोजन कर सकते हैं। सत्य हरिश्चंद्र नाटक का संक्षिप्त मंचन किया जा सकता है। आवश्यकता है पश्चिमी सभ्यता को ओढ़ने के बजाए हम अपनी संस्कृति से जुड़े। बच्चों को गलत और सही परंपरा में अंतर करना सिखाया जाए। मानवीय मूल्यों के प्रति उन्हें जागरूक किया जाए, तभी हमारा देश आगे बढ़ सकता है और भारत विश्व शुरु बनने में सक्षम हो सकता है।

ईमानदारी, हर किसी के जीवन में बेहद अहम रोल अदा करती है। ईमानदार व्यक्ति को समाज में सम्मान मिलता है और उसकी छवि नैतिक मूल्यों को मानने वाले एक आदर्श व्यक्ति के रूप

में समाज में प्रतिष्ठित होती है। ईमानदारी, व्यक्ति का एक विशेष गुण एवं सर्वश्रेष्ठ आदत है, जो कि व्यक्ति को आदर्श बनाती है और उसे सच्चाई के मार्ग पर जीवन जीने की कला सिखाती है। इसके साथ ही ईमानदारी लोगों के मन की अच्छाई और खुबियों समेत उसकी नैतिकता को प्रदर्शित करती है एवं उनके जीवन को खुशियों से भर देती है। ईमानदारी, मनुष्य को भरोसेमंद बनाती है। वहीं ईमानदार व्यक्ति के जीवन में किसी भी गलत अथवा अनैतिक काम और धोखेबाजी करने की गुंजाइश नहीं होती है। ईमानदारी ही एक ऐसा गुण होता है, जिससे सामने वाला का भरोसा आसानी से जीता जा सकता है। ईमानदारी के मार्ग पर चलने वाले व्यक्ति हमेशा अपने जीवन में आगे बढ़ते और तरक्की पाते हैं, उन्हें कभी किसी चीज का भय नहीं रहता है, जबकि बेईमान और धोखेबाज व्यक्ति को हमेशा उसके किए का डर सताता रहता है।

ये हो सकता है कि ईमानदार व्यक्ति को अपनी मंजिल तक पहुंचने में काफी संघर्ष करना पड़े लेकिन ईमानदार एवं कर्तव्यनिष्ठ व्यक्ति को सफलता जरूर मिलती है। वहीं दूसरी तरफ बेईमान व्यक्ति की सफलता स्थाई नहीं होती, क्योंकि जब उसकी घपलावाजी और घोटालों का भांडा फूटता है तो समाज में उसकी प्रतिष्ठा धूमिल होती है और क्षण भर में उसका सब कुछ नष्ट हो जाता है।

ईमानदारी कई मानवीय समस्याओं का समाधान है इसलिए इसके महत्व को हर किसी को समझना चाहिए और ईमानदारी के साथ अपने जीवन का निर्वहन करना चाहिए एवं अपने कर्तव्यपथ पर आगे बढ़ना चाहिए।



When good people in any country cease their vigilance and struggle, then evil men prevail.

Pearl S. Buck





Jewels under the saddle

Once upon a time, a merchant, on a casual jaunt through a market, came across a fine specimen of a camel for sale. The merchant and the camel seller, both skilled negotiators, struck a hard bargain. The camel seller, pleased with his skill of worming out what he felt was a very good price, parted with his camel and the merchant, chuffed that he had struck a fantastic bargain, proudly walked home with the latest addition to his large livestock.

On arriving home, the merchant called to his servant to come and help him take out the camel's saddle. The unwieldy heavily padded saddle being too difficult for the servant to manage on his own. Hidden under the saddle, the servant found a small velvet pouch which on opening he discovered to be filled with precious jewels!! The servant was overexcited!!! "Master you bought a camel.....but see what came FREE along with it!!!"

The merchant was astonished as he looked at the jewels in his servant's palm. They were of extraordinary quality, sparkling and twinkling in the sunlight. "I bought the camel", he said, "not the jewels. I must return them to the camel seller immediately."

The servant was aghast his master was really foolish. "Master.....no one will know."

But, the merchant headed right back to the market and handed over the velvet pouch back to the camel seller.

The camel seller was very happy, "I had forgotten that I hid these jewels in the saddle for safe keeping. Here, choose one of the jewels for yourself, as a reward."

The merchant said "I paid a fair price for the camel and the camel only, so NO, thank you, I do not need any reward."

But, as much as the merchant refused, the camel seller insisted.

Finally, the merchant said, sheepishly smiling, "Actually, when I decided to bring the pouch back to you, I already took two of the most precious jewels and kept them for myself."

At this confession, the camel seller was a bit flabbergasted and quickly emptied the pouch to count the jewels. However, he was very confused. "All my jewels are here. What jewels did you keep?"

"The two most precious" said the camel seller. "My INTEGRITY and My SELF RESPECT."



King and the seeds

Once there lived a great king, renowned for being wise and intelligent. As the thought of retiring came to the king's mind, he spread the word across his kingdom that he was soon to appoint a new successor for his throne.

The king called the youth of the nation together and gathered them in the royal hall. The king gave each of them a seed and said "This is a very special seed. I want all of you to plant it, take care of it and come back after a year with what you have. Based on what you bring back, I will decide the next king of the country."

Everyone left the gathering with a seed. They excitedly planted their seed and waited for it to grow. As the months passed by the youth of the country was talking about how their plant has grown tremendously beautiful. Among all the youth, there was a young man whose seed hadn't even sprouted. Although he used to water the seed every day and did everything to make it grow, the seed would not grow. He could hear people talking about their plants. But still, he has nothing.

A year had passed from the day the seed was distributed. All the youth were summoned to the palace where they were to display the outcome of their seeds. The young man, whose seed did not grow as that of the others, was very reluctant to even attend the gathering. But, his mother insisted him to go to the palace with what he had, because his efforts had been true and that there was no shame in showing that. The young man went to the palace with his pot of soil.

In the gathering, he was amazed to see the variety of beautiful plants others had grown. The young man put his empty pot on the floor, while a number of the others were laughing at him as he did so. The young man was embarrassed to be there.

When the king arrived in the hall, he inspected each and every pot. He slowly examined all of the different foliage and the beaming children that accompanied them. The young man was hiding in the back trying to go unseen, but the king found him, and gave pause when he did. Walking over, he eyed the young man and his plant closely, but he said nothing. He ordered his guards to bring the young man to the front of the room.

The young man was very sad as the king had noticed his utter failure to grow a seed. Arriving at the front, the guards let go of him, leaving him standing alone before all of the others, many of whom were snickering and pointing. The king called the young man closer. He held his hand and raised it and said loudly "Behold, everyone, your new king!"

The king said “One year ago, I gave everyone a seed. I instructed you to take the seed, plant it, water it, and bring it back. What you were unaware of, was that every seed I handed out had been boiled beforehand so that none of them were fit to grow! All of you after a year have brought me trees, plants and flowers, born of your dishonesty. The seeds which grew these plants were not the ones I provided you. Therefore, look upon the only honest one among you, this young man, and know now why he deserves to be your ruler.”

Moral: Honesty is the key to integrity.



People’s indifference is the best breeding ground for corruption to grow.

**Delia Ferreira,
Chair of Transparency International**



Due diligence in Credential Verification for tendering/contracting

A. CONCEPT NOTE :

1.1 Case Study 1 (HDC)

A global e-Tender was floated by HDC for procurement of a high value capital equipment in early 2018, having an estimated cost of around Rs. 46.50 Crore. The tender consisted of two stages – the first stage for determination of techno-commercial eligibility (Technical Bid) and the second stage for determination of price suitability (Price Bid). The MEC (Minimum Eligibility Criteria) to be satisfied by the bidders for qualifying to the second stage was clearly stipulated in the bid document. One of the 5 (five) components of Eligibility Criteria, stated therein, was as follows:

“

1.1 MINIMUM ELIGIBILITY CRITERIA (MEC):

1.1.1 XXXXX

1.1.2 Capacity and capability:

The bidder must have supplied at least 1 (one) no. equipment, of at least 40 T capacity, from amongst the equipment listed below, during 6 (six) years ending on 31.12.2016 [i.e. date of commissioning of equipment should be any date between 01.01.2011 & 31.12.2016, both dates included]:

- (i) Rail Mounted Quay Crane (RMQC) [with PLC control], used for Container handling.
- (ii) XXX
- (iii) XXX
- (iv) XXX
- (v) XXX ”

In response to the tender, 3 (three) companies – **one from India (M/s III), one from China (M/s CCC)** and **one from Vietnam (M/s VVV)** – submitted bids. In support of the above narrated Eligibility Criteria, M/s CCC had submitted papers claiming that they had supplied 20 RMQCs to a **Singaporean Multinational**

Corporation (M/s SSS) during last 6 (six) years. In other words, their experience was in compliance to what was mandated by HDC, vide bid condition 1.1.2 (i) narrated above.

It is pertinent, at this stage, to emphasize that the bid document prepared by HDC had also specified the nature of documents that will be entertained by them in support of credential (experience certificate) submitted by a bidder. The document standard specified in relation to bid condition no. 1.1.2 was as follows:

“1.2.2: Order letter(s), along with documentary evidence(s) in support of execution [should not be self-declared document(s), but should be document(s) containing the signature of the concerned Employer/Client, certifying completion of work/successful execution of order], to establish eligibility as per Clause No. 1.1.2, as indicated in the corresponding filled up format, as aforesaid.”

When the Purchase Order for 20 RMQCs submitted by M/s CCC (purportedly placed by M/s SSS) was examined, it was found that the capacity of the equipment as well as presence of PLC control were nowhere mentioned. Further, the Experience Certificate, purportedly issued by M/s SSS in favour of M/s CCC, also did not mention any particular capacity of these Cranes as well as presence of PLC control.

When the concerned Tender Committee sought clarification from M/s CCC on the above technical aspects, M/s CCC submitted another Experience Certificate, which was identical to the previously submitted one in all respects, except for two typed entries pertaining to capacity of the equipment and presence of PLC control.

Thereafter, concerned HDC authorities sent both the above Experience Certificates (supposed to have been issued by Ms/ SSS) and the order copy (supposed to have been placed by Ms/ SSS on M/s CCC) for verification and confirmation from M/s SSS. The first reaction of M/s SSS was to refrain from divulging the bonafide of these documents, saying that their company policy prevented them from disclosing information to third parties pertaining to their vendors. Finally, it was decided by the competent authorities of Port Trust to discharge this tender and go for fresh tender to realize the intended capital equipment acquisition.

However, in a strange turnaround, after discharge of the above tender and during the invitation of the fresh tender, the same Singapore-based Multinational Company (M/s SSS), made a written disclosure to HDC authorities, stating that they have found, from their internal investigation, that the credentials submitted by M/s CCC to HDC had been forged.

1.2 Case Study 2 (KDS):

A somewhat similar situation was faced in the first stage bidding of a very high value tender floated by KDS in 2014-15, for finalizing a contract related to mechanization of Container handling operations. In this case, a Consortium of an Indian company and a German company had bid for the tender. The technical credential of the Consortium depended upon the experience of the **German company**, which had submitted a Certificate issued by a **Port in Ukraine**. When KDS authorities verified this credential from the Ukrainian Port, the same had been promptly confirmed, without any issue being raised about non-disclosure of vendor related documents. However, this case became complicated because of a completely different reason pertaining to contradictory pronouncements about "Experience" eligibility of a bidder in two different places in the same bid document. The experience stipulation mentioned under eligibility clause did not put any restriction on such experience being either in India or abroad. However, contrary to this, the bid document mandated the bidder to submit a signed JBA (Joint Bidding Agreement) that required such experience to be with Indian Entities only. The exact language contained in the JBA was as follows:

"If the lead member of the consortium is depending on the work experience of other member of the consortium for fulfilling the technical experience criteria of pre qualification. In that case, such work experience should be only of Indian Ports/ICDS/CFS to facilitate reliable verification of work experience."

Thus, the offer of the Indo-German Consortium was techno-commercially acceptable according to one part of the bid document, while being unacceptable according to the JBA. This immediately threw up the Tender Committee into a confusion about the acceptability of the Consortium's offer and whether to open their Price Bid by progressing to the next stage. The Committee even approached the PMC, who had been contracted to prepare the bid document and handhold the Port authorities through the tendering process. However, on being approached, the Consultant, who themselves had prepared the bid document, could not advise the Port any definitive line of action, furnished an indecisive reply, which could be interpreted both ways and left the final decision to the Tender Committee.

2.0 Case Analysis:

The first case study illustrates the importance of due diligence in carrying out proper credential verification and shows how even companies of supposedly international repute cannot sometimes refrain from the temptations of submitting

false/misleading/non-transparent documents, in order to corner high value contracts from various Government departments. It also shows the need to incorporate appropriate conditions in the bid document to account for the possibility of non-confirmation/non-disclosure by a foreign company about the bonafide of Experience Certificates and other credential related documents like Order copies, when requested by a concerned Indian Government agency.

The second case study illustrates the need for great care to objectively lay down the credential requirement and its verification process. The KDS authorities did have an intention to conduct a reliable experience verification, for which they incorporated such a clause in the JBA. But, by not insisting on mandatory work experience in Indian Ports/ICDS/CFS in the eligibility criteria, the whole issue was thrown into different possible interpretations.

Analysis of both the above cases do indicate a need for laying down a standard credential verification process to be followed by concerned authorities while deciding tenders. The experience of Vigilance, from scrutinizing various tender files, is the authorities can introduce more precision instead of following widely varying tender clauses in this respect. The process of verification of Experience Certificate and associated documents substantiating such experience may also depend upon the type of tender (works or supply), nature of tender (normal or emergency) and tender value (high value or small value). For instance, in the first case (i.e., procurement of a high value capital equipment in HDC), the tender designing authorities had specifically precluded self-certification of credential documents by the bidders. This a very welcome stipulation, as reliance on self-certified credential can be very dangerous, as the experience in HDC so clearly demonstrates.

B. SUGGESTED SYSTEM IMPROVEMENT:

- 1.0 Verification of Experience Certificate and related credential documents submitted by a bidder should be confirmed independently and confidentially from the credential issuing organization. Reliance should not be placed on self-certified documents related to credential/experience submitted by a bidder. Verification of such documents by or through a bidder entails an obvious conflict of interest, since it is the bidder who stands to gain on a positive confirmation.
- 2.0 Whenever confirmation is sought from the credential issuing entity/organization, the order copies/performance certificates/payment details submitted by the bidder must be enclosed in the confirmation seeking letter sent to the credential issuing entity.

- 3.0 If the credential issuing firm happens to be a foreign entity and they do not respond to request by the Port authorities for confirmation of credential, then assistance of the Indian embassy in the corresponding country may be sought for (Incidentally, for the same bidder mentioned in Case Study 1, such assistance had been taken from the Diplomatic Mission of another country).
- 4.0 In many cases, Auditor/Chartered Accountant's Certificate is relied upon by the authorities for confirmation of financial credentials. Simultaneously, the bid document also prescribes submission of Balance Sheet and Profit & Loss Accounts, etc. A confusion arises if analysis of such financial documents submitted along with the bid appears to contradict the certification of the Auditor/Chartered Accountant. It must, therefore, be clearly stipulated in the bid document how the tender inviting authority intends to confirm the financial eligibility of a bidder. If it is intended to rely on any Certificate issued by a Chartered Accountant as submitted by the bidder, then confirmation of bonafide of the same should be taken directly from the Chartered Accountant.
- 5.0 To safeguard against participation of dubious firms, suitable specific clause should be incorporated in tenders stating that if a bidder has had previous history of "defined misconduct" (such as banning from by any government sector, premature termination of a contract solely on bidder's fault, criminal case pending against the company or its owner / current director filed by a government entity, etc.) his offer is liable to be ignored. Such clause is known as "good conduct" clause in tender parlance and often finds place in government tenders.
- 6.0 Whenever instances of submission of fraudulent/misleading document(s) is detected by the Port authorities, appropriate penal action must be unleashed, as provided for by the terms of the tender document. It must be realized that submission of fraudulent/forged document(s) to a Government department is not only a Civil/contractual offence, but might attract Criminal culpability under Indian Penal Code. It must be ensured that all bidding documents clearly state the range of punitive actions that could be undertaken by the Port authorities in case of detection of such fraud/forgery/deliberate misrepresentation of documents during the bidding process or afterwards.
- 7.0 Such penal action, if undertaken by the Port authorities against any company, must also be circulated to other Ports and Ministry for their awareness. There are several examples where a company blacklisted by a Port succeeded in getting orders from other Ports because of failure of circulating such punitive actions among other sister Ports.



Let them cut down high salaries.
But at the same time legalise
corruption! Otherwise it will be
difficult to make ends meet!

“Whether to Bill or not to Bill?”

An Analytical Study on Estate Billing Process of KoPT with suggestions for improvement.

1.0 Background:

‘Estate Rentals’ forms an important part of revenue earned by a Port like KoPT, which has vast swathes of land in possession, not only in areas where Port operations take place, but also in various prime locations of Kolkata and Howrah. As per the revenue account for the year ending 31st March, 2018, “Estate Rentals” from KDS amounted to **185.93 Crores**, comprising 4 sub-streams of revenue (i) Rent collected from land (102.2 Crs.), (ii) Rent for buildings, sheds and godowns (50.2Crs.), (iii) Premium on leased land (13.4 Crs.) and (iv) Miscellaneous (20.2 Crs.).

Estate Division raises periodic bills against tenants who have been awarded leases / licences by KoPT. A bill against a tenant who is legally authorised to occupy KoPT’s premises is called “Rental Bill”, while bills sent to tenants who are in unauthorised occupation of KoPT’s premises (due to various reasons) are called “Compensation Bills”. Till the unauthorised tenant gets actually evicted and KoPT repossesses the land, compensation bills at three times of the normal rental amount are to be sent, according to latest land policy.

It needs to be pointed out that the amount shown against “Estate Rental” in KoPT’s Annual Account represents the amount “billed” to various **tenants towards “Rent” and not the amount “actually collected”** from such tenants. Further, this figure does not reflect the various type of Taxes included in the bills generated by Estate. It also does not include the amount billed to/ received from unauthorized occupants as “compensation” (*Such component is currently being shown under “Capital Reserve” head of Revenue Account*).

The actual realisations against bills raised by the Estate Wing, for rent as well as compensation taken together, in the last four years, have **averaged 63%** (it was 61.3% for the year 2017-18). Thus, the real “estate rental income” to KoPT is much lower than what is reflected in its books of account.

2.0 Scope of Study and Methodology:

2.1 The Estate Module, despite its many shortcomings, is still a veritable source of information for Estate Division, which manages vast swathes of land and structures owned by the Port. The database behind this module had been created sometime during the Year 2003-04 with considerable effort. It contains

information on land & structures licensed/leased by Kolkata Port Trust (called “Plates”) dating back to even 1950s & 60s. The billing history of all plates under operation had been fed into the BR Module, at the time of its creation, to enable the Port to generate computerized bills to tenants and record payment received from them, from time to time. It is also from these modules that outstanding dues against a plate/tenant are certified by Estate Division for determining whether or not a tenant is in default/arrear, at any given point of time.

2.2 Unfortunately, no comprehensive analysis of the data accumulated in these Modules over years has ever been undertaken since their creation. Let alone conducting analysis of accumulated data, most Tenancy Officers, including those serving there as frontline executives since years, were found, during an inspection by CVO, to be totally unfamiliar with the information already existing in these modules. It may be recalled here that when some elementary information on the latest status of the plates were sought from Tenancy Officers, who form the backbone of Estate Management, they were unable to provide the same, even after lapse of 6 months.

2.3 It is in the above backdrop that an “**Exploratory Data Analysis**” [EDA] on Estate Module and BR Module - the modules that presently function as Executive Support System for Estate Division - was undertaken. EDA is a process to analyse data sets, summarise their main characteristics and to see what they can tell us beyond formal modelling or hypothesis testing. Such analysis refers to breaking the whole into its separate components, for individual examination, after obtaining raw data and converting it into information useful for decision-making by users. In addition, several rounds of discussion were held personally by CVO with Tenancy Officers, Officials who are associated with various billing functions, Resolution Officers, Legal Wing of Estate Division as well as the Software professionals who maintain these modules. Customized queries were designed and data sets extracted from various tables as prevailing on 28-11-2018 to examine unusual trends/patterns in the area of Estate billing, which forms the first part of this study.

3.0 FINDINGS:

3.1 The Estate Module contains information on 5475 land parcels (known as “Plates”), measuring a total area of 2816 Acres, awarded to 2207 tenants, under various type of short term licenses, long term leases and way leave permissions. Excluding way leave permission plates, which entail a very small area, the population of plates reduces to 3808 number, encompassing 2805 Acres of land, in possession of 2126 tenants.

- 3.2 As on 28-11-2018, a huge amount - **2,649 Crores** - is lying pending against these 3808 plates as “outstanding dues” to be recovered (1,328 Crores as Rent and Compensation dues + Interest 1,321 Crores). However, this figure is a conservative one, since the compensation amount, which should have been charged at a rate of 3 times the SoR after implementation of 2010 Land Policy against unauthorized occupants, has been applied only for 31 months out of an applicable duration of at least 88 months). Even considering such leniency in compensation billing shown to unauthorized occupants, the amount of dues currently outstanding [excluding GST and Municipality Tax component, which is roughly 30% of the billed amount - elaborated in more detail at Para 4.7] is more than 10 times the annual income from Estate Rental (185 Crores) reflected in the Revenue Account for the year 2017-18.
- 3.3 Out of 3808 plates, 806 plates have been declared as “closed” and no bills are currently being generated and sent against them. These tenants occupy 463 acres of land in prime locations of Kolkata and Howrah, with nearly 123 Crores of pending dues (without interest). Vigilance was given to understand bills have been stopped because such tenants might have left the licensed premises at some point of time after clearing their dues and KoPT may be in possession of them. But there is no such plate-wise-possession-list maintained in Estate Division from which it could be verified whether these plates are really free and ready for fresh tendering. On the other hand, the EDA revealed that 26 of these “closed-plate-tenants” owe dues more than 1 Crore (without interest) to KoPT with just the top two of them accounting for nearly 30 Crores. No comprehensive information is available in Estate Division as to the reason for treating plates with such huge outstanding dues as “closed”. Only a painstaking “plate-by-plate-file-search” can reveal the true reason – if such files are physically available in the Division. Random check by Vigilance on a few of these “closed” plates revealed that they are still in possession of “unauthorized” occupants. The bottom line is no one is clear as to what precise reasons lie behind not sending bills in so many cases and whether a decision has been taken at any level to waive such dues. This would be known only when files for each of these plates are examined thoroughly provided such files are not missing – a not-so-rare occurrence in Estate Division (*For instance, last year, in connection with an investigation on allegation of unauthorized occupation, when Vigilance requested lease documents concerning two godowns located right within the KoPT’s own official complex, where the Vigilance Department is located, it was told by the Estate Wing that the concerned files were missing.*). A list [List-4] of 23 Tenants with respect to 26 such “closed” Plates, where the total outstanding is more than 1 Crore (without interest) in each case, is enclosed.

- 3.4** The plates which are under effective billing process (excluding way leave cases) number **3002**, encumbering an area of **2342 acres**, represented by **1764 lessees** and licensees. These are termed as **“open” or “live” plates**. They have outstanding dues of **1,205 Crores** against them (without interest and without applying full compensation rate i.e. 3 SoR for most of the times during last 7 years). **The EDA of the Modules done in this analytical study mostly concerns these 3002 “live plates”, for which bills are being generated at pre-determined frequency.**
- 3.5** An astounding 80% of outstanding dues against “live plates” are accounted for by plates which are under **“unauthorized occupation”** on some ground or other. In terms of occupied area, the extent of “unauthorized” occupation is 35% (813 Acres out of 2342 Acres), while in terms of number of tenants, it is 45% (796 out of 1764 live-tenants).
- 3.6** Viewed from the perspective of “type of tenancy”, another shocking fact emerges. Almost all of these unauthorized occupied plates fall into the category of **short-term “Monthly Licenses”**. Monthly licenses are allotted to a tenant for a few months duration, with rent decided primarily at prevailing Schedule of Rent (SoR) notified by TAMP. In contrast, a long term lease is for a duration exceeding 1 year and is awarded generally on tender/auction basis.

		Number	Area (Acre)	Rent Outstanding (Cr.)	Compensation Outstanding (Cr.)	Total Outstanding (Cr.)	No of Tenants
1	Plates Under Lease/License	5475	2816	358	988	1346	2207
2	Plates W/O Way Leave and Tax	3808	2805	343.75	984.62	1328.37	2126
2(i)	Live Plates	3002	2342	305.99	899.4	1205.39	1764
2(ii)	<i>Closed Plates</i>	806	463	85.21	37.76	122.97	518
2(i)(a)	Under Compensation	1329	813	82.28	890.27	972.55	796
2(i)(b)	Under Regular Rent	1673	1529	223.71	9.13	232.84	1077
2(i)(a)(1)	Under Compensation (Monthly)	1316	794	82.1	890.27	972.37	787
2(i)(x)	Never Paid Live Plates	436	367	51.63	55.11	106.74	356
2(i)(y)	Never Billed Live Plates	33	20.26	6.53	14.14	20.26	24

**Outstanding amount shown are without interest and without full application of compensation rates as envisaged in SoR-2010.*

3.7 Free-for-All Plates? The EDA of Estate Module tells us that out of 3002 “live” plates (not considering way leave permissions and “closed” plates), **there are 436 plates against whom not even a single instance of payment is recorded. These 436 “never paid plates” are held by 356 tenants, who have a total outstanding of 106.74 Crores, without interest (Rental = 51.63 Crores + Compensation = 55.11 Crores),** as on 28-11-2018, i.e., the date of analysis. **These plates occupy a total area of 367 Acres land, 87% of which are in prime areas of Kolkata and Howrah.** Going by the database, it is, indeed, an enigma how these tenants have been enjoying such vast tracts of prime urban land, without paying anything right since they got the land leased/licensed from KoPT. Almost all these plates (excluding just 4) are under various types of short term licenses – those which are supposed to be for a few months to a maximum of 11 months and need to be specifically renewed after expiry, for legal validity [**List-1A enclosed**]. Also most of the 357 tenants who have been enjoying these premises are private companies or proprietary entities.

Some example of Private Companies who “never paid”

Tenant Name	Plates	Total Area under occupation (m ²)	Rent Outstanding (Cr\$)	Compensation Outstanding (Cr\$)	Total Outstanding (w/o Interest) (*)
MACHINERY MANUFACTURERS	3	53821.82	7.19	0.00	7.19 Crores
INDIAN ROADWAYS CORPORATION	1	3864.95	0.00	6.28	6.28 Crores

**Source: Estate Module Database (as on 28-11-2018)*

4.0 ANALYSIS :

4.1 Self-inflicted Financial Injury by Billing Never-Paying Tenants : The above EDA exercise has revealed that not only KoPT has never got any payment from the above 436 Plates, but it has also incurred huge additional expenditure by way of Service Tax/GST. It may be recalled that after the “**Point of Sales Taxation**” system came into being in July 2011, Ports had to pay Service Tax at a rate of 15% on the “billed amount” the instant such a bill got generated, whether or not KoPT received payment against the bill. However, there was a small relief as far as “compensation” billing was considered, as the Port paid Service Tax only on the compensation amount actually realized from a tenant. **All these changed when GST was introduced in Estate billing in July 2017. Thereafter, GST was needed to be paid, at the time of billing itself, on the “billed amount”, whether the bill was for rent or compensation.**

4.2 In contrast to the above backdrop, it was found that rental and compensation bills worth **35 Crores** have been raised by KoPT against these “never-paid-plates” since July 2011 till November 2018 (the reference database for EDA). After raising these bills, KoPT instantly paid nearly 13 Crores of GST and delineated 2 Crores of Municipality Tax, without receiving a single rupee from the tenants of such plates. **This amount of 13 Crores represents a loss caused to KoPT because of completely irrational billing, which could have easily been averted, had the available database been even cursorily scanned to identify cases of never-paying tenants.** Needless to say, there can be no earthly reason behind sending a bill to a tenant who has not paid to the Port even once. A list of such “never-paid plates” and their privileged tenants is enclosed [**List-1B**] for immediate circulation to Estate Wing, so that their billing from now onwards can be halted. (Such loss could have been much larger but was prevented, at least after April-May 2018 when the present Estate Manger decided to stop compensation billing for nearly 300 odd plates after GST implementation for compensation billing came to be effected in Feb-2018.)

4.3 **Billing against “Non-responsive Plates” : Increasing the loss further:**

The above scenario of purposeless billing against “Never-Paid-Plates” worsens when we take into account bills generated for those plates where no payment has been made by the concerned tenant in the previous 1000 days preceding such billing. Had the payment behaviour in such plates been analysed, KoPT could have taken a more nuanced decision to raise or not to raise a bill against such confirmed “non-responsive” tenants (*after all the contractual obligation of the lessee/licensee to pay the required fee does not extinguish whether or not KoPT sends them a bill in a particular frequency*). It is obvious that there is very low probability of being paid by a tenant who has been ignoring KoPT’s bills for the previous 3 Years, while it is certain that KoPT has to make instant payment to various taxation authorities right at the moment they raise a bill.

The extent of such self-defeating billing, if one takes into account such non-responsive tenants [those who had made no payment (for whatever reasons) against the concerned Plate in the previous 1000 days], is truly substantial, as revealed from the following table.

Table-1 : Extent of Infructuous Billing

PERIOD FOLLOWING "POINT OF TAXATION RULE" OF GOI FOR SERVICE TAX (JULY 2011 TO NOVEMBER 2018)					PERIOD FOLLOWING IMPLEMENTATION OF GST (JULY 2017 TO NOVEMBER 2018)			
	Plates	Tenants	Bills raised (Crores)	Area under occupation (Acres)	Plates	Tenants	Bills raised (Crores)	Area under occupation (Acres)
Never-paid-Plates Bills raised although no payment had been made against the Plate in previous 1000 days (3 years).	317	263	34.97	327.29	292	243	7.45	321.57
	606	421	248.22	163.31	593	413	50.54	160.66
Total	923	(665*)	283.19	490.60	885	(640**)	57.99	482.23

* There are 19 common tenants between the 2 (two) groups. (**) There are 16 common tenants between the 2 (two) groups.

The table above shows that these tenants had been billed a staggering 248 Crores, despite their no-payment-for-previous-1000 days-history and causing huge loss to KoPT through avoidable tax outgo [**List-2 enclosed**].

Moreover, tenants of "Never-Paid-Plates" had been billed a whopping 7.45 Crores, after implementation of GST, fully knowing that such tenants had never, even for once, paid anything to KoPT against their respective plates. A list [**List-3**] of such tenants is enclosed herewith.

4.4 Raising bills against those whose correct address is unknown:

Recently, a peculiar phenomenon of numerous bills (both rental and compensation) being returned back by Postal authorities undelivered was noticed by Vigilance. In most cases, the bills were not even reaching the desired tenants, because the tenant was simply no more existing in that address and might have parted with possession to third parties for unknown sums of money.

One such example accidentally came to Port's records, when an enquiry committee was investigating a major fire on 06.01.2006 that devastated the "Sale Tea Warehouse" comprising a total godown space of 23,525 m². The ground floor of this warehouse had been licensed to one LMJ International Limited. The enquiry committee found to their surprise that the licensee, LMJ International Limited had parted possession of 930.98 m² at ground floor (license given by KoPT @ Rs. 26.54 per sq. ft. in the year 2001 for 6 months) to one LMJ Logistics Limited, who, in turn, re-licensed it to Jupiter International Limited, without ever obtaining permission of KoPT. By chance, the committee got hold of a secret agreement, which showed how

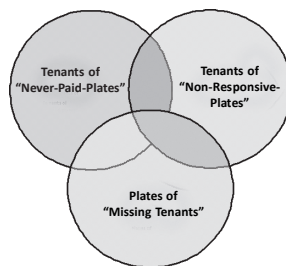
KoPT premises had changed hands from LMJ Logistics Limited to Jupiter International Limited, albeit at a rate 3 times than the rate at which KoPT had originally licensed the land. The enquiry committee noted in its report that the devastating fire had originated from the portion occupied by this unauthorized tenant, which destroyed the building, leading to an estimated Rs. 30.55 Crore loss to KoPT's structure. Even after lapse of 12 years, the licensed land has not come into the possession of KoPT, with not only the assessed damage of Rs. 30.55 Crores, but even an outstanding due of Rs. 74.08 Lakh remaining unpaid.

The sheer number of these undelivered bills surprised Vigilance, prompting them to inform such happening to Management immediately. Sending bills to a tenant that is not even reaching him and incurring GST and Municipal Tax on the billed amount can only be termed as bizarre. A Software utility has been created under guidance of Vigilance having a separate database for entering all such "returned" bills that have been accumulating in various corners of Estate Wing since months. From the entries made into the said Software utility has so far unearthed **368 different plates (belonging to 268 tenants)** [List-5 enclosed] against whom bills in the recent past have been returned back by Postal authorities with mainly the following categories of remarks:

- | | |
|--------------------------------------|-------------------------|
| <i>i) Addressee not known</i> | <i>v) Wrong address</i> |
| <i>ii) Addressee moved</i> | <i>vi) Refused</i> |
| <i>iii) Continuously door closed</i> | <i>vii) Left</i> |
| <i>iv) Insufficient address</i> | <i>viii) Deceased</i> |

An interesting reason for returned bills was the addressee "refusing to accept the bill", such as William Jacks & Co. Pvt. Ltd., West Bengal Education Department, Bengal Jute Mills & Co., Nabarang Estate Pvt. Ltd., Howrah Municipal Corporation. Further, the above list of apparently Postally untraceable tenants is not yet complete and even so, a number of 368 is a huge figure given the total population of live plates being only 1764. It is a known fact that in the past, whenever any communication is sought to be disseminated to the entire tenant population or any trade meet called by Port authorities, no more than 100 – 150 tenants have assembled. This is baffling, although there are supposed to be 1764 nos. of distinct tenants recorded in the database against 3002 live plates. The ambiguity and uncertainties hanging over the basic physical existence/whereabouts of all the tenants could well be the reason behind this mystery.

4.5 It is imperative that the tenants and plates belonging to the above 3 categories - Never Paid Plates, Non-Responsive Plates & Plates of apparently missing tenants - must be scrutinized before the next billing cycle to prevent Crores of Rupees loss to KoPT by way of infructuous Tax payment. The alarming situation, even otherwise, due to poor realization against rent and compensation needs immediate attention at the very highest level of Management.



4.6 Is KoPT inflicting loss upon itself by raising rental / compensation bills?

A comparison of bills raised with the actual receipt from tenants was made for all bills sent out by Estate during the Post-GST period, from February 2018 to November 2018. This period was chosen because although GST in estate “rental” billing has been in effect since July-2017, it was applied for compensation billing only since February 2018. As depicted in the Table below, it reveals that during these 10 months, Estate Division generated and sent **compensation bills worth 237.79 Crores, which includes 36.27 Crores of immediate payment towards GST and another 30.51 Crores for Municipality Tax. But, all these Compensation bills sent out to various tenants fetched an actual payment of only 43.35 Crores, i.e., a paltry realization of 18.23%. This actual receipt of 43.35 Crores is inadequate to meet even the Tax component of the Compensation bills sent out to tenants.** Similar analysis of rental bills sent during the above Post-GST period shows the **realisation against Rent bills to have been hardly 49%.**

Table 2 :REALIZATION OF ESTATE BILLS DURING THE POST-GST PERIOD FROM FEBRUARY 2018 TO NOVEMBER 2018

DETAILS OF ESTATE BILLS RAISED						DETAILS OF PAYMENT RECEIVED				
RENT	MONTH	RENT (Cr.)	MT (Cr.)	GST (Cr.)	GROSS (Cr.)	RENT (Cr.)	MT (Cr.)	GST (Cr.)	GROSS (Cr.)	REALIZATION CO-EFFICIENT (%)
	Feb-18	9.73	1.47	2.01	13.21	6.22	0.94	1.29	8.44	63.92
	Mar-18	13.56	2.46	2.88	18.90	10.11	1.83	2.15	14.09	74.54
	Apr-18	12.06	2.35	2.59	17.00	6.73	1.31	1.44	9.48	55.74
	May-18	5.34	1.22	1.17	7.73	3.32	0.76	0.73	4.81	62.14
	Jun-18	10.56	2.49	2.35	15.40	7.45	1.75	1.68	10.88	70.65
	Jul-18	18.56	3.55	3.98	26.09	5.49	1.05	1.17	7.72	29.58
	Aug-18	13.91	2.59	2.97	19.47	8.99	1.68	1.92	12.58	64.58
	Sep-18	13.27	2.45	2.83	18.55	5.60	1.03	1.19	7.82	42.16
	Oct-18	19.48	4.72	4.35	28.55	7.74	1.88	1.73	11.35	39.74
	Nov-18	11.11	2.32	2.42	15.84	2.23	0.47	0.48	3.18	20.05
	TOTAL (Crore)	127.59	25.61	27.55	180.75	63.87	12.69	13.77	90.33	49.98

VIGILANCE DEPARTMENT, KOLKATA PORT TRUST

COMPEN- SATION	MONTH	COMPEN SATION	MT (Crs.)	GST (Crs.)	GROSS (Crs.)	COMPEN- SATION (Crs.)	MT (Crs.)	GST (Crs.)	GROSS (Crs.)	REALIZATION CO-EFFICIENT (%)
	Feb-18	10.01	1.49	2.07	13.57	1.70	0.25	0.35	2.30	16.95
	Mar-18	54.83	11.37	11.92	78.11	14.55	3.02	3.17	20.74	26.55
	Apr-18	18.87	3.05	3.95	25.86	2.07	0.33	0.44	2.84	10.99
	May-18	18.95	3.32	4.01	26.28	2.16	0.38	0.46	3.00	11.41
	Jun-18	18.13	2.81	3.77	24.71	2.08	0.32	0.43	2.84	11.48
	Jul-18	9.35	1.70	1.99	13.04	1.77	0.32	0.38	2.47	18.92
	Aug-18	12.26	1.68	2.51	16.44	3.86	0.53	0.79	5.18	31.50
	Sep-18	9.86	1.78	2.10	13.74	1.57	0.28	0.33	2.19	15.96
	Oct-18	9.89	1.73	2.09	13.71	1.73	0.30	0.37	2.40	17.50
	Nov-18	8.87	1.58	1.88	12.34	1.34	0.24	0.29	1.87	15.15
	TOTAL (Crore)	171.01	30.51	36.27	237.79	32.84	5.98	7.00	45.82	19.27
	Grand Total (Cr.)	298.60	56.12	63.83	418.55	96.71	18.67	20.77	136.15	32.53

Table-3	GST PAID BY KoPT	GST REALIZED BY KoPT
W.R.T RENT BILLS	27.55	13.77
W.R.T COMPENSATION BILLS	36.27	7.00
TOTAL	63.83	20.77

Table -4 :REALIZATION OF ESTATE BILLS ON LAND DURING THE PERIOD FROM 2014-15 TO 2017-18

Year	Rent Bill raised (Crs.)	Rent received (Crs.)	Percentage Realization (%)	Compensation Bill raised (Crs.)	Compensation received (Crs.)	Percentage Realization (%)	Total Bill raised (Crs.)	Total payment received (Crs.)	Percentage Realization (%)
2014-15	129.06	114.27	88.54	121.11	54.14	44.71	275.71	193.45	70.17
2015-16	138.02	137.33	99.50	141.15	55.10	39.04	316.23	228.37	72.22
2016-17	170.00	153.36	90.22	267.88	68.30	25.50	465.25	250.57	53.86
2017-18	167.10	148.43	88.83	173.59	48.75	28.08	375.13	229.98	61.31
Total (Crore)	604.18	553.39	91.59	703.72	226.29	32.16	1432.31	902.37	63.00

Table- 5

	Rent	Compensation	Total
Realization Co-efficient (%)	Pre-GST	91.59	32.6
	Post GST	49.98	19.27
			32.53

Pre-GST : Realization Co-efficient calculation takes average of raised vs realized Estate dues for 4 (four) years from 2014-15 to 2017-18.

Post-GST : In Post-GST period, Rental Bills were started from July-17 but Compensation Bills started from Feb-18. Hence, the period of Post-GST analysis has been made for 10 (ten) months, i.e., Feb-18 to Nov-18.

4.7 Determination of Threshold Realization Co-efficient for viable Estate Billing:

From the above examples, it is evident that merely generating rent and compensation bills to various tenants, in itself, does not guarantee net financial benefit to KoPT and depends on the extent of realization. Given a particular Tax structure, there are distinct threshold below which the bill-raising exercise assumes a self-defeating character. The following section attempts to derive these limiting realization co-efficients for rent and compensation billing, under the present Tax regime.

Table-6 : COMPONENTS OF A TYPICAL “RENT” BILL FOR LAND (Without Structure)

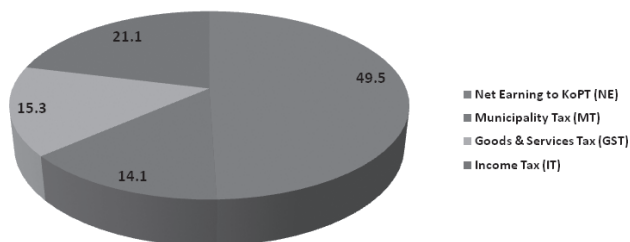
	In terms of R		In terms of B	Actual Payment Received from tenants with μ as Realization Factor	
RENT (R)	R	R	0.706 B	μR	Remarks @ , # *
MUNICIPALITY TAX (MT)	20% of R	0.20 R	0.141 B	0.20 μR	
GOODS & SERVICES TAX (GST)	18% of (R + MT)	0.216 R	0.153 B	0.18 ($\mu R + 0.20 \mu R$)	
				= 0.216 μR	
GROSS BILLED AMOUNT	B	1.416 R	1.00 B	1.416 μR	
INCOME TAX (I) [Paid only on Rental component]	30% of R	0.30 R	0.211 B (30% of 0.706 B)	Only applicable for Rental Billing amount and not for Compensation Collection as they go to Capital Reserve Account of KoPT.	

(@) Municipality Tax varies according to plate location. It is 20.25% for Kolkata Area, 20.15% for Howrah and Nil for land located outside. For simplicity, it has been assumed to be 20% of Rent.

(#) An additional 20.25% has been demanded by KMC as KoPT's share of Municipality Tax to be paid to them. The issue is under active dispute since and hence not considered above.

(*) GST was implemented in Estate billing since July 2017 for Rent billing and February 2018 for Compensation billing. Prior to GST regime, Service Tax at a rate of 15% of the Rent charged was prevalent since 01-07-2011.

What KoPT gets from an Estate Rent Bill of Rs. 100



When either a Rent Bill or a Compensation Bill is sent to a tenant, KoPT immediately incurs various Tax liabilities on the full Rental component mentioned

in the bill. GST is paid right at the point of generation, while Income Tax might be paid quarterly/yearly. However, the tenant may pay the charged Rent in full, in part or even none at all. If he pays a part of the charged rent, then he allocates GST and MT on that part only. In case of no payment being made by the tenant, the entire Tax amount mentioned in the despatched bill becomes a net loss to KoPT simply because of raising a bill. Thus, the revenue effectiveness of the billing exercise depends on how much KoPT charges in their bills vis-à-vis how much is actually paid. This can be termed as “**Realization Co-efficient**” for billing to break even.

Determination of Realization Co-efficient for Break-even Billing:

For Rent Bills: Total Tax Outgo on Rental Bill (TTOR) = MT+GST+ I = 0.2R+0.216R+0.30R=0.716R.

For Break-even Rental Billing, “Amount actually received from all tenants against whom bills get raised” must at least be equal to Taxes incurred by KoPT.

In other words: $1.416 \mu_r R = 0.716R$ where “ μ_r ” is the **Realization Co-efficient**.

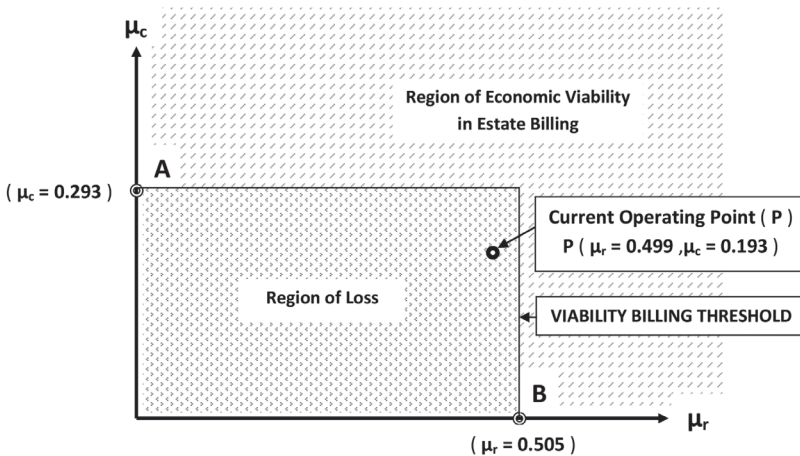
This implies $\mu_r = 0.716/1.416$ or 0.505 or 50.5%

For Compensation Bills: For Compensation Billing, there is no outgo towards Income Tax. Hence, for Break-even Compensation Billing, $TTOR = MT + GST = 0.416R$. Therefore, for Break-even Compensation Billing, amount actually received against Compensation Bills must exceed at least the total Tax component of such bills raised by Estate.

In other words: $1.416 \mu_c R = 0.416R$ where “ μ_c ” is the **Realization Co-efficient**.

This implies $\mu_c = 0.416/1.416$ or 0.293 or 29.3%

THE CURRENT STATE OF ESTATE BILLING



5.0 SUGGESTIONS TO IMPROVE ESTATE BILLING PROCESS:

- 5.1** The fact that dozens of bills being sent to tenants only to be returned back by Postal authority undelivered (as described in the case study “Undelivered Bills and Missing Tenants”) is an ample proof that there is severe lack of oversight on the billing processes in Estate. As has been deduced in the analysis above, the very act of bill generation turns out to be a self-defeating & loss-making exercise and sending such bills becomes a self-defending exercise, if realization against these bills falls below certain threshold limit, because of instant incurrance of Tax liability. **Since the billing operation is presently operating below such critical thresholds, great care needs to be exercised and previous payment history of each plate analyzed by the Tenancy Officers before contemplating to generate either a rent or a compensation bill.**
- 5.2** **Billing against the “Never-Paid-Plates” should be immediately halted and undertaken only after reason(s) for their continued non-payment since inception is/are found out.** List of such plate codes are enclosed as **List-1A** for ready reference.
- 5.3** **Billing against plates whose tenants are not traceable and against which despatched bills are being returned back from Postal authority should be halted, till the whereabouts of actual tenant are found out.** The returned bills are currently being entered into a separately developed utility. The entries made so far are enclosed for ready reference.
- 5.4** **In a similar manner, plates against which no payment has been made since one year (Non-responsive Plates) should be examined before contemplating to send a bill.** A list of such Non-responsive Plates where bills had been generated, even though no payment had been made against them 1000 days prior to raising the bill, is enclosed[**List-2**] for immediate scrutiny and action by Estate Department. If a bill is required to be sent to such tenants, despite their non-payment history, then reasons should be recorded for the same, on file, at least at the level of Tenancy Officer.
- 5.5** Since raising a bill instantly attracts GST, whether the firm pays against such bill or not, it results in loss in case of unpaid compensation bills. **Expert legal/taxation opinion must be taken as to how such cases of GST-outgo against unpaid bills should be dealt with. It should also be examined whether the non-paying tenants are claiming such GST through any fraudulent means, which are being/had been credited by KoPT.**
- 5.6** In most license offer/lease agreements, the licensee/lessee is directed to make his payment, whether or not KoPT sends him a bill. It is important to stress here that if Port does not send a bill to a lessee/licensee, it does not extinguish

his liability to pay. Payment (in the form of Rent or Compensation) against a licensed/leased Plate flows automatically from the contract that governs the license/lease document (*In fact, this is unambiguously stipulated in the last sentence of Clause No. 16 of SoR notification.*). **Therefore, sending bills in the form of demand letter or any other alternative format, in a lawful manner, especially in compensation cases, should be explored, as is reportedly done in some other Ports like Paradip and Haldia.**

- 5.7 It is understood that in cases of Marine billing, Cargo billing, Railway billing as well as short term land licensing in Haldia Dock Complex (HDC), the concerned party is required to maintain a PCAN (for the first three cases) / LCAN (for short term land licensing) Account [which is, in effect, a Revolving Deposit Account] with HDC. The party is required to maintain requisite amount of money in such account, in order to be eligible for receiving the corresponding Port services from HDC. Bill(s) is/are generated by HDC, for a particular service or allotment of land for a particular period, only upon availability of corresponding adequate balance in such account. **The viability of introducing such system in Estate billing in KDS may also be explored.**
- 5.8 It is also seen that billing exercise is undertaken by a Section called “Rent Section” of the Estate Department. At present, only 1 (one) Official, at Clerical level, is familiar with the full details of billing operation and the calculation logic that governs Rent/Compensation. No one else in the entire Estate Department knows these details. No Tenancy Officer makes any kind of post-billing checks on the Plates under his jurisdiction. In fact, a definite Circular from Estate Manager, allocating specific responsibility to Tenancy Officers to check the bills sent against the Plates under their jurisdiction, came as recently as on 08.11.2017 [Ref.: Point No. 2.(iv) of Estate Manager’s Office Order no. Lnds.3030/Office Order/17/3644 dated 08.11.2017]. Even this instruction from Estate Manager seems to have not been observed by various Tenancy Officers, else infructuous billing to non-paying/non-responsive tenants could have easily been detected. Some Tenancy Officers have plainly admitted to Vigilance, during their interaction, that they do not have the time to make such checks, i.e., whether KoPT is really earning something from the bills raised. It is pertinent to note that exactly 6 years back, an internal audit undertaken for the purpose of ISO certification had clearly pointed out these aspects in the following words *“For the sake of revenue generation, the major steps comprise (a) allotment of space/shed, etc., (b) raising of bills, (c) receipt of payments from lessees and licensees, and (d) follow up for default in payment by lessees and licensees. As per existing system, the calculation for raising bills is done by individual staff, without any system for auditing of correctness of the billed amount. In the interest of KoPT, there is scope for introduction of a system for auditing*

of bills to ensure correctness of bill amount and clearly defining the accountability within the Estate Department." It is tragic that the advice of the audit team has so thoroughly been ignored for such long period to the financial detriment of KoPT, as has been pointed out in various Tables of this report. Therefore, **Chairman may kindly enforce scrutiny of the bills pertaining to the unusual plates described in the various Lists enclosed with this report by the respective Tenancy Officers.**

- 5.9 The programming code behind the present Estate Module, at its present state, suffers from a peculiar deficiency in respect of generation of "arrear bills". As is well known, occasions for arrear billing arise when the Schedule of Rent (SoR) undergoes revision, to be made effective from a date prior to the date of notification. For instance, the latest SoR revision that got notified by TAMP on 31.05.2017 is required to be applied to all plates with effect from 07.04.2016. The peculiarity stems from the fact that although the revised rates have been applied for current billing of rent (since July 2017) and compensation (since February 2018), the Estate Module is not able to generate arrears bills for the same plates for the prior period starting from the date the revised SoR took effect i.e., 07.04.2016. Once the rate against a plate gets revised and the module is able to generate monthly bills at revised rate, the task of applying the same to any previous period and auto-generate arrear bills should have been an extremely easy Computer task. But, that is not the case at present. Even the Software Maintenance Vendor stated that the programming block has been patched up so many times in the past that it has been practically rendered inscrutable for arrear billing purpose. Such conditions have reduced the arrear-bill-generation process to a manual, plate-by-plate data-entry process, necessitating engagement of extra personnel supervised by the same single official and payment of significant amount of overtime to them, whenever the need to send arrear bills arose in the past. **The aforesaid augmentation for arrear billing must be taken care of in the ongoing Software augmentation / ERP effort.**

- 5.10 As on date, there is 37 months billing for rent and compensation pending as arrears, as depicted in the table below.

Table – X	Pendency of Arrear Billing		
	From	To	Period
Rent Billing	April 2016	June 2017	15 months
Compensation Billing	April 2016	January 2018	22 months

As and when it is decided to generate such arrear bills, it should not be done without undertaking a plate-by-plate analysis of previous payment history.

- 5.11 Putting responsibility of bill generation and ensuring their correctness on the shoulder of a single individual, with no one else being aware of it (not even the Software Maintenance Vendor), not only is an improper and illogical allocation of duty, but is fraught with other dangerous vulnerabilities. For instance, in exercises like arrear billing, which currently follows a Plate-by-Plate manual processing, unintentional mistakes can wreak havoc, both for tenant and landlord. **In absence of anyone else knowing about the nuances of billing, the policy of rotational transfer for such a sensitive post cannot be implemented.** No wonder the PP Court proceedings are often marred by arguments and counter arguments regarding the correctness of billing by KoPT, dragging the process through an interminable number of hearings on such a simple matter. Similarly, there are dozens of cases of overstating the billing amount and then correcting / reversing the same through Credit Notes.
- 5.12 **Billing is a critical process and there is no doubt that there should be more than just a single employee who should be familiar with it.** An Officer, who had been in Estate for a considerable number of years and was associated with the computerization exercise of 2003-04, lamented before Vigilance about KoPT being unable to train and develop at least 1 (one) more person who understood the complete billing logic.
- a. *It is high time that at least 2 (two) Supervisors, drawn from other Departments (preferably from Finance Wing), should be fully trained in the entire gamut of processes involved in Estate billing, such as Rent / Compensation calculation, bill generation and bill reconciliation.*
 - b. *Chairman may kindly constitute a multi-departmental-team of senior Officers, who would immediately undertake a targeted, Plate-by-Plate audit of all bills despatched and realization against them.*
 - c. *At present, there is nearly **Rs.33.78 Crores** worth un-reconciled TDS, which the concerned tenants had deducted from their license/lease fee, claiming TDS credit. Finance should immediately verify whether the said tenants have deposited such amounts to the concerned tax authority.*
 - d. *Currently, jurisdiction of Tenancy Officers is based on geographical location of plates. Instead, it may be prudent to create a distinct group of high-value tenants and allocate the same to various Tenancy Officers for closer scrutiny and monitoring.*
- 5.13 The Shipping Ministry has recruited experienced IIM Graduates to infuse fresh, innovative and cutting-edge management expertise into Port Sector. Some of them are also currently assigned to KoPT and working in various capacities for a period of two years. **It will be highly beneficial to KoPT if one or two of them are entrusted with the targeted implementation of the specific system improvements gleaned from the aforesaid analytical study and build on it further.**

System Improvement Series in Estate Management :
“Income Vs Dues & Litigation Vs Recovery”

1.0 Exploratory Data Analysis of Estate and BR Modules on 28-11-2018: *Major findings*

An Exploratory Data Analysis (EDA) conducted on 28-11-2018 on the two existing databases which contain information on the licensed/leased plates of KDS, bills raised by Estate Division and payment received from tenants etc. revealed the following:

- 1.1 The Estate Module contains information on 5475 land parcels (known as “Plates”) pertaining to KDS measuring a total area of 2816 Acres awarded to 2207 tenants under various type of short term licenses, long term leases and way leave permissions. Excluding way leaves plates, which comprise very small area, the population of plates reduces to 3808 numbers encompassing **2805 Acres** under possession of **2126** tenants.
- 1.2 Out of 3808 plates, 806 plates (21.11%) have been declared as “closed” and no bills are currently being generated and sent to them. These “closed” plates comprise **463 acres** of land in Kolkata and Howrah. No consolidated readily available information exist in Estate Division on the reason(s) for labelling these plates as “closed” even though huge amount of dues (Rs. 123 Crores, without considering Interest) are outstanding against their tenants.
- 1.3 The plates which are under effective billing process (excluding way leave and “closed” plates) number 3002 comprising an area of **2342 acres** under possession of **1764** lessees and licensees. These are commonly known as “live” plates. It is to the tenants of these plates that Estate Division sends regular bills which are mainly of two types: “Rent bill” and “Compensation bill”. If a tenant commits breach of one or more terms of the lease/ license granted to him and the same cannot be resolved, then the premises is declared by Port to be under “unauthorized occupation”. For an “unauthorized” tenant, instead of the regular “Rental” bills, a “Compensation bill” is served towards wrongful occupation and usage of land. Such compensation amount is supposed to be much higher than the rent charged to regular lawful tenants (3 times of SoR as per Land Policy, 2004). After starting compensation billing, the Port invariably initiates proceeding to evict such tenants through relevant legal provision.

- 1.4 A whopping 1329 out of the 3002 live plates (44%) are under “unauthorized occupation” by tenants, who have committed breach of the term(s) of the lease/license instrument granted by KoPT. These illegally occupied 1329 plates comprise of 813 acres of prime urban land out of the total 2342 Acres (34.7%) of tenanted area.
- 1.5 **Tenants of 1106 plates** out of the 3002 “live” plates have made no payment during the last 3 years (either by way of rent or compensation) against bills raised by KoPT. **Among them are tenants of 436 plates, who have not paid even once after KoPT granted license/ lease to them many years ago. These never-paying tenants occupy 367 Acres of land, 85% of which are in prime localities and Central Business District of Kolkata.** Nearly three fourth (307 out of 436) of such plates had been originally allocated under short term monthly licences (for a few months at best), without competitive tendering as is required to be done in the case of long term leases for 10 / 20 / 30 Years. Once allotted land by Port, most of these short term licensees have resorted to wrongful occupation of the allotted land beyond the licensed period, parted possession to some other entity or encroached upon adjacent port land while embroiling Port in some form of litigation or other.

2.0 The Revenue from & Profitability of Estate Process:

The revenue earned by Estate (KDS) by way of Rent from regular tenants and Compensation from unauthorized ones, in 2017-18 was **Rs. 152.37 Crores & Rs. 17.00 Crores** respectively (out of total Estate Revenue of **Rs. 185.93 Crores** that includes miscellaneous earning & apportioned lease premium). The Post-Tax Net Income from Estate, after discounting applicable Taxes (GST, Municipal Tax & Income Tax on rental portion), boils down to just **Rs. 30.53 Crores**. **[Detailed break-up of various revenue and expenditure components of Estate Process of KDS, collected from Finance Wing, is enclosed at Annexure– A].**

3.0 The Quantum of Outstanding Dues:

As against the above revenue scenario, amount of rental and compensation dues unpaid by tenants of these 3808 plates happens to be **Rs. 2649 Crores on the date of this analysis, i.e., 28-11-2018 (Rs. 1328 Crores towards rent & compensation + Rs. 1321 Crores by way of interest)**. This is 15.5 times the rent and compensation from land & structure reflected in KoPT’s 2017-18 Books of Accounts. Viewed from another perspective, if Estate Division succeeds in recovering even a fraction of this humongous outstanding due, they would be generating similar revenue without doing any other work for a full year!

3.1 The Nature of Outstanding Estate Dues : There are **four disturbing and disconcerting aspects** to the pendency of this outstanding dues as described below:

3.1.1 Aspect 1: *The amount of Rs 2649 Crores dues is actually underestimated figure:*

The reported outstanding Estate due is actually lower than what it would have been due to the following factors:

- i. **Lenient policy of charging Compensation:** Since 2004, Land Policies announced by MoS have directed Ports to charge unauthorized tenants a penal rent (also called compensation charge) equal to 3 times the normal rent mentioned in the SoR for wrongful occupation of Port premises. Such compensation billing continues till the day the unauthorized tenant is physically evicted from the occupied premise. However, it was only in **August 2016** that KoPT decided to claim 3 times the normal rent in compensation bills sent to unauthorized tenants. Prior to August 2016, penal bills @ 3 x SoR had been applied to unauthorized tenants only sporadically, for a total of 2 months during a total applicable period of 147 months (April 2004 to July 2017). During the rest 145 months, compensation bills to unauthorized occupants were being claimed at 1 x SoR, i.e., at the same rate as was being charged to rule-abiding, timely-paying authorized tenants! In fact, the very first imposition of penal rent by KoPT @ 3 x SoR to unauthorized tenants commenced in July 2012, i.e., 8 years after the Land Policy of 2004 empowered them to do. But, such penal billing was abandoned just after two months on the ground that such amnesty will lead to lesser litigation and more compliance. It was once again applied, after 4 years, in August 2016 - only to be stopped after 8 months. The "revenue forgone" by KoPT, because of non-application of 3 x SoR rate to unauthorized tenants since April 2004 to June 2017, has been calculated to be nearly **Rs. 2606 Crores** [See "*What would have been the dues*", Annexure -B]. **If one takes this "forgone" Penal (Compensation) amount into account, the real total outstanding dues as on the date of analysis along with accruable interest would increase by a further Rs. 2606 Crores, taking it to a level of but Rs. 5255 Crores** (Rs. 2649 Crores dues with interest as on 28-11-2018 + forgone amount of Rs. 2606 Crores). The non-adherence to land-policy-mandated penal rent not only results on showing lesser dues than what it would really have been but has also a far more systemic consequence. Charging an unauthorized tenant the same as authorized ones creates a strong

perverse incentive in the system that encourages non-compliant behaviour. **Yet, it was within this policy matrix - where the lawful and un-lawful tenants paid the same rent -that Estate billing of KDS had continued since 2004 till recently.**

- ii. **The Computer generated “Dues” output is erroneous:** Since July 2017, in a bid to minimize GST outgo on account of severely declining realization from bills sent to unauthorized tenants, Estate Division has been reflecting an amount 1 x SoR in the GST-Paid Bill while claiming the balance portion (i.e., 2 x SoR) in a separate “Demand Letter”. Such paper-demand-amount is not being captured in the Computer system leading to lower outstanding dues being reported after July 2017.
- iii. **Arrear from SoR revision missing from “dues”:** The Schedule of Rent (SoR) for Estate undergoes revision every 5 years. The last such revision was notified on 31-03-2017 with effect from April 2016. After a new SoR gets notified, usually with enhanced rate (SoR - 2016 is higher than SoR-2011 by 75% to 100%), Estate Division not only applies the revised rate to current rental/compensation bills but also has to raise “arrear” rental/compensation bills (amounting to the difference between old & new SoR) from the effective date of new SoR. However, due to certain IT & manpower constraint and to prevent infructuous GST outgo, Estate Division has not generated arrear compensation bills for the period from August 2016 to July 2017, i.e., nearly one year. Since realization against compensation bills has been in the order of 34% in the pre-GST period, sending the arrear compensation bills would have left 66% of the amount as outstanding dues. This amount is missing from the currently reflected due amount in the computer.
- iv. **Due Amount does not include many non-billed tenants:** After Vigilance detected hundreds of non-existent, never-paying & non-responsive tenants [See earlier Analytical study on KDS Billing Process] Estate Wing analyzed them and stopped generating bills against a large number tenants to prevent infructuous GST outgo. The amount not billed because of a conscious decision by Port Management is naturally missing from the computer calculated outstanding-due-output.

Thus, even discounting the fact that the unauthorized occupants have been generously and leniently treated by KoPT as far as the level of penal rent is concerned, the factors enumerated at (ii),(iii) & (iv) lead to reflection of lower “dues” in the BR Module at present. For instance, if we take a computer output of pending dues as on 31-03-2019 it would show a figure of Rs. 2772 Crores which is actually lower than what it

would have been, if factors like (ii),(iii) & (iv) would have been taken into calculation.

3.1.2 Aspect 2: It is mostly due to Unauthorized Occupation by Short term licensees: A drill-down analysis of pending dues reveal that 80% of it [Rs. 972.55 Crores out of a principal due of Rs. 1205 Crores outstanding against all live plates] is due to unauthorized occupation by short term licensees. In terms of occupied area, the extent of “unauthorized” occupation is 34.7% (813 Acres out of 2342 Acres), while in terms of number of tenants, it is 45.1% (796 out of 1764 live tenants). Another striking feature is that almost all of the outstanding dues are contributed by Short Term Licensees and not Long Term Lessees. Employing a range of devious techniques and helped in no small measures by absence of even a rudimentary inspection/monitoring system, these “short term” licensees have been able to occupy their plates for such a long time that the difference between the short-term nature of their license and that of a “long-term lease” has practically vanished. In many cases, such illegal occupation resembles a “lease in perpetuity”. While complete age-wise break-up of such licensees is not possible to determine (due to the dates of commencement of license/monthly-lease missing from the current database for as many as 1070 plates), analysis of the 1518 plates reveals that 97% of them have duration of more than 1 Year, 37.5% more than 20 Years, 21.81% more than 30 Years and 6% exceeding even 40 Years! No comprehensive information is currently available as to whether or not (and if so, how many times) renewals had been granted after the original short-term-currency of such licenses expired due to efflux of time.

3.1.3 Aspect 3: The due amount has been steadily growing: The rise of outstanding dues from defaulting, non-paying & unauthorized tenants has been a matter of serious concern for Ministry of Shipping over years. A communication dated 25-08-2000 made by the Secretary, Ministry of Surface Transport (the Ministry that controlled the Ports at that time) to Chairman, Calcutta Port Trust, quoted below, reflects this in no uncertain terms:

*“... it has been brought to my notice that the total amount of lease rental remaining to be recovered from various allottees is of the **order of 67 Crores** as on end March 2000. The Land management in the Calcutta Dock system has always been a matter of serious concern to this ministry. However nothing tangible in this regard has been achieved so far reflecting improvement over the years. ...Considering the various liabilities of CPT, a Pension Fund of the order of Rupees 1500 Crores approximately needs to be created. At present no Pension Fund exists in CPT. This is a matter of serious concern. The possibility of sale of land assets of CPT to create such fund needs to explore.”*

The enormous leap these outstanding dues have taken over years can be visualized from a 41 fold jump they had in a space of 19 years - from a level of Rs. 67 Crores to Rs. 2772 Crores between 31.03.2000 to 31.03.2019. During the intervening period also, this figure displays a consistently increasing trend, barring a few exceptions, with each year's "outstanding due" being several times of that year's reported "revenue" from tenanted land & structure [See Table below].

Estate Revenue Vs Estate Dues:

The juxtaposition of revenue earned during a year with dues outstanding in the market at the end of the year (which predominantly belongs to tenants occupying Government land in unauthorised and unlawful manner) does present a frightening picture. For instance, the total outstanding dues to be collected by KDS at the end of the Financial Year 2018-19 is Rs. 2772 Crore, which is 15 times the total earning made by Estate Division not only from land and structures, but also from other miscellaneous sources, including land lease premium.

FY	Total Revenue From Estate (Crore)*	Revenue from Estate (Land & Structure) [Crore] *	Total Outstanding Dues (Crore) #
2008-09	99.82	61.64	1015.73
2009-10	115.58	67.53	1312.52
2010-11	132.21	87.33	1206.13
2011-12	251.37	180.41	1397.45
2012-13	196.36	136.83	1645.44
2013-14	159.96	104.37	1823.94
2014-15	131.29	111.56	1744.06
2015-16	151.31	117.84	1938.49
2016-17	152.92	123.64	2213.66
2017-18	185.93	152.37	2450.79
On Date of Analysis		28-11-2018	2649.53
On End of Financial Year		31-03-2019	2772.61

* As per KoPT Books of Accounts

Dues are inclusive of taxes prevailing on end of FY

3.1.4 Aspect 4 : *There is practically no prospect of recovery of this stupendous due:*

The natural question that arises, when one is confronted with the above comparison of “Estate-Earning” with “Estate-Dues” is whether these can be recovered in future from the concerned tenants. This is particularly important in the cases of numerous “Unauthorized tenants” who account for nearly 80% of this gigantic sum (Rs. 2772 Crores as on 31-03-1019) and most of whom are in litigation with Port. If this outstanding due can be recovered in the near future, it would indeed change the financial fortune of Port since this amount is not only several times the Annual Estate Revenue, but even more than the entire Annual Revenue of Port itself. In other words, simply by recovering the rightful and legitimate amount which such tenants owe to Port, it would get more than what it earns from handling the entire cargo and vessels round the year. On the other hand, if Port fails to reclaim this outstanding amount, there is a real and ominous prospect of this huge amount (measuring nearly 1500% of reported annual rental income of KDS) turning into a kind of **Non Performing Asset (NPA)**. Thus, it is vital that the process of recovering such fast increasing potential NPA be analyzed. Since overwhelming portion of this arises from unauthorized occupation, such analysis must inevitably explore (a) *What is/are the methods for recovering outstanding dues from an unauthorized tenant*, (b) *Whether such mechanisms have been effectively applied by Port Trust in the past?* (c) *What has been the amount & trend of financial recovery of outstanding dues from unauthorized tenants in the past?*

Considering the vital nature of these issues they were studied by collecting available data from individual tenancy officers, land inspectors, resolution officers and officers from law department since litigation data was neither recorded in the existing Estate and BR Module nor kept in any centralized manual registers [For more on this information deficiency, see an earlier System Improvement on the subject of “Information black hole in Estate”]. The result of these efforts, for which data collection itself took 6 months, was a study titled “*Estate Litigation: Process, Progress and Prospects*”. Its salient points are produced here under:

3.1.4.1 Eviction of Unauthorized Occupants and Recovery of Outstanding Dues:

Once a licensee/lessee is declared as an “unauthorized occupant” by Port Trust (which can arise out of a variety of irreconcilable breaches in terms of

lease/license granted by Port, including non-payment or irregular payment of rent), the Estate Division serves an Ejection Notice upon such tenant, asking to vacate the land. From that point onwards, instead of the regular rental bill, Port starts billing the tenant at compensation rate and initiates a legal process under relevant provisions of Public Premises Act, 1971, with the twin objective of evicting the tenant from the wrongfully occupied premises and recovering pending rental/compensation dues [as stated earlier, compensation dues are charged at penal rate (3 x SoR) right from the date of serving Ejection Notice to the time the occupied premise is re-possessed by Port].

The Public Premises Act, 1971 is the only Legal instrument available to Port for eviction of/ recovery of dues from such an illegal occupier. This Act is administered by an Estate Officer (EO), who is equipped with sweeping powers to decide on the question of eviction and recovery. In KoPT, such Estate Officers are posted from the Port Cadre, by making a Gazette notification.

Government of India enacted the PP Act, which has several features especially aimed at ending the menace of illegal & unlawful occupation of land & structures owned or managed by Public Authorities. Unlike regular Court proceedings, PP Act is a unique law, which puts the burden of proof on the accused unauthorized tenant, specifies strict time limit for each phase of litigation, prohibits frequent adjournments & interim orders and obviates any mandatory examination/ cross-examination of witnesses. Such provisions empower the EO to pass an "Order of eviction" within a matter of few weeks, in contrast to a proceeding in other Courts of Law. In case EO passes an order of eviction, the authorized tenants must vacate the occupied land/ structure within 15 days, failing which the EO can appoint an Authorized Officer (AO), who can avail Police assistance to forcefully evict him.

After the tenant gets evicted, Port is required to approach the EO, to recover all pending rental dues and the compensation dues that might be accumulating till that time, under a separate provision of PP Act. Even after passage of a Recovery Order by EO, if the evicted tenant does not pay up, then Estate Wing is supposed to again approach EO for issuance of a "Certificate of Dues". Armed with this "Certificate", the Port finally has to approach the Public Demand Recovery Officer of the concerned area (usually a District Magistrate) to effect recovery, by attaching movable or immovable property of the evicted tenant.

Obviously, the effectiveness of conducting PP Court litigation process is of paramount importance not just to enforce jural relationship between the landlord and tenant, but also to evict the defaulting ones and recover pending dues. This is all the more important, considering the vast number of plates that are currently under unauthorized occupation, with enormous dues pending to be recovered from such defaulters [See preceding paras]. Unfortunately, a pivotal process like this is yet to be computerized even 16 years after creation of Estate and BR Modules. As a result, no comprehensive or consolidated information exists on any milestone events – from Quit Notice to Recovery – either in manual register or even in an Excel sheet.

After painstaking efforts lasting for months and series of meetings with AEMs, SAEMs, PP Court Cell officials, what emerged was truly surprising. Despite existence of stringent provisions in the PP Act, 1971, aimed to ensure eviction of unauthorized tenants in the most expeditious manner in a matter of a few weeks, most such litigations have been dragging for not weeks but years together to the huge advantage of illegal occupants. During this time adjournment after adjournment are found to be granted and multiple interim orders are passed, which would make even a High Court or Supreme Court proceeding look less complex. The saddest part in the manner many of these litigations have been conducted is that they violate the very letter and spirit of PP Act that had been conceived by GoI to ensure speedy eviction. **Data collected from various officials of Estate and PP Court Cells show that the average time for securing an Eviction Order is an astounding 6 years.** Even after an order from PP Court to surrender the land few actually vacate the premises. For such defying tenants PP Court allows the landlord to get an Authorized Officer (AO) appointed by PP Court This AO can seek police help to physically evict the tenant. But here, too, upon an analysis of pending eviction orders made available to Vigilance, it has been found that **Port authorities take an average of 1000 days i.e., nearly 3 more years** to get simply an AO appointed. *In other words if a tenant refuses to pay immediately after getting a lease the probability of him enjoying the land free of cost without any adverse consequence during the ensuing litigation would be for a period on 9 long years !*

However the objective of litigation against an unauthorized tenant is not completed by only getting him evicted after a protracted period of litigation running in PP Court for years. It gets completed only when Port recovers the dues outstanding against him all those years when he was enjoying the

occupied premises, in most case, free of cost. Here again statistics show that the Port Authorities have never even once been able to get back the pending dues by applying the appropriate provisions of PP Act (Section 7). In most cases Port Authorities have not even attempted the full range of legal process required for recovery after evicting the tenant. *Thus if a potentially non-compliant tenant looks at the past results of KoPT's legal effort, he would be convinced that the worst that can befall him is only an "eviction" and that too after years of litigation but never any financial recovery!*

Taken all the above facts together, the prospect of recovery of the currently outstanding unpaid estate dues of Rs 2772 Crores (as on 31.03.2019) is remote to say the least.

- 4 **Valuation of Land:** Comparison between meagre incomes from land resources of KDS due to non-payment / meagre payment from a large number of tenants appear even more pathetic when one realises that the rent charged by KoPT (which depends on the correct assessment of market value of land owned by Port) is actually much lower compared to the actual market rate in Kolkata & Howrah. This aspect was evident in the earlier case study concerning a tenant named Vijay Arya where he was gaining 42 times the rent charged by Port Trust from his own sub-tenants. As per "Land Policy 2014", the minimum expected annual rental of estate is supposed to be 6% of their latest market value calculated from the maximum five stipulated parameters. As has been described in a separate analytical study titled "**Valuation of KDS Land and Determining its Escalation**", such rental income from only the tenanted land area of 2342 Acres under KDS could conservatively reach a level of Rs 5400 Crores per year instead of the present Rs 186 Crores. This study also has specific suggestions for management to reassess the value of land owned by Port in accordance with the letter and spirit of latest land policy guideline.

N.B: *The above study has 2 (two) enclosed Annexures A & B and also refers to other related "Analytical Studies" as indicated.*

Estate Litigation: *Process, Progress and Prospects*

The predominant reason behind prolonged unauthorized occupation of a huge number of plates of Kolkata Port Trust (KoPT) land is due to a very peculiar and infructuous litigation process in the Public Premises Court (PP Court), which commences once a tenant is declared unauthorized occupant for a plate or a group of plate(s), due to any one or more of the following reasons:

- a) Default in payment of rent for the tenanted premise.
- b) Parting of possession without permission/transfer of lease.
- c) Sub-letting without permission of the Port authorities.
- d) Encroachment beyond the land area allotted.
- e) Construction activity not authorized by the Port authorities.
- f) Using the tenanted premises for the purpose other than what was stipulated in the offer letter [in Licence and/or Lease Deed (in case of lease)].

If the Port authorities fail to come to reconciliation with a tenant, alleged to have committed any one or more of the aforesaid breaches, “Ejectment” or “Quit” Notice is served upon such tenant, asking the tenant to hand over possession of the licensed/leased property to the Port and pay any rent that might be outstanding till the notice. If the tenant does not vacate the premise in question, even after being served such Quit Notice, then the Port authorities take recourse to the Public Premises (PP) Act, 1971, for eviction by approaching the Estate Officer (EO), who presides over the Public Premises (PP) Court, with a formal plaint.

1.0 The Legal remedy against unauthorized occupation of Govt. land:

The Public Premises (PP) Act, 1971 is the principal legal instrument for securing eviction of any entity, who might be in **unauthorized occupation** of a public premise, and to effect recovery of “Rent” or “Damage” from such entities. The PP Act, 1971 had originally been enacted in 1958. It is a unique act, enacted by the Government of India, to secure expeditious eviction of unauthorized tenants, without being encumbered by complex legal process. Prior to 1971, this Act had been moved between various High Courts and the Supreme Court. But, each time, the Government of the day had come back to strengthen its provisions, to make it more and more effective and expeditious to clear eviction.

Section 2(g) of the act defines an unauthorized occupation in very simple terms, i.e., “*the occupation by any person of the public premises without authority for such occupation*”. The section goes on to add that the above definition

includes those who might have been authorized in the past to occupy such land through a valid lease/license, but continue to occupy the same without authority even after the lease/license has expired or has been terminated by the landlord. The latter phrase is to emphasize the fact that it is not just “rank outsiders” or “trespassers” occupying a public premise who are to be deemed as “unauthorized”, but even an occupying entity who might have had valid authority in the past, but not at present. The distinction between these two types becomes further evident from the way Section 11 – a section that criminalizes unauthorized occupation – treats them. This Section, which makes such illegal occupation punishable by fine or simple imprisonment up to a period of 6 months, makes an exception for the second category of unauthorized occupants, i.e., those who once had a valid authority for occupation by way of lease/license, but now is in occupation without authority. Thus, this section is a potent tool in the hands of any Government organization to deter encroachment of their premises by rank outsiders, by unleashing the criminal consequence envisioned under this section. The severity of this section got further amplified when Government of India introduced Section 11-A in 1984, by way of an amendment to the act, which now states that “*The Code of Criminal Procedure, 1973 shall apply to an offence under Section-11 as if it were a cognizable offence.*” Incidentally, long ago, KoPT had sought opinion from an eminent lawyer as to the most effective way to evict such kind of illegal occupants. The advice was to use the potency of this provision already ingrained in PP Act. Unfortunately, and for reasons not known, the deterrence of this provision has never been put into motion by KoPT, although eviction of unauthorized occupants remains one of the foremost problems faced by the Estate Division.

1.1. The special nature of PP Act:

This Act had been enacted by the Parliament in 1971, primarily to effect eviction of unauthorized occupants from public premises, through a simple, quick and time-bound legal process, unhindered by the procedural legal complexity that usually mark Civil/Criminal proceedings in Courts of Law.

Such lack of complexity in proceedings under PP Act is actually deliberate on the part of its makers, keeping in view its basic objective, i.e., to determine whether or not a complain of unauthorized occupation lodged by a landlord is true, and if true, to order eviction and effect the same even by force, if needed. In fact, prior to 1971, the eviction process used to involve filing a full blown Civil Suit in a District Court, with its attendant complexities. Several distinguishing features of the Act, implying how stringent this Act is towards unauthorized tenants, are described here under:

- (i) It is a “summary process”. The term “summary process” applies to a case that is settled and solved quickly, without the help of a Jury, indictments and a lengthy procedure. Such type of proceedings is

normally allowed in various countries in the matter of tenancy disputes.

- (ii) Its proceedings are Quasi-judicial in nature, which means evidence required to prove unauthorized occupation need not meet the strict standard of evidence laid down by Indian Evidence Act of 1872. The elaborate process of examination and cross examination of witnesses and documents and multiple opportunities to defense side at various stages, which are mandatory in many other quasi-judicial proceedings (like the Disciplinary Action Rules in Government Department against accused employees), are not required to determine eviction under the Act.
- (iii) The Estate Officer (EO) of the PP Court can start eviction proceedings, not only on receipt of information from the landlord about unauthorized occupation, but also suo moto, against information received from any source.
- (iv) Once a Show Cause Notice is issued by an EO to an alleged unauthorized occupant, it is the occupant who has to show cause and advance evidence in support of such cause(s). In that sense, the burden of proof (that the accused is in “authorized occupation” of landlord’s premise) immediately shifts to the tenant (the defendant) from the landlord.
- (v) The role of EO under PP Act is vastly different from a Judge of a Court, who is supposed to be an impartial observer and where truth is expected to be manifested from the arguments between prosecution and defense.
- (vi) The EO has been given sweeping power u/s 12 to cause production and discovery of any documents he wishes from either side, to discover truth. If the tenant does not vacate the premise after an order of eviction, he can appoint his own Officer to do the same.
- (vii) Most importantly, the very intent and essence of this Act is “speedy process”. Accordingly, each phase of the litigation process has been made time bound. At every critical clause, a definite time limit has been prescribed. For instance, the time to issue a Notice by EO has been prescribed as 7 days after receipt of information of unauthorized occupation, either from a complaint from landlord or from EO’s own knowledge. Similarly, only 7 days (without any relaxation) has been granted for the alleged-unauthorized occupant to reply to the Notice issued by EO. The Act urges EO to issue the Order (of eviction or otherwise) within 15 days of the Notice. If EO passes an order of eviction, the occupant has to vacate within 15 days, which, under compelling reasons to be recorded by EO, can be extended up to 30 days.

- (viii) Last, but not the least, the time period for appeal - against an order passed by the Estate Officer – is only 12 days u/s9 of the Act. This time period needs to be compared with the period of appeal granted to an aggrieved entity under most judicial/quasi-judicial processes, which is 90 days. For instance, the period of appeal against the order passed by Disciplinary Authority in a Departmental Proceeding (which is a quasi-judicial process) is 60 days. The unmistakable trait emanating from the above features of P.P Court is that its provisions are attracted to achieve one and only one objective, i.e., to vacate an unauthorized tenant from Public Premises, in the most expeditious manner, by following stringent time to the intermediate processes, free from usual legal complexities and encumbrances.

The table below illustrates the time limit for various phases of P.P Court proceedings, as laid down in the P.P Act, 1971:

Event Sl. No.	Section	Event description	Time frame		Remarks
E1		Plaint by Landlord before Estate Officer (EO)/Information with EO regarding breach	0	E1	
E2	4(1)/4(1-A)	Issue of Eviction Notice by EO	7(Max)	E1+7	
E3	4(2)(b)(i)	Reply by Tenant to Eviction Notice	14(Max)	E2+7	Opposite Party (OP) to show cause, if any, against the proposed order and to appear before the EO on the date specified in the notice along with evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.
E4	5(1)	Hearing/Proceedings			<i>Provided that every order under this sub-section shall be made by the estate officer as expeditiously as possible and all endeavour shall be made by him to issue the order within fifteen days of the date specified in the notice under sub-section (1) or sub-section (1-A), as the case may be, of section 4. Time frame reduced from 30 days to 15 days in 1980.</i>
E5	5(1)	Issue of Eviction Order	21	E2+15	
E6	5(1)	Premise to be vacated	36(Max)	E5+15	
E7	5(2)	Extension of eviction period	51	E6+15	Only if the EO is satisfied, for any compelling reason, which is to be recorded in writing.
E8	5(2)	Appointment of Authorized Officer (AO)	52	Failure of E6 & E7	AO may evict the unauthorized occupant from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary.

2.0 The process of eviction:

In KoPT, a proceeding under PP Court can start when the Port authorities notice a breach in the terms of lease/license accorded to a tenant and decide to file a "Plaint" before the EO of PP Court [EOs are Officers from KoPT's own cadre], praying for an order of eviction and recovery of rental arrears, if any. Following this, the EO of the PP Court issues an Eviction Notice u/s 4 of PP Act to the tenant - detailing various grounds for eviction - who now stands formally labelled as unauthorized, in accordance with Section-2(g) of PP Act. Often, along with the Eviction Notice, 2 (two) other notices are simultaneously sent u/s 7, asking for payment of rent and compensation dues. It is important to understand here that once an unauthorized tenant is served a Quit Notice, then he is not sent regular rent bills. Instead, a compensation bill is sent to him every month, or in whatever frequency bills are scheduled to be sent, carrying an amount, which is supposed to reflect the penal charges for occupying a Govt. land without any valid legal authority. Since after Ejectment Notice, a formal plaint is filed before the PP Court and an Eviction Order/Notice is issued subsequent to such plaint, it is, therefore, natural that during the aforesaid time, i.e., between Quit Notice and Eviction Order/Notice, some compensation charges must accrue to the unauthorized tenant, apart from regular rental bills, if unpaid.

The OP then replies to show cause with his own evidences for disproving the case against him and may be granted oral hearings, if the EO so wishes.

After conclusion of proceedings u/s 5 and issuance of Eviction Order, the Port Trust first tries to get the land vacated by approaching the unauthorized tenant. If the tenant does not vacate the land within the time stipulated in the PP Act, then the Port Trust approaches the EO for appointing an Authorized Officer (AO) to secure eviction. The said AO, appointed by PP Court, then tries to get the tenant evicted. In case the AO fails to do that, he/she has to file a Police Diary and then the Act empowers the AO to seek assistance of Police to evict the tenant by force. For seeking Police assistance, after filing the said Police Diary, the AO must intimate, by a report to the EO, about his/her failure to evict the tenant and need to pass an order for seeking Police assistance. With such an order, the AO can approach Police, seeking their help and get the unauthorized tenant evicted, against whom Section 4 & 5 orders have been passed by the PP Court Officer, by application of force.

3.0 The process for damage recovery:

The aim of PP Act, 1971 is not only to secure eviction of unauthorized tenant in an expeditious and hassle-free manner, but also to recover any amount

outstanding as regular rent and any compensation charges that might be due towards such unauthorized tenant. An important aspect, as far as recovery of dues is concerned, is that while the rental bill stops the moment Quit Notice is served, the compensation bills continue to accumulate even afterwards. Such compensation bills would stop, if the EO presiding over the PP Court issues an order of eviction in favour of the landlord after the litigation process is over. But, that is not so, because there is another series of time steps to be undertaken, i.e., after the order of eviction by EO till the physical possession of the plate by the Port Trust, which may take time. Since there can be a time gap between order of eviction and actual vacation of the litigated plates and its possession by Port authorities, the compensation charges keep on accumulating in this period and does not stop at the eviction order stage. Therefore, to recover the full dues, the Port authorities must go back to the EO, once again, for initiating a proceeding under a separate provision, i.e., u/s 7, to recover the outstanding rental, compensation amount, including interest that might have accumulated throughout the said PP Court litigation process.

As per provisions of PP Court for recovery of dues, a separate notice is required to be issued to the now evicted unauthorized tenant and he is allowed to defend himself against payment of such dues, just as he had been allowed to defend the allegations levelled in the Eviction Notice u/s 5. After such proceedings u/s 7 culminate, an order for recovery for dues is passed by the EO. Armed with this order, the Port Trust is again required to approach the unauthorized tenant for asking him to pay the amount of outstanding dues, with interest (if any), so ordered by EO u/s 7.

Even after this, if the evicted tenant refuses to pay the outstanding amount, then the landlord (Port authorities) is expected to approach the Estate Officer for issuance of a "Certificate" of dues. Once such a "Certificate" is issued by the EO, the Port Authorities are then required to approach a different forum, i.e., Public Demand Recovery Forum, presided over by a Public Demand Recovery Officer, normally the Collector of the District where the litigated plate is located. At the time of approaching the Public Demand Recovery Forum, the Port is expected to inform the exact whereabouts of the evicted tenant and/or his legal heirs, with a list of property/properties, which can potentially be attached by the Public Demand Recovery Officer, to realize the amount of dues mentioned in the "Certificate". Therefore, the Public Demand Recovery Act comes into play, with its full range of due process, after which a Decree is issued by the Public Demand Recovery Officer that can be executed to realize the outstanding dues for attaching the properties of the unauthorized tenant or his/her legal heirs.

It is pertinent to note here that u/s 9 of PP Act, the order of the EO is prone to be challenged by the Appellate Authority, who happens to be the District Court. The order of District Court can be challenged in the High Court, which, in turn, can go up to the Supreme Court. In other words, the P.P Court order, either for eviction u/s 5 or for recovery of dues u/s 7, has four stages of appeal before the Public Demand Recovery Officer is approached with a "Certificate of dues" from the EO. The question that arises in my mind here is supposing the unauthorized tenant does not challenge the Eviction Order or order for recovery of dues passed by EO up to the stage of issuance of "Certificate" and its enforcement in the Public Demand Recovery process. The unfortunate position is that even after the entire range of Public Demand Recovery Process, under the Public Demand Recovery Act, a Decree is passed for attachment of property of the unauthorized tenant or his/her legal heirs, such order is prone to appeals and challenges too.

While the process for getting an eviction order through PP Act is rather exceedingly rapid and simple and a reasoned order under Section 5 passed by EO is nearly unassailable to challenge at higher Courts, the process of recovery, covered under Section 7 of the Act, is not so. For recovery, KoPT has to come back to the EO, after actually evicting the tenant in question. There can be a long gap between serving of the Eviction Order by EO (under Section 4) and actual physical eviction for a variety of reasons, the most common of which is lack of co-operation from Police to drive out a belligerent unauthorized tenant. Eviction may be hindered if the tenant moves to different Courts as a parallel legal offensive and secures some kind of stay.

However, assuming that the tenant got evicted and KoPT approaches the EO for an order of recovery of any rental and/or compensation arrear, the EO issues one more Show Cause Notice - this time under Section 7 - to the tenant. With reply from the erstwhile tenant and through another round of hearings, the EO assesses the exact amount of dues that the tenant must pay to KoPT and passes an appropriate order to that effect. If the tenant does not honour this Order, then Port has to once more approach EO for issuing what is known as a "Certificate". But, this "Certificate" is not a "Decree" and is rather the first step to unleash the process of another act called "Public Demand Recovery Act", to be administered by a "Certificate Officer", who happens to be the Collector of the District where the leased premise is located. This "Certificate Officer" issues Notice to the debtor-tenant, asking him why he should not pay the amount mentioned in the Certificate of EO. He then launches another legal process, with the aim of granting a "Decree" to the aggrieved landlord, which can be recovered from the debtor directly or in case of non-payment, by attaching and auctioning his/ his legal heir's

property. For achieving this, KoPT has to provide a list of property and the identity of legal heir of the evicted tenant to the District Collector. It is also important to note that the Order of the District Collector is subject to appeal (at District Court) and revision at higher judicial forum.

4.0 The ground reality:

4.1. *How much time elapses between Proceeding and Eviction Order?*

Despite the Govt. of India enabling various Public authorities with stringent provisions in the P.P Act proceeding, to effect expeditious eviction through a simple summary legal process, where the burden of proof has been cast on the accused, the Statistical analysis of P.P Court orders passed during last 5 years in KoPT and their implementation has exactly been the opposite. *The analysis reveals that the average time taken for securing a final Eviction Order is an incredible 6 (six) years* [Ref.: Annexure – P1]. What is most pertinent to note here is that each day the process is delayed, financial benefit immediately accrues to the unauthorized tenant, since he may not pay any rent or compensation charge as long as such litigation runs. In addition, he incurs minimal legal expense in the P.P Court proceedings. If the litigation process in P.P Court would have been completed in a time bound manner and even if the unauthorized tenant would have moved to the Appellate Authority, he would have to incur much higher legal expenses compared to what he has to spend in P.P Court litigation.

The insight into each phase of the litigation process shows a complete lack of intent on the part of Port authority to enforce their right for timely completion of P.P Court proceedings. For instance, many cases have been noticed, where the Eviction Notice issued by the Estate Officer grants huge time to the unauthorized tenant for response, instead of the legally mandated 7 days.

The P.P Act does not envisage any interim order or adjournment. It rather implies almost day to day hearing, since the entire process is expected to be completed in a few weeks' time. Contrary to such provisions, in almost every case, multiple interim orders are seen to have been passed and numerous adjournments have been allowed, interestingly, in some cases even at the request by Port authority. During all these delays, it is to be noted that the unauthorized tenant - against whom huge outstanding amount continues to be accumulated in KoPT's books of accounts by way of compensation penal charges - enjoys the land freely and peacefully.

4.2. *How much time does appointment of Authorized Officer (AO) take?*

Even after securing an Eviction Order, after such prolonged and inexplicably delayed P.P Court process, little interest is taken by the Port authorities even to inform the EO about their failure to evict the tenant within a legally granted 15-day period, and request the EO for appointing an Authorized Officer (AO). Appointment of an Authorized Officer, following failure to implement an order of eviction within 15 days (extendable by another 15 days), is a very simple process. The concerned Tenancy Section Officer of KoPT has to simply apply to the Ld. EO of PP Act (both belonging to the Port Cadre itself). The process can be completed in a matter of a few days at best. Instead, analysis of pending eviction orders (collected for the first time by Vigilance Department, since no centralized Statistics- either computerized or manual - existed till date) show that *average time taken merely to appoint AO is an incredible 1,063 days, i.e., almost 3 (three) years* [Ref.: Annexure – P2]. The day to day proceeding conducted in some of the P.P Courts, running for decades, give an impression as if the manner in which they have been conducted are more complicated than what goes on in a legal case in Higher Bench of High Court and Supreme Court.

For instance, there was a case when after completion of the proceedings that ran for years, the EO reserved his judgement of significant 5 proceedings. Ultimately, the Ld. EO released his judgement after passage of 6 months. Even in one case, the Ld. EO of PP Court even gave a scope to KoPT to apply for modification of the said order, if required, which (such an order of EO) had later been set aside by the Hon'ble High Court.

The obvious conclusion from the analysis of PP Court proceedings and the activities that go on to secure merely the eviction of an unauthorized tenant is this:

On an average, the P.P Court proceedings can run upto 6 years. Even at the end of 6 years, if an Eviction Order is passed, it would take 3 more years to appoint an AO, who can seek Police help and take possibly a meaningful step for eviction of the belligerent unauthorized tenant. So, just upto appointing an AO and seeking Police help, a period of 9 years can elapse, while the tenant is free to enjoy the litigated land in question, without paying even single paisa. Thus, it is to be noted that this 9-year period is only upto the stage of appointing AO, and not the actual eviction. Let it not be forgotten that the entire work of recovery

of dues, through Section-7 proceedings, will still have to wait. If the unauthorized occupant does not vacate the land and does not respond to Section-7 proceedings, the only legal recourse is to obtain a "Certificate" from the EO and to approach the Public Demand Recovery Officer with a list of attached properties of the unauthorized/evicted tenant. The 9 years does not include the time that might be taken for completion of recovery. In fact, never in the history of KoPT has any outstanding dues been recovered from a tenant who has been successfully evicted or who has voluntarily vacated a litigated plate, either during the P.P Court proceedings or after culmination. The above are the disturbing revelations that were found after interacting with the Officers of the P.P Court and from perusal of the Eviction Orders passed during the last 5 years. However, even more disturbing is the scenario (in some cases) where an order for recovery of rent and/or compensation, albeit for a limited period, had been passed by the EO at the time of issuing Eviction Order itself. In none of these cases, save and except one or two cases where the evicted tenant voluntarily came up to give some outstanding dues, the Port has even attempted to undertake recovery of outstanding rent and/or compensation. After Eviction Orders had been passed, Port Authorities had neither attempted to enforce the same nor approached the EO for a "Certificate", failing their attempts (if any) to implement such Section-7(3) orders.

5.0 The Perverse Incentives:

The above scenario clearly indicates existence of a massive perverse incentive for a litigated tenant, who gains substantially in financial terms because of intricate and prolonged litigation process, in violation of the provisions enshrined in the Act itself. It simply shows that any tenant, who secures short term license or long term lease, can commit a breach and go scot-free for at least 9 years and enjoy the said land without making any payment. Even after its 9 years of illegal occupation of Port land, without paying a single rupee, the worst outcome that can befall them is an actual eviction from the premises and not any financial recovery. No such enforcement of recovery of compensation charges has ever been made under relevant provision of P.P Act. No wonder when EDA of the Estate Division's Estate and BR Modules was done in the previous system improvement, it was found that tenants of nearly 496 plates have never paid single rupee and were still enjoying their land, in complete defiance to the monthly rental/compensation bills that have been sent to them since decades. It has also been found that

such delay in PP Act case attracted attention of Hon'ble High Court, who had directed that PP Act cases involving public properties should not be dragged for years and should be completed in 60 days. Even thereafter, KoPT's PP Act Court did not finish the case within the said timeline.

The question of enforcing recovery of dues, which might have accumulated during the prolonged P.P Court proceedings u/s7, and attempted recovery of dues, i.e., going upto the "Certificate" stage to recover unpaid dues, essentially requires that the Port has some details about the tenant's whereabouts or and a list of his or his legal heir's asset. It has been shown in previous System Improvement Reports that in hundreds of cases, even the correct address of the original tenant or his PAN are unavailable and dozens of cases have been unearthed where tenants have died long ago or have gone away after selling/parting possession to others.

Once the tenant gets a parcel land and stops paying to KoPT and the case enters the stage of P.P Court litigation, the perverse incentive embedded in the system allows him to enjoy the land free of cost for a period of 9 years. During this period, the Port continues to send compensation charges, resulting in ever increasing outstanding dues against such tenant. How strong this perverse incentive is can be assessed from the fact that from 2004 till 2016, even the compensation charges were the same as rental charges. In other words, there was no difference between the rent to be charged to an authorized tenant and the damage rent to be charged to an unauthorized tenant, once a Quit Notice is served and jural relationship between a tenant and the Port is severed. It is important to note that right from 2004, the Government of India, through the various land policies, have mandated that compensation charges at 3 times the Schedule of Rent are to be levied upon an unauthorized tenant, to dissuade against unauthorized occupation. However, KoPT had applied compensation charges at 3 times SoR rate only for a brief period of 3 months during 2012, in an extremely lenient gesture to such illegal occupants. Nevertheless, such leniency shown has never resulted in reciprocal gratitude from the huge number of unauthorized illegal occupants of Port land, having hundreds of Crores of outstanding dues.

6.0 Widespread pessimism and reluctance to go after illegal/unauthorised tenants: *The case of Mahindra and Mahindra*

The widespread pessimism prevalent in the minds of the Officers of the Estate Division in the capability of Port authority to reclaim unauthorisedly occupied leased/licensed land is starkly demonstrated in a classic case known as "Mahindra & Mahindra Case". In this case, a company called Mahindra & Mahindra had been awarded a 10-year long term lease in 1990, for several plots of land measuring nearly 22,000 m² area, at a location called Sonai,

adjacent to the Dock area of KDS. When the said lease expired in the year 2000, the company declined to continue the lease and intimated their desire to surrender it to KoPT. However, their request for surrender was for only one of the occupied plates and not the entire leased area. The ensuing dispute saw the then Deputy Chairman, KoPT ordering to get the tenant evicted by serving "Ejectment Notice", which strangely was not sent to the company till 2002. At this point of time, a different entity called Shri T. Khan manifested and approached KoPT with a request that they be granted the tenancy on a monthly licence basis against some paltry deposit amount that did not cover the outstanding dues left pending by Mahindra & Mahindra. The request letter of Shri T. Khan contained this classic paragraph

"In this connection it is to be mentioned that the unauthorized encroachment in Sonai is extremely rampant and it is only due to our existence that the plots of land leased/licensed to M/s. Mahindra & Mahindra could not be encroached by others. If CPT decides to hand over lesser area we will have to vacate the remaining area in our possession now. In that case the likelihood of encroachment is very high. It is relevant to state that we are not the encroachers in the strict sense and actually were the handling agent of Mahindra & Mahindra by virtue of which we were safeguarding the lands licenced/leased to M/s. Mahindra & Mahindra at Sonai, in the right interest of the Port."

Responding to the letter of Shri T. Khan, the then Deputy Land Manager of KoPT penned the following paragraph in a note that brings out the systemic pessimism and reluctance on the part of KoPT to go after the illegal occupants in no uncertain terms:

- “6. *The alternative scenario vis-a-vis grant of transfer to M/s. T. Khan is initiation of proceedings in the P.P. Act against Mahindra & Mahindra. If KoPT succeeds in the proceedings Mahindra & Mahindra as well as M/s. T. Khan will automatically be evicted. But in that event, recovery of old dues will be mired in uncertainty as procedure to be followed for such realisation is through public demand recovery act which is extremely circuitous, complicated, difficult and long-drawn procedure. At the same time, if eviction order is passed, question of execution of the decree and taking over possession will come. Here also, police assistance will be required. But our past experience with the police is not encouraging. However, question of recovery of possession will only come if interested parties do not move to the Appeal Court i.e. District Court, Calcutta high Court and the Supreme Court in that order for stalling the proceeding. My experience of working as an Estate Officer induces me to state that the incidence of recovery of possession through P.P. Act where eviction order is passed is not even 1%. It almost always results in Appeal which is synonymous with inordinate delay. Assuming that*

everything goes right for KoPT and it ultimately manages to get over possession, the land will remain vacant for years together as has been happening in case not only Sonai lands but also other lands in KoPT. If we consider response in the tender as far as KoPT land is concerned for last few years it is far below expectation if not poor and abysmal.

7. *In the back drop of the circumstances mentioned hereinbefore, it is felt that the offer of M/s. T. Khan be better lapped up by KoPT. However, it will not be possible for us to waive the settlement fee as suggested by M/s. T. Khan though the offer he has dangled for payment of Rs. 5 lakhs at one stroke is extremely enticing and ensnaring especially for cash-strapped port gasping for revenue."*

7.0 The history of Estate problems:

While preparing the above series of analytical studies and system improvement reports, I have also had the occasion to discuss with retired Chairman, an Estate Manager and other officials to get greater insight into the historical roots of Estate related problems. From these discussions, I gathered that the only time the estate revenue registered significant growth on an Y-o-Y basis was during the period 2004-2006. The main reason they attributed for the same were (a) introducing Compensation billing for defaulting tenants which did not exist earlier at all (b) eviction of several unauthorized occupants who were enjoying large areas of Port land without paying or with paltry payment and (c) a determined and concerted legal effort to win some important Court cases/litigations in High Court/Supreme Court where the unauthorized tenants had challenged the authority of Port on various counts, such as right of the Port to issue eviction notice, Orders passed by PP Court and even the amount of annual rent charged by the port as per the valid SoR.

*After consideration of the entire spectrum of issues faced by Estate Wing of KDS, one feels that the only solution to realize the present outstanding dues of Rs. 2,772 Crores (as on 31.03.2019) and realize the real potential of land asset of KDS is to **mount a determined and massive legal counter attack on the unauthorized tenants who are occupying Port land unlawfully for years together with the best possible legal help and** throw the re-possession plates to competitive bidding. The time, energy and cost for such legal effort will be more than justified, if Port is able to recover even a fraction of the outstanding dues, which is more than the entire earning of KoPT from all income streams.*

[N.B.: The above Analytical Study refers to 2 (two) Annexures (P1 & P2)]

SYSTEM IMPROVEMENT SUGGESTIONS

The specific suggestions for effecting improvement in various focus areas related to Estate litigation have been mentioned in italic font.

- 1.0. **Focus area:** For any kind of Land Management, a landlord (Port) must have the following 3 basic piece of information:
- (a) The exact geographic boundary of his land
 - (b) The precise identity of the land user (lessee/licensee), and
 - (c) The instrument that defines the jural relationship between the land owner and land user (Registered lease deed/Offer of license/ Permission of Way leave).

The fact that dozens of cases of litigation dragging in PP Court for lack of authentic information on such simple matters as plate area, plate boundary, area under encroachment proves that comprehensive information on (a) is not available for all tenanted plates. Two case studies – the case of Manor Floatel, where several years were consumed in PP Court to ascertain an allegation of alleged encroachment of a few meters of land, and the case of Ram Murat Pandey, where 5 years have been spent in PP Court to ascertain area of a licensed plate – are testament to this fact.

The detection of hundreds of non-existent/ghost tenants, to whom even the monthly rental bills sent by KDS have not been reaching, proves the lack of authentic identity related information pertaining to all plates in the Port database. Vigilance found that the field meant for PAN & GST Number against a large number of tenants are missing from Estate Module. It is no secret that there are many plates where the original tenants have sold/resold/parted possession to other entities long back and nothing is known about their current whereabouts at all. Thus, information on (b) is not available for all plates.

Similarly, there is no clear information as to in how many out of the currently tenanted 3,000 odd plates under KDS, documents like offer of license and lease deeds are available. During Vigilance investigation, several Land Inspectors have frankly admitted that they never checked all the files and voiced apprehension that in substantial number of cases, these crucial documents could be missing. The existing database too does not even have the start date of lease/licenseses for hundreds of tenanted plates. In other words, complete information on (c) too is lacking.

It needs to be appreciated that the above 3 basic information are essential to the success of any litigation against a disputing tenant either before PP Court or higher courts. Many a times, KoPT had been severely criticized by District Court/High Court for their inability to produce elementary information, even on litigations of huge financial implication running for decades.

1.1. *Suggestion for improvement:*

Immediate physical verification of all Plates & Tenants: A time bound drive by engaging mobile squads should be immediately undertaken to identify the entity/entities who are actually occupying/in possession of the 3,002 tenanted plates found in the Estate Module. This will reveal the exact number of plates under unauthorized occupation, the identity of tenants who are occupying them and how many of them are rank outsiders/trespassers. The benefits from such exercise can be two fold.

- (i) Estate Division can identify plates under occupation of rank outsiders/trespassers and stop infructuous billing to them and prevent avoidable outgo of GST.
- (ii) Unauthorized occupants who are rank outsiders and/or trespassers are liable to criminal prosecution under Section 11 of P.P Act, 1971. The legal process for evicting them is considerably shorter than an unauthorized tenant who had once been awarded the land parcel under a valid licence/lease, but continued to occupy it in breach or stayed beyond expiry of lease without permission of landlord. Moreover, detection of non-existent/dead/long vanished tenants will lead to immediate disposal of any dispute that might be continuing before PP Court or other judicial fora, thus bringing down the enormous legal workload (around 400 pending cases before PP Court and 700 before other Courts).

2.0. Focus area: To successfully defend a dispute in any court against an unauthorized tenant and recovering outstanding dues the existence of original jural instrument, i.e., offer of licence/registered lease deed/bid document used for tender-cum-auction are essential. During the system improvement study and interaction with various Estate Officials, it has been found that in a large number of cases, these documents are unavailable. Often, an entire Estate file goes missing at critical juncture, creating administrative and legal embarrassment to Port Administration.

2.1. *Suggestion for improvement:*

Verifying existence of Lease/License documents for a plate: An immediate census of Estate files should be undertaken, if required, by engaging additional manpower on a temporary basis, to identify the existence/non-existence of such documents for the 3,000 odd tenanted plates contained in the database. Any half-hearted approach here could have lethal consequence for success in litigation and recovery of pending dues, which have reached a level Rs 2,772 Crores by April 2019. It is to be further noted that no such

effort - ongoing or contemplated - can be effective, if hard copy of these documents are not available for some plate(s). It is pertinent to note that way back in 2013, RBI had issued a specific circular asking Chairman of all Scheduled Banks to conduct a "Legal Audit and Verification of title documents of all credit exposure above Rs 5 Crores" to check their genuineness and prevent fraud. A similar exercise for all licensed/leased plates exceeding 100 m² area should be done. Such exercise can not only prevent an ongoing fraud, but also considerably increase chance of legal victory in future disputes.

3.0. Focus area: The information black hole that exists currently on various milestone events taking place in P.P Court/Civil Courts needs to be removed. At present, this is in a complete state of disarray, resulting in absence of any consolidated repository of information, either in manual or in computerized form. For instance, no one knows the implementation status of all eviction orders issued by P.P Court in past years, whether recovery proceedings u/s 7 of PP Act have been launched. Only piecemeal information is available with respective officials in individual files. The situation is so precarious that there could be an eviction order passed by PP Court against an unauthorized tenant long ago and yet be totally untraceable now. That is the reason why, in one case, a licensee named Indian Roadways Limited claimed to have returned a large piece of land 34 years ago, while the Port said they did not have the land in their possession and knew nothing about it, as they had been still sending monthly rental bills [See this Case Study titled "No Man's Land" in the earlier system improvement study circulated to Port]! While two computerized modules were created in 2003-04, for storing tenant and billing related information, there was no module to record data pertaining to litigation process, which starts after an ejection notice gets served on the unauthorized tenant. This missing link in computerization of Estate functions is the principal cause behind the emergence of an information black hole that impedes monitoring of pre-eviction and post-eviction process and makes the same virtually impossible. Elaborate discussion on these missing links had been appraised to Port Administration on 11-03-2018 through a Vigilance study titled "Inspection of the Lease Section".

3.1. Suggestion for improvement:

Create a database to store all litigation milestone events and link the same through the appropriate bridge-fields (like "Plate ID", "Tenant Code" & "EO's Order No") to the existing Estate Modules. This will enable quick retrieval of authentic information, which are essential for preparation of Quit Notice (by Estate Division), Eviction Notice (by EO) and Legal Brief for Legal Counsels engaged by Port.

- 3.1.1. **Connect Legal Database to Resolution Register:** CLO should ensure incorporation of a bridge column in their Legal database connecting the specific order passed by E.O, which might be under appeal for challenge in Civil Court/ High Court. At present, this data bridge does not exist, making the task of retrieving any challenge that might have been mounted by evicted tenant, after issuance of eviction order by E.O, very difficult.
- 3.1.2. **Ensure registration of all lease deeds:** *It should be kept in mind that unless a lease is registered with appropriate Registering Authority of the State Govt., it does not have legal validity, if contested later under any dispute. Also, a full hard-bound register of lease deeds, which has gone missing, should be retrieved or reconstructed. This hard-bound register maintained by Lease Section contains reference to registration of hundreds of past lease deeds.*
- 3.1.3. **Establish a procedure for hand over and take over for Estate Division:** *Whenever any Tenancy officer or Land Inspector is transferred, a clear executive order should be issued, making it mandatory for them to leave a signed detailed hand over note for their successor. At present, there is no such system, which makes fixation of responsibility on any one virtually impossible in the case of loss of sensitive Estate files. The traceability of sensitive files in Estate Division and accountability of their custodians can be further bolstered by attaching RFID tags to each file within Estate Wing and controlling their movement through fixed RFID cover Electronic exit ways. This, in turn, will decrease preparation time for legal defence in PP Court.*

4.0. **Focus area:** In the entire range of Estate Management functions, so far studied by Vigilance, the largest gap noticed is in the management of litigation process against unauthorized tenants before PP Court. **It is not an exaggeration to state that this is the “nerve centre” that controls the compliance behaviour of a tenant. If a tenant expects that Port would not win a litigation case or would take a long time to do so after he commits a breach (for instance not paying rent after getting a lease/license) he would rather do so instead of being law abiding tenant.** In other words, expectance of success or failure in Port’s ability to evict a breaching tenant and recover dues determines the incentive for compliance.

The Public Premises Act, 1971, the primary legal instrument for securing eviction & recovery, specifies strict time limits for each phase of litigation

process, starting from issuance of Show Cause Notice to alleged unauthorized tenant u/s4 to issuance of eviction order u/s 5. Such strict time line is the very essence of this Act, which was created by GoI to prevent the menace of rampant unauthorized occupation of public premises by unscrupulous entities and trespassers. Non-adherence to such time limit by anyone – be it the litigating tenant (Opposite Party) or the KoPT or the Estate Officer - tantamount to violation of an Act. But, analysis of data made available to Vigilance shows that it takes **an average 6 years** to get an eviction order issued from the Estate Officers. Similarly, even after an eviction order gets passed by the E.O, directing the unauthorized tenant to surrender the litigated plate within time limit specified by PP Act (15 days extendable to a maximum of 30 days), most tenants simply defy such Court Order. In such cases, the suffering landlord can approach the Estate Officer of PP Court to get an Authorized Officer, who, in turn, can seek police assistance to get a defying tenant evicted. From the data made available to Vigilance, **the average period for simply getting an A.O appointed is found to be nearly 1,000 days instead of being a matter of a less than a week at worst.** Further, the P.P Act of 1971 does not envisage issuance of interim orders and granting of multiple adjournments, both of which have been found to be a ubiquitous feature in the currently prevalent litigation process. During the sensitization meet organized by Vigilance, several EOs informed that in many cases, the representatives of KoPT do not come prepared for the hearing and request for adjournments.

4.1. *Suggestion for improvement:*

4.1.1. *The Show Cause Notice issued u/s4 is the most vital part of a litigation process. Before this is issued by E.O, it is the responsibility of concerned Tenancy Officer of Estate Division to supply relevant documents to substantiate the alleged breach(s) by an unauthorized tenant. Failure on this account should be viewed seriously by the higher authorities of Estate Division. Reserve utmost diligence for a Section 4 Notice. **Make available faultless data to PP Court, so that a Section-4 Notice issued by EO cannot be contested on factual merit.***

4.1.2. *Verify identity of OP or his representative before litigation. Before an unauthorized tenant or his representative is allowed to participate in the P.P Court process, the E.O must check the identity and their exact relation to the litigated platel/licence/lease. The detail procedure to do this had been suggested by Vigilance in an earlier System Improvement Study titled “Missing Tenants and Undelivered Bills” circulated in December 2018.*

- 4.1.3.** *Beware of Burden of Proof Clause in PP Act.* The P.P Act, 1971 casts the first burden of proof on the Opposite Party to substantiate that they are not unauthorized tenant as alleged by Port Authority. A period of only 7 days have been stipulated in the Act for the unauthorized tenant to respond to an SCN issued by the EO u/s 4. This time limit was specially incorporated into the Act, through an amendment in 2015, in the interest of expeditious disposal of eviction cases in the country. But, it has been noticed that this provision of P.P Act is often violated by EOs by allowing unnecessary huge time to O.P to reply to SCN. If an unauthorized tenant fails to respond, EO has full liberty to pass an Order of Eviction. This aspect must be kept in mind by all those participating in the PP Court proceeding.
- 4.1.4.** *Ensure adherence to PP Act mandated time limits once the litigation process commences.* Their breach, especially if blatant, can weaken Port's capacity to fight back legal challenge by the unauthorized tenant before higher courts.
- 4.1.5.** *Grant of any adjournment to litigating tenant on flimsy grounds by any EO should be immediately contested by those defending Port's interest.*
- 4.1.6.** *Ensure quick appointment of AO in less than a week in all cases where the unauthorized tenant refuses to vacate the litigated premise within the time limit specified in the eviction order. AO appointment must be aggressively monitored by the highest authority(ies) in charge of dispute resolution, since intentional/unintentional delay in this particular activity can subject the Port to adverse criticism from Court regarding their intention to ensure eviction. The appointed A.O must promptly establish written communication with police, requesting them to help on the scheduled date of eviction.*
- 4.1.7.** *Section 11 of PP Act makes unlawful occupation by a rank outsider (who never had a valid lease or license to begin with) a cognizable criminal offence punishable with simple imprisonment upto 6 months. The legal potential of this section must be explored for securing quick eviction of such category of unauthorized tenants.*
- 4.1.8.** *Periodic review of resolution process: Monitoring P.P Court cases at the highest level in-charge of litigation and resolution process is required to prevent arbitrary and frivolous protraction of the P.P Court cases as has been found*

in numerous cases. The Resolution Section under Estate Division must clearly have a detailed list of orders passed u/s 5 & 7 in a centralized Register, in a chronological order, assigning a Unique Identification Number to each case referred by a Tenancy Officer for eviction proceeding. The said register, which must contain all litigation milestone events and dates, should be reviewed by the highest authority in charge of recovery and resolution process every fortnight.

4.1.9. *In a meeting organized by Vigilance on 25/03/2019, in Port Trust Guest House, all EOs, Resolution Officers, Estate Manger and Chief Law Officer were sensitized on all the above aspects. **More such seminars need to be held to further drill this aspect into the mind and habit of all those who participate in P.P Court proceedings.***

4.1.10. *Port Management must immediately undertake a “Legal Audit of cases before PP Court & other courts”, which should include analysis of pendency numbers & duration, case-outcome, counsel productivity vis-a-vis case allotment, legal fees vis-a-vis case value, etc. There exists adequate in-house capacity in KoPT to undertake such job.*

5.0. Focus area: The need to recover dues: After a tenant gets physically evicted by Port Officials/AO, with or without Police assistance, the goal of Port is only half accomplished. The other half is to recover any outstanding dues towards rental/compensation charge that might have accumulated during the litigation-cum-eviction period under Section 7 of PP Act. It has been gathered that there has never been a single instance of successful recovery of outstanding dues from an evicted tenant, using the legal process prescribed for it in P.P Act. In almost all cases, even the procedural steps required to effect recovery, after the tenant gets evicted, have rarely been undertaken by Estate or Legal Wing. This could be because of lack of optimism about prospect of recovery of dues, given the admittedly complex and circuitous legal process meant for it. But, that should not be the reason for abandoning the recovery process mandated in PP Act altogether.

5.1. Suggestion for improvement:

Do not abandon recovery efforts u/s 7 of PP Act after eviction. The Port badly needs to set at least a few examples of unauthorized tenants being pursued till the very end of the legal processes, to not just evict an unauthorized tenant, but also recover their legitimate outstanding dues.

Valuation of KDS land and determining its escalation

At present, Kolkata Dock System (KDS) unit of KoPT manages an Estate of 4,543 acres of land. Excluding land currently under use of Port and reserved for future use, nearly 2,905 acres of land, located in Metropolitan areas of Kolkata, Howrah and Budge Budge, are available for leasing and licensing. Out of this, Kolkata City accounts for 2,559 acres, while tenanted land under various leases and licenses (on the date of analysis) amounts to nearly 2,342 acres, comprising 3,002 plates.

A. Analysis of currently followed method of land valuation:

- 1.0 An extremely meagre rental income, accruing from vast stretches of premium urban land, coupled with a mountain of dues, rising up every year because of huge number of unauthorized and litigating tenants paying scant regard to the bills sent to them, looks even more tragic, when we consider the fact that the lease rent/license fee fixed by Kolkata Port Trust (KoPT) is already much lower than the prevailing market rate in the city.

The extent of loss sustained by KoPT (and consequently the potential for revenue augmentation, if such loss could be averted), due to non-payment/meagre payment from a large number of unauthorized tenants, can be gauged from another perspective, i.e., the value of the land occupied. As per Land Policy issued by MoS from time to time, it is the **assessed "latest market value of land"** that determines the quantum of minimum annual rent that a Port can expect. As per the latest **Land Policy (2014)**, the minimum annual lease rental income from a land parcel must not be less than 6% of its market value. This Policy also lays down a definitive methodology for calculating market value of land possessed by a Port, which, it says, **should be the highest of the following 5 factors:**

- (i) *State Government's ready reckoner of land values in the area, if available for similar classification/activities.*
- (ii) *Highest rate of actual relevant transactions registered in the last 3 (three) years in the Port's vicinity, with an appropriate annual escalation rate to be approved by the Port Trust Board.*
- (iii) *Highest accepted tender-cum-auction rate of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board.*

- (iv) *Rate arrived at by an approved Valuer appointed for the purpose by the Port.*
- (v) *Any other relevant factor, as may be identified by the Port.*

Correct determination of value of land at various locations (called Zones) is important, because it is after such valuation exercise that KoPT prepares a Schedule of Rent (SoR), showing the monthly rent to be charged to a tenant for a land parcel falling within a particular zone (derived from 6% of its assessed value). The SoR, so proposed by a Port, takes effect only after approval from TAMP, the final arbiter as per Major Port Trust Act to fix/revise rental charges. Once in 5 years, this approved SoR needs to be revised, based on fresh land valuation exercise. The latest Land Policy also stipulates *the annual escalation rate in land value to be a minimum 2% per annum*. KoPT currently applies 2.5% escalation to an existing SoR for each year elapsed, since its approval till the next revision takes place through fresh land-valuation exercise.

Land Policy, 2014 mandates that any fresh long term lease (more than 11 months and typically for duration of 10/15/30 years) must be awarded by Port through competitive bidding only. For this, KoPT follows a tender-cum-auction process, where the base rate for auction is fixed at the annual lease rental value taken from the SoR, duly adding the escalation for intervening period, if any. Bidder quoting the highest premium above the SoR, in this process, gets to enjoy the lease. Even for award of fresh short-term licenses, competitive process has been made the prescribed mode. For the numerous old licensees, who have been holding on to the land for years together by virtue of automatic/repeated renewals, Board of Trustees of KoPT have decided to subject them to tendering-cum-auction process, albeit with a First Right of Refusal, and not granting more than 2 (two) renewals in any case. However, the process of bringing even a small number of such licensees under tendering process has hardly made any progress in the 2 (two) years that has lapsed after the said Board decision.

But, the sad reality is only a miniscule number of current plate-population is amenable to such competitive bidding process, as most of them are encroached/unauthorizedly occupied/litigated, especially in prime location and central business district of the city. It is these land parcels that are the most sought after real-estate in the city and would have fetched the highest rate of rent in a competitive bidding process, **had they been free from the clutches of the unauthorized entities** (See the Paradiip Port Case Study discussed later in this Report).

Thus, even though long term lease for several unencumbered land has been awarded in recent past, at tender-discovered prices (or under bidding process currently), their immediate revenue augmentation potential is rather limited.

Data made available to Vigilance shows that the value of land under KDS, assessed by Port authorities before the last revision, is considerably lower than what it should have been, had the criteria for determination of “market value of land” stipulated in 2014 -Land policy been strictly followed.

This depressed assessment of land valuation has automatically led to fixation of significantly lower rental charge for Port land in the current SoR for the concerned zones, where a tenant had been awarded license for a particular land parcel. This fact was starkly demonstrated by Vigilance in the earlier case study of M/s. Vijay Arya. This tenant had been awarded land measuring 1.6 Acres, in prime locality of Kolkata, for which rental fee in 2015 was **Rs. 4,665/-, i.e., a paltry 7.25 Paisa/ft²/month. In contrast, the company was found to have sublet the premise to 9 other companies and collecting a monthly sum from them, which was 42 times more than what Port was charging him.**

The factors responsible for depressed land valuation before the last SoR Revision are as follows:

- (a) Although as per MoS circulated Land Policy the market value of land was supposed to be the maximum of 5 factors, KoPT relied mostly on one single factor, i.e., **the valuation of land assets by a third-party Valuer appointed by them [factor (iv) above]**. For instance, one of the major determinant - the valuation of land as per State Govt. **[factor (i)] – was not considered while accepting the Valuer’s Report by KoPT’s Board of Trustees as the Valuer**, in his report, had asserted that State Government’s land rates were not readily available. The study by Vigilance did not find any merit in such assertion because of the following:
 1. The WB Government’s Directorate of Registration & Stamp Revenue Dept. not only has a complete database, containing latest updated values of land located in the city and its surroundings, but have long back launched a citizen service user-friendly public website [<https://wbregistration.gov.in>], where land rates for any area of Kolkata and Howrah can easily be checked for a specific location and end-use. That State government land rates were readily available is evidenced from the fact that the

Port authorities did collect Govt. land rates from the above website later, to counter a representation made by a group of tenants alleging that the rates in the approved SoR of KoPT were exorbitantly high.

2. Apart from the above website, there was another obvious source of knowledge about State Government's land rate, i.e., the "Lease Deeds" registered in past by Port in the Land Registration Department of WB Govt. It is pertinent to note that unlike a license, every "lease" awarded by Port needs to be registered with State Government for legal validity.

During this process, the fee for registration and Stamp Duty to be paid to the State Government by the lessee is calculated on the basis of State Government's valuation of the leased area. This value, along with Stamp Duty and Registration Fee, are part and parcel of a "Registered Lease Deed" document, which is the contractual instrument that binds the lessee with the lessor. Vigilance could easily collect many of these "Registered Lease Deeds" maintained by a Section of Estate Wing, where WB Govt. land rates for the concerned area were readily available. Although there were many cases of long term leases where the registration process had not been completed years after award to the party (and can make such lease legally invalid), analysis of the few Registered Leases, which contained WB Govt. land rate, is an apt pointer to the large variation that exists between land value assumed by Port and State Govt. This analysis indicates how the annual lease rent derived from WB Govt.'s valuation happens to be 2 to 20 times more than Port's SoR, based on valuation made by the approved Valuer [Annexure-V1].

- (b) In a similar manner, the registered lease deeds of past years are also the "actual relevant transactions registered in Port's vicinity", i.e., the 3rd factor for determining land value as per Land Policy. But, the Valuer does not seem to have collected or analysed the existing Lease Deeds and the rates contained in them. In fact, had they attempted to do so, they could have easily noticed dozens of awarded leases awaiting registration, years after they were made operational by Port, and that an entire Lease Register was altogether missing from the Section.

- (c) Further, while going through the Valuation Report submitted by the Valuer to the Board of Trustees, due cognizance does not seem to have been accorded to market rates discovered through tendering in preceding years (**the 3rd factor** for land value determination). In fact, the Valuer seems to completely ignore rates obtained through vigorous bidding in certain cases, as would be evident from their following strange and counter-intuitive assertion:

“Some of such rates have been obtained through well contested auctions between certain desperate bidders. The element of competition in auction makes them unsafe guide for determining the market value and should not be taken into consideration”

[Para 1.5.1 (x) of Board Resolution No. R/75/KDS/EST dated 03/08/2016]. How wrong such notion could be is exemplified from the Case Study of Paradip Port Trust, discussed later in this Report.

- (d) That the rates fixed in 2016, which were notified in 2017, were much lower finds credence, when one analyzes the rates obtained for certain plates, which were subject to competitive bidding in the immediate aftermath of this SoR. The analysis of 20 such tenders floated in the same year (2017) of TAMP notification of this SoR reveals that the successful bidders’ rates were higher than the SoR rates by an average of 392% above the SoR rates (adopted for assuming reserve annual lease rent), which were supposed to reflect latest and current market value of land! Even if one tempers the variation obtained in each tender case with the corresponding lease area to arrive at a “Weighted Average Variation”, one still arrives at an astounding 109.25% **[Annexure-V2]**.

After TAMP accorded approval to Port’s SoR, an association of tenants appointed their own Valuer and on the basis of this Valuer’s Report, sent a representation to Ministry, claiming that the rental charges fixed are too high. To counter the same, KoPT authorities made a detailed comparison of valuation of KDS land with a point-by-point rebuttal to the points raised in this representation. In this analysis, Port’s valuation of land was juxtaposed with WB Government’s valuation taken from the afore-mentioned website and past tender rates for areas wherever available were also taken. **This in-house analysis by Port Officials is truly an instructive eye-opener. The data sheet compiled within Port, with related correspondences/mail among various authorities [Annexure-V3], clearly brings out**

the massive difference between the rate in the prevalent SoR and the rent derived from State Government valuation figures. A small extract from the same, for some prime localities of the city, is presented below to illustrate the point.

Extract from KoPT's analysis on 21-06-2017 of Land Valuation as per various factors

Sl. No.	Location & description of land	Rate (Rs./100 sq.m/Month)				Ratio of WB Govt. rate to TAMP approved SoR - 2016
		Updated 2011 SoR Monthly Rent (after escalating @ 2% per annum) as on 07.04.2016	TAMP approved SoR - 2016	Rate from KPZEWA data based on JLL Report	Website (State Govt.) derived rate (Industrial use)	
1.	Diamond Harbour Road (Western side) from Majherhat Bridge to Seamen's House	5,404	6,277	5,909	56,325	8.97
2.	Hide Road and Hide Road Extension (up to crossing towards JJP Road) both sides and Mint Place and Roads at JJP	2,225	3,893	2,433	32,186	8.27
3.	Boat Canal & Diamond Harbour Road (Eastern side)	7,088	7,088	7,062	56,325	7.95
4.	Chetla Road	3,544	5,421	3,875	40,232	7.42
5.	Watgunge	2,472	4,326	2,703	24,139	5.58
6.	Circular Garden Reach Road[from Satya Doctor Road to Bascule Bridge][from Bascule Bridge to NSD Gate No. 5][from NSD Gate No. 5 to NSD Gate No. 9 (new diversion portion) including lands on the new roads off the road]	4,147	4,859	4,534	24,139	4.97
7.	Grand Foreshore Road River Side (Portion on the North of Banstalla Ghat Road)	1,772	3,101	1,938	12,517	4.04
8.	Grand Foreshore Road River Side (Portion on the South of Banstalla Ghat Road)	1,772	3,101	1,938	12,517	4.04
9.	Strand Bank Road (from Ahiritola Street to Nimtolla Burning Ghat Road)	10,630	13,478	11,623	53,643	3.98
10.	Strand Bank Road (from Nimtolla Burning Ghat Road to Jorabagan Cross Road)	11,811	13,478	12,915	53,643	3.98
11.	Strand Bank Road (from P. C. Tagore Ghat Road to Adya Sradhya Ghat Road)	8,859	13,478	9,687	53,643	3.98
12.	Strand Bank Road (from Adya Sradhya Ghat Road to Jagannath Ghat Road)	8,859	13,478	9,687	53,643	3.98

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13.	Taratala Road (from Budge Budge Road to Circular Garden Reach Road)	3,366	5,706	3,681	20,921	3.67
14.	Strand Bank Road (from Howrah Bridge to Mullick Ghat)	14,765	14,765	14,710	53,643	3.63
15.	Taratala Road (from Diamond Harbour Road to Budge Budge Rd and Mint Place)	3,692	5,706	4,037	20,921	3.67
16.	Remount Road (between Diamond Harbour Road & Bhuikailash Rd)	4,001	5,421	4,375	13,679	2.52

* **SOURCE: Dy. Chairman's e-mail dated 21.06.2017 to Chairman with data for responding to Ministry in connection with representation by KPZEWA.**

2.0 Estimating rate of escalation of land value: Even the annual escalation of lease rent assumed by KoPT, i.e., 2.5%, appears to be lower, when one considers that the same KoPT had assumed an escalation of 5.1% per annum for 15 long years (1996-2011). Escalation of land value as per WB Government website in some important area under KDS like Boat Canal Road, Hide Road, etc. has been calculated on 2 (two) dates: the first is one which the Port authorities had calculated while countering the claim of the aforesaid tenant association on 21/06/2017 and the second is their value in April 2019 [See **Table below**]. The annual escalation in these areas are found to be well above 2.5% assumed by Port, although technically the assumed escalation does satisfy the provisions of Land Policy, 2014. Even common prudence would indicate that real estate in land scarce urban metropolis of India do not increase at such low pace as 2.5%.

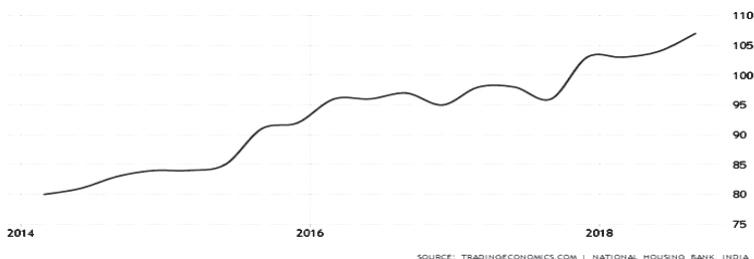
Some Example of Actual Escalation of Land Value

Diamond Harbour Road (Western side) from Majherhat Bridge to Seamen's House	TAMP Approved Rent Updated as on April, 2019 (Rs/100 m ² /month)[R]	Annual Rent per Acre (Rs.)(=R/100) *12*4047	State Govt. Land Value (in Crore) as per WB Website as on 21-06-2017	State Govt. Land Value (in Crore) as per WB Website as on [01-04-2019]	Annual Escalation (%)
Hide Road and Hide Road Extension (up to crossing towards JJP Road) both sides and Mint Place and Roads at JJP	6,759	2,73,53,673	46.50	59.76	59.76
Boat Canal & Diamond Harbour Road (Eastern side)	3,862	1,56,30,809	26.57	28.56	4.27
Boat Canal & Diamond Harbour Road (Eastern side)	6,759	2,73,53,673	46.50	69.72	28.53
Strand Bank Road (from Ahiritola Street to Nimtolla Burning Ghat Road)	6,437	2,60,51,186.52	44.29	56.18	15
Taratala Road (from Diamond Harbour Road to Budge Budge Road and Mint Place)	2,511	1,01,60,074.44	17.27	23.24	20

2.1. Is there any reliable indicator of property rate escalation?

The following 3 (three) are the most reliable indicators of property value growth rate in India. All these indices are known to move parallel to the value of land and hence, are proxy indicators for its growth rate.

- (i) **NHB RESIDEX**, India's first official housing price index, was an initiative of the National Housing Bank (NHB) undertaken at the behest of the Ministry of Finance, Government of India in July 2007 and updated periodically till March 2015, taking 2007 as the base year. During this period, the coverage of NHB RESIDEX was expanded gradually to 26 cities. Initially, NHB RESIDEX was computed using market data, which, 2010 onwards, was shifted to valuation data received from Banks and Housing Finance Companies (HFCs). Thereafter, data was sourced from Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) from 2013 to 2015. Thereafter, revamped NHB RESIDEX with larger scope and wider geographical coverage was published. This index is computed taking FY2012-13 as Base Year and is updated up to March 2018. With effect from April 2018, a new series, with FY2017-18 as new Base Year, has been published and is updated up to the current Quarter.



- (ii) Reserve Bank of India initially started an index called **RPPI (Residential Property Price Index)** by collecting prices of both residential and commercial properties in various cities. This index is a proxy indicator for growth in the value of real estate in any city and on an all India basis. As per table published by RBI for 13 cities, along with all India average, the all India RPPI has risen significantly from a value of 107 (for Base Year 2010-11) to a value 172

by third Quarter of 2014 – 15, which indicates an increase of 72% in a 5-year time span, representing a YoY growth of 9.96%. The rise for Kolkata, for the same period, was lower than the all India average, i.e., from 103 to 153, representing a YoY of 8.24%. Both these figures are far higher than the 2.5% annual escalation for KDS land value assumed by KoPT.

- (iii) The Reserve Bank also compiles quarterly **House Price Index (HPI)** based on property transaction registration data obtained from 'Department of Registration and Stamps' of State Governments of select ten cities (Mumbai, Delhi, Chennai, Kolkata, Bengaluru, Lucknow, Ahmedabad, Jaipur, Kanpur and Kochi), which is more robust than other indices. The latest HPI data released by RBI in October 2018 was as below:

House Price Index: RBI

Quarter	MUM-BAI	DELHI	BANGA-LORE	AHMEDA-BAD	LUCK-NOW	KOL-KATA	CHE-NNAI	JAI-PUR	KAN-PUR	KOCHI	ALL INDIA
Q1.2010-11	90.6	100.7	98.6	93.2	88.8	77.9	102.7	95.3	91.7	89.6	94.2
Q1.2011-12	122.1	126.8	110.7	121.3	118.0	103.0	101.2	106.3	104.7	120.9	116.0
Q1.2012-13	147.6	177.3	133.3	140.8	136.4	135.2	119.2	113.4	114.4	98.8	142.6
Q1.2013-14	160.0	214.8	142.3	161.9	173.9	171.8	138.3	129.4	82.4	127.0	162.3
Q1.2014-15	183.2	241.7	180.4	173.0	223.3	194.0	179.2	120.6	99.4	166.9	188.0
Q1.2015-16	203.5	296.5	208.4	186.6	259.8	231.1	186.0	132.7	104.3	172.6	215.3
Q1.2016-17	219.2	305.7	220.6	207.6	302.6	234.9	230.6	126.8	113.0	199.7	231.1
Q1.2017-18	246.0	341.9	227.7	243.1	341.3	251.4	204.8	132.7	133.5	189.1	251.2
Q1.2018-19	264.2	341.6	244.8	254.0	360.6	254.5	224.5	155.6	148.7	267.0	264.6

[Source: <https://dbie.rbi.org.in/DBIE/dbie.rbi?site=statistics>] The above index of RBI once again shows that the increase in the price of House Property, a proxy indicator for real estate and rental income, has been from 77.9 to 254.5 for Kolkata in last 9 (nine) years that translates to an year-on-year annual growth rate of 14.9%, which is 6 (six) times more than the currently adopted land value escalation rate of 2.5%.

2.2. Report of CAG on land management in Major Ports (2015):

The importance of timely submission of proposal for revision of SoR by Ports to TAMP finds serious mention in Report No. 27 of 2015 of CAG. Here, CAG had analysed TAMP orders of 11 Ports to examine the compliance of Ports in revising SoR at an

interval of 5 years. After the analysis, CAG lamented the fact that the proposal submitted by Ports for revision of SoR ranged from 2 years to 11 years & 10 months. In this analysis, the second worst delay (the maximum being in the case of Kandla Port Trust) found by CAG was that of Kolkata Port Trust, where a delay of 10 years & 2 months had been found between the last revision of SoR in October 1999, which was due for revision in October 2001, and its actual approval by TAMP was in January 2011.

3.0 Price Discovery Through Competitive Process: The case of Paradip Port Trust

The Land Policy of 2004, issued by Ministry of Shipping, stated the following regarding award of license of land:

“...The license may be up to a maximum period of 11 months and shall normally be in accordance with the Schedule of Rates (SoR)/Rates approved by the competent authority. At the discretion of the Chairman, such license may also be given by inviting tenders. The license can be renewed at the expiry of the previous license period.”

In Paradip Port, prior to 2005, plots for storage of Iron Ore used to be allotted on payment of normal license fees as per the Ports Schedule of Rent (SoR), which was Rs 9/m²/month. Due to surge in international Iron Ore market, demand for these plots also increased in Paradip Port. **Even though it was not mandatory for Port management to award license through tender or auction as per the Land Policy prevailing in 2005, they decided to introduce auction for the allotment of manual Iron Ore plots for export of Iron Ore.** In the auction, bidders were asked to quote an “One Time Premium” over and above the normal rent to be paid every month as per Port’s SoR. Once the open competitive process was unleashed for award of license, the true market value of these plots (even for a short duration of 11 months on license basis) came to the surface.

The variation between Port’s SoR and the real market value of these licenses (reflected by the premium quoted by the successful bidders), revealed through auctions, is depicted in the table below:

Year of Auction	No of Plots	Area auctioned for award of 11-month license(m ²)	Total "One Time Premium" obtained in auction (Rs)	Value of Premium obtained (per sq. mtr. of license)	Increase in "Premium Income" over 2005 level
2005	26	78000	27489000	352.42	
2006	20	60000	40400000	673.33	91.06 %
2007	14	42000	40000000	952.38	170.24 %
2008	4	12000	60400000	5033.33	1328.21 %
2009	6	18500	197377111	10669.03	2927.34 %
2010	3	9000	166666665	18518.52	5154.63 %

[Source: Traffic Department, Paradip Port Trust]

The above data shows how the premium for the license increased every year way above the SoR of that time. **By 2010, the premium accruing to Paradip Port was an astounding 5154% of the 2005 level.** This demonstrates the hidden revenue potential of hundreds of plates under KDS which have continued to exist without being exposed to any kind of competitive bidding.

- 4.0 Revenue augmentation potential:** It is pertinent to note that all Major Port Trusts have been empowered to realize maximum possible commercial value from their land assets, unlike other Port services whose pricing is aimed at providing services to Port Users at affordable cost and facilitating Maritime trade. The latest Land Policy clearly envisages realisation of yearly rent from tenanted assets to be at least 6% of its "latest market value". Value of land in any city varies from location to location. For instance, as per West Bengal Land Registration Department, one acre of land in the Central Business District of Kolkata, located one or two kilometres away from Howrah Station, is presently valued at Rs. 70 to 80 Crores, while further 8 to 9 kilometres down, it can drop down to Rs. 5 to 10 Crores per acre. Thus, even on a conservative basis, the market value of the currently tenanted land of 2,342 acres (assuming an average of Rs. 40 Crores for an acre of prime Metropolitan land) would be in the region of **Rs. 90,000 Crore**. Consequently, as per latest Land Policy, **the annual lease rental income from tenanted land under KDS alone has a potential to reach 6% of this market value, i.e., at least Rs. 5,400 Crore.**

The above figure of annual revenue generation potential of Rs. 5,400 Crore stands in stark contrast to the current level of income generated

not just from Estate rental but from all Port operations put together. For instance, the annual income of Kolkata Port Trust, which operates 2 (two) separate Dock Systems, i.e., Kolkata Dock System (KDS) and Haldia Dock Complex (HDC), comes from 4 different revenue streams: (a) Income from Cargo handling and storage charges, (b) Income from Vessel related charges, (c) Income from Railway operations, and (d) Estate Rental.

In the year 2017-18, KoPT's Book of Accounts showed a total revenue of Rs. 2,313 Crore from the above 4 revenue streams. Out of this total revenue, rental income from Estate was Rs. 316 Crore from both KDS & HDC, with KDS contributing Rs. 186 Crore. Even this figure of Rs. 186 Crore is not the actual earning, but represents only the amount billed to lessees and licensees - not what actually gets realised from them during the year. Data of past years show that the actual realization vis-a-vis billing has been always low, with historical trend pointing to hardly 60% - 70% [Ref: *Earlier Analytical Study & System Improvement titled "Billing Process of KDS"*]

B. System Improvement Suggestions:

- 1.0 *Proper evaluation of land asset is a sine qua non for determination of optimal rental charges to be stipulated in the new SoR. This is especially true when a ball park estimate of value of tenanted KDS land alone would be close to Rs. 90,000 Crore. The next revision of SoR is due in 2021, for which KoPT will undertake a fresh land valuation exercise, well in advance. **At least next time, all the 5 factors stipulated in Land Policy, 2014 must be taken into account for valuation and extreme reliance on any third-party approved Valuer must be avoided for this purpose.** It is not out of place to mention here that Kolkata Port Trust has enough expertise, experience and knowledge bank to undertake such land valuation exercise.*
- 2.0 *The State Government land price must invariably be considered for the purpose of land valuation, since the said database has been created in consideration of all locational factors and end-uses.*
- 3.0 *Immediately, a database of all past registered Lease Deeds should be compiled by Estate Division. This would serve as repository for "actual relevant transaction" data for various zones.*

- 4.0 *It has been detected by Vigilance, in numerous plates, that the lessee/licensee has rampantly deviated from the original purpose (end-use) stipulated in deed/ offer, in absence of any laid down programme of periodic or random inspection of tenanted plates by Estate Division. It may, therefore, be prudent to take such a possibility while determining land value in a particular area.*
- 5.0 *A tender database already exists in the Tender Section, which must be taken into account while the next valuation exercise is undertaken.*
- 6.0 *A census of short-term licenses that have been continuing long after efflux of time, due to multiple undeserving renewals, must be terminated and brought under the fold of competitive bidding exercise, as envisaged by Board of Trustees in 2015. The decision not to grant more than 2 (two) renewals to such tenants must be scrupulously adhered to. The 70-odd plates, already identified to be brought under tender-cum-auction, should be expedited and concluded without any further delay.*
- 7.0 *The practice followed in Paradip Port Trust, for fixation of Annual Reserve Rent for their tender-cum-auction process meant for awarding new leases/licenses, can be worth emulating. In Kolkata Port Trust, fixation of Annual Reserve Rent is always as per prevailing SoR, irrespective of whether a higher rate was obtained in the last tender for the same /adjoining plate. In Paradip Port Trust, the higher of the rates obtained in the last tender and SoR is understood to be considered for such purpose.*

This procedure of Paradip Port Trust can be a welcome system improvement for Kolkata Port Trust for fixation of Annual Reserve Rent for their tender-cum-auction process.

- 8.0 *The present level of 2.5% annual escalation in value of land needs to be revisited with the aid of reliable indexes like NHB RESIDEX, RPPI or HPI. The index of choice should be HPI, since it is the only one based on actual property transaction data collected by RBI.*

[N.B: The above Analytical Study on land valuation refers to 3 (three) Annexures (V1, V2 & V3) and Report of the CAG on land management in Major Ports (2015).]



Streamlining Estate inspection

A. Analysis of existing practice:

During multiple interactions with Estate officials, it has been noticed by Vigilance that there has been no system of scheduled/periodic inspection of leased/licensed premises, by the Land Inspectors or their Tenancy Officers, to detect possible breach of lease terms. Physical inspection of plates is one of the most basic Estate management functions, without which a lessee or licensee making encroachment/unauthorized construction at a site or parting his possession to rank outsiders can never be detected. The very job description of Land Inspectors in an Estate Department entails this function. Yet, several Land Inspectors are on record stating that there is no such inspection schedule with defined periodicity specified for them, and whatever inspection they undertake happens on a case-to-case basis, when their “superior” orders such site-inspection for specific plate(s) or if such inspection is directed by any legal/quasi-legal authority. That is the reason why today, no certain information is available on such simple things as to how many of the tenants, against whom KoPT had awarded lease/license, are currently in physical existence, and how many have vanished, having parted possession to rank outsiders. Similarly, no one knows that in exactly how many plates a licensee/lessee has committed the breach of unauthorized construction/encroachment.

In KoPT, there are scores of licenses, which had been granted in prime areas years ago, initially for short term duration of a few months and subject to notice of termination by either side. Many of these licenses are continuing for decades, after expiry of original license duration, as no one either terminated or specifically renewed the license, but sanctified them by the conduct of sending rental bills periodically and accepting payment against the same. Today, a large number of such licensees are neither paying the meagre monthly license fee nor the compensation demanded by KoPT, while occupying land in prime localities of Howrah and Kolkata, as the premises continue to remain under never ending litigation/court proceedings for breach of unauthorized construction/using the premises for purposes other than what the license stipulated/encroachment and not paying any rent. Needless to say that such breaches could have been detected much earlier and termination notice served, had there been a proper system of periodical inspection.

Vigilance has come across plates, located not in some far off place but literally at stone's throw distance from Estate Division, where the licence has been continued for decades while the licensee resorted to encroachment of huge areas, without undergoing a proper site inspection for years together. There are cases where the license entity does not simply exist, but the premise is found locked up by some unknown entity since years. Let alone timely detection of breaches, through scheduled/periodic inspection by Land Inspectors/Tenancy Officers, today the situation is such that they are not even aware whether the monthly rental/compensation bills of Crores of Rupees are actually reaching the tenant by Post or returning from Post undelivered, back to their own Division, as no tenant exists in the designated address [Ref.: Earlier Case Study and System Improvement by Vigilance on the subject of "Undelivered Bills and Missing Tenants"].

Even in the few cases where inspection has been conducted by a Land Inspector, more often than not, the structure and quality of the "inspection" has been found to be invariably wanting. For instance, inspection reports alleging unauthorised construction or encroachment by a licensee/lessee are not accompanied by any photographic evidence or proper measurement. In some report, even an elaborate description of the breach is found missing. When such inspection reports form the basis of eviction, it becomes easy for the tenant to challenge the same during PP Court proceeding, leading to the Estate Officer ordering another round of inspection to determine the nature and extent of breach. However, this creates an evidentiary uncertainty, especially if the breach involves encroachment, since a second (and later) round of inspection, even if done properly under order of EO, can neither establish nor negate an encroachment alleged to have been committed prior to the instituted proceeding. Such multiple rounds of inspection also end up in delaying the PP Court proceeding – a situation that helps a non-paying unauthorized occupant. In many other cases, neither the offer of license nor the lease deed is available to ascertain the stipulated "use" of the land and hence, allegation on that count can easily be denied by a defaulting tenant. In a case of a well known riverside plate of land, licensed for operating a floating luxury hotel, one of the allegations made by Estate authorities as grounds for eviction was that the licensee had encroached upon 5 (five) feet of land. However, the same could not be proven even in 13 (thirteen) years, as the sketch available with Port was not sufficient.

It is seen that although there was an administrative directive in 2013 to conduct inspection of plates and file reports, no precise responsibility was laid down as to who should ensure the same. The Land Inspectors, with whom Vigilance interacted, stated that they had tremendous day-to-day workload and it was not feasible for them to go around for inspection on a

regular basis. In fact, one Inspector even stated that let alone inspection, he even did not know whether the license/lease agreement existed in a significant number of plates under his jurisdiction. Therefore, the directive for inspection issued in 2013 has merely been a policy on paper, without any semblance of ground level implementation.

Surprise field inspection by Vigilance, Estate and Legal Team: While interacting with P.P Court officials, where nearly 400 litigation cases are currently in progress, Vigilance came across a peculiar case dragging for last 5 (five) years, only because the Port authorities were not able to ascertain whether a litigated plot of land (plate) licensed to a tenant was 6.69 m² or 66.9 m². The location of the licensed plate was in the centre of the city and very near to the Port HQ. It was, therefore, surprising that such a simple matter could not be verified for so many years and so much time and manpower was being spent in PP Court without any result.

Therefore, Vigilance decided to conduct a physical verification of the licensed plate, accompanied by the Surveyor of the Port, 2 (two) Land Inspectors and a Resolution Officer. Incidentally, that particular location had a cluster of 27 (twenty-seven) other tenanted plates. To gather legally enforceable evidence, which could be helpful in any litigation, the entire inspection - lasting about 2.5 hours - was videotaped by a Videographer.

Strange facts surfaced from this field inspection, as narrated below:

- a) In the instant case, dispute was for an area of 6.69 m² area, for which the tenant was not paying to Port for 15 (fifteen) years. However, this plate was found to be part of a larger area divided into two parts: one with area of 6.69 m² while the other was 66.9m². In fact, the area which was disputed was an extension of the adjacent area of 66.9 m². There was no physical separation between these two areas over which a double storeyed building stood. Two families had been staying on rent in these two parts. While KoPT was sending bills for the plate of 6.69 m² area, the other larger part had completely vanished from Estate database. No bill was being generated or sent for this other larger plate.

From the Estate file, it was found that license had been awarded for construction of a Hindu Hotel, but the original licensee had converted it into a double storeyed residential building long back. Right now, the licensee and his son were reported dead, while some rank outsider had rented it out to two outsiders. It was, therefore, surprising as to who was conducting the litigation process in PP Court, when the tenant was long dead.

- b) After inspecting the single disputed case, the team turned their attention to the cluster of 27 (twenty-seven) other plates located in the same area. Here again, it was found that licenses for these plates had been awarded to tenants, under short term licenses for few months, most of whom have vanished from the site long back parting possession or illegally selling the plate to someone else. At least 18 (eighteen) of these 27 (twenty-seven) plates were found to be in the possession of rank outsiders. When information on these plates were called for from the concerned Estate Officials, they could not provide any information at all – neither billing details nor litigation details – for about 5 (five) plates.
- c) But, the most interesting part of the case is that although the original licensee had long vanished from the site, with whereabouts unknown to the Port, and rank outsiders are in occupation, litigation on behalf of many such non-existent licenses/lessees are currently in progress in P.P Court. It is not understood when the licensee has either died or vanished from the plates, which entity was involved in the ongoing litigation against KoPT. The list of these 27 (twenty-seven) plates, with their current litigation status obtained from the concerned Land Inspectors, is enclosed as **Annexure-I**.
- d) It is pertinent to note here that successful conclusion of litigation in P.P Court involves not only eviction but also recovery of pending dues from the original licensee. Eviction of a non-existent/dead/long-vanished tenant is evidently meaningless. As far as recovery is concerned, it can only be done from the original licensee/lessee, but not from any rank outsider. In fact, Section-11 of P.P Court classifies a rank outsider (who never had any licence or lease to begin with, but had come to occupy the site as trespasser) is criminally culpable under provision of Section-11 of PP Act, 1971. When the Port is not aware of the whereabouts of the original tenant, who had taken the land years ago, the question of conducting proceedings to recover anything from him simply does not arise.

Further, to make ultimate recovery of any pending dues, not only one must exactly know the identity and location of the original tenant, but must also provide list of assets of either the evicted tenant or his legal heirs, so that the same can be attached by the recovery-enforcement authority.

B. Suggested System Improvements:

There should be a clear policy for conducting Estate inspection, with due regard to the following aspects:

- 1.0 **Responsibility for inspection:** Which exact authority/authorities in Estate Division are to be involved in inspection must first be stipulated.
- 2.0 **Structure and content of Inspection Report:** The structure of the Inspection Report must be spelt out in a standardized format.
- 3.0 **Periodicity/Frequency of inspection:** A programme for periodic inspection by respective Land Inspectors must be drawn up in the beginning of each year by the Tenancy Officer, duly approved by the Estate Manager. Apart from such scheduled/programmed inspection, there should be a scheme for conducting certain random inspection, by a different Inspector, in pre-determined interval. In a few cases, the Tenancy Officer must also be directed to make random checks.
- 4.0 **Inspection Register:** Before going out for inspection, the concerned Land Inspector must make entries in a specific central Register, detailing the plates/area which he proposes to visit. On return, the visited plate codes should be recorded in the same Register, duly affixing the visiting Inspector's signature. No inspection should be conducted without informing the respective Tenancy Officer(s).
- 5.0 **Quality of inspection and breach-evidence:** The format for conducting inspection should be structured and standardised. Every breach noticed at site must be elaborately and unambiguously described in the Report. If site measurement is needed for a particular type of breach, then the same should be recorded, by engaging the Port Surveyor immediately.

Collecting audio, photographic and video evidence of breach must invariably be employed by the inspecting authority, so as to be able to substantiate breach, if denied later by the licensee/lessee. If licensee is available at site, then he should be asked to jointly sign the Inspection Report. In case of tenant's non-availability on inspection day or refusal to sign a report, a copy of the Report should immediately be sent to

the tenant by Registered Post. Whenever new licence/lease is awarded, detailed photograph of the site should be taken and kept in file. This will help in making comparison with photographs taken in later inspections, to determine encroachment/unauthorised construction by a tenant.

- 6.0 **Integration of inspection data with Estate Module:** The structured Site Inspection Report must also be uploaded, along with photographic/video evidence, to the Computer database. It is pertinent to note here that in the age of Mobile telephony, it is extremely easy to record audio/video images of any location and to transfer the same to a database, in a format suitable for easy storage and retrieval.
- 7.0 Videographed inspection of all tenanted plates under KDS must immediately be conducted, in a targeted time bound manner. The minimum benefit that can accrue from such an exercise is a quick end to any litigation pending before P.P Court or in any other judicial forum, with the help of Section 11 of PP Act.
- 8.0 Another important point that emerged from this field inspection is the need to verify the identity of the person/ persons who are supposedly carrying out litigation on behalf of these vanished tenants in P.P Court. After all, at least 18 (eighteen) out of the 27 (twenty-seven) cases have been found to be rank outsiders, in which the original licensees have long gone, parting possession or even effecting fraudulent sale of the plates. The KYC of the legal defendants of these cases in PP Court must, therefore, be immediately verified.

Encl.: The study refers to 1 (one) Annexure, which is enclosed.

Systematic Improvement

During the course of a Vigilance Investigation on a land related issue, it was found that there was unauthorized encroachment on a particular plot of KoPT land situated at some distance beyond the limits of HDC, as a result of which, HDC could not obtain possession of the said land for many years. Though a Court case was going on in this issue for nearly 25 years, and Estate Section, HDC was fighting the case on behalf of KoPT, yet it is observed that the Estate Section of Administration Division, HDC was totally unaware about such unauthorized occupation.

The delay in obtaining possession of the said land was also due to irresponsible performance on the part of the Advocates engaged by HDC to defend the case.

the Advocate who had lastly defended the case, took nearly 08 years to process the case though a lackadaisical approach on the part of this advocate, as also others before him, is prima facie evident.

Lack of performance on the part of the same Advocate had also been evidence in another well known case of HDC, where an employee had succeeded in withdrawing huge sums of money by submitting forged/fabricated prescriptions, mostly after retirement. The case was proven both by the Departmental vigilance and later by CBI. However, by this time, the said employee had expired. In their Self Contained Note (SCN), the CBI had advised the Port Trust Authorities to file the Money suit, and accordingly, HDC filed such a suit for recovery of sum of Rs. 45 lakh from the late employee's legal heirs. However, such a clear case got dragged for nearly 09 years after which the surprising verdict from Tamluk court was that the HDC authorities could not submit any proof of the expired employee having actually received the defrauded amount.

This was a very elementary piece of evidence which could have been easily made available to the court, by examining the Account Number of the expired employee from the concerned bank. However, such a simple fact was not taken care of. When the issue came into notice of Vigilance, the Port Authorities were immediately urged to file an Appeal before the High Court, duly adducing the proof of defrauded sum of money.

It is therefore felt necessary to critically examine the level of performance of Advocate from the cases handled by him in the past, as also being handled at present.

The following System Improvement, measures are accordingly ordered:-

- (i) **Programmed Inspection Schedule for Land Occupancy Verification:** Frequent periodical inspection by Estate Section of Admn. Division of HDC should be carried out of all land parcels belonging to KoPT, to prevent any unauthorized encroachment, whether of a temporary or a permanent nature. Wherever such encroachment is found, action should be taken immediately and eviction / demolition of any unauthorized structures thereon should be carried out.

A monthly report should be submitted by the Head of Estate Section to the Dy. Chairman, Chairman and CVO.

- (ii) **Periodic Review of Advocate Performance:** All GMs shall arrange for periodical review of the performance of all advocates engaged by Port Trust who have been entrusted to defend cases of significant financial/legal interest.

Such an advocate wise review of the performance should be done every quarter at the level of the concerned General Manager.

- (iii) The level of performance of Advocate should be critically analyzed by each GM, in respect of each court case defended by the said Advocate on behalf of KoPT and they shall put up the result of such analysis to the undersigned on or before 15.03.2019.

Upon receipt of such report from each GM the desirability of engaging him in future court cases on behalf of KoPT shall be decided.

Telegraphic Address :
"SATARKTA: New Delhi

सं./No. 005/CRD/012

E-Mail Address
cenvigil@nic.in

भारत सरकार
केन्द्रीय सतर्कता आयोग

Website
www.cvc.nic.in

GOVERNMENT OF INDIA
CENTRAL VIGILANCE COMMISSION

EPABX
24651001 - 07

फैक्स/Fax : 24616286

सतर्कता भवन, जी.पी.ओ. कॉम्प्लेक्स,
ब्लॉक-ए, आई.एन.ए., नई दिल्ली-110023
Satarkta Bhawan, G.P.O. Complex,
Block A, INA, New Delhi 110023

दिनांक / Dated
20th January, 2010

- (i) The Secretaries of all Ministries/Departments of Government of India
- (ii) The Chief Secretaries to All Union Territories
- (iii) The Comptroller & Auditor General of India
- (iv) The Chairman, Union Public Service Commission
- (v) The Chief Executives of all PSEs/Public Sector Banks/Insurance Companies/Autonomous Organisations/Societies.
- (vi) The Chief Vigilance Officers in the Ministries/Departments/PSEs/Public Sector Banks/Insurance Companies/Autonomous Organisations/Societies
- (vii) President's, Secretariat/Vice-President's Secretariat/Lok Sabha Secretariat/Rajya Sabha Secretariat/PMO

CIRCULAR No.01/01/10

Attention is invited to the Commission's circular No. 4/3/07 dated 3.3.07 on the issue of "Tendering Process – Negotiations with L1".

In the said circular it has, among other things, been stated "As post tender negotiations could often be a source of corruption, it is directed that there should be no post tender negotiations with L1, except in certain exceptional situations". It has come to Commission's notice that this has been interpreted to mean that there is a ban on post tender negotiations with L-1 only and there could be post tender negotiations with other than L1 i.e. L2, L3 etc. This is not correct.

It is clarified to all concerned that - there should normally be no post tender negotiations. If at all negotiations are warranted under exceptional circumstances, then it can be with L1 (Lowest tenderer) only if the tender pertains to the award of work/supply orders etc. where the Government or the Government company has to make payment. However, if the tender is for sale of material by the Government or the Govt. company, the post tender negotiations are not to be held except with H1 (i.e. Highest tenderer) if required.

2. All other instructions as contained in the circular of 3.3.2007 remain unchanged.

3. These instructions issue with the approval of the Commission and may please be noted for immediate compliance.


(V. Ramachandran)
Chief Technical Examiner

No.005/CRD/012
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A',
GPO Complex, INA,
New Delhi- 110 023
Dated the 3rd March, 2007

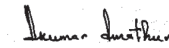
Circular No. 4/3/07

Sub:- Tendering process - negotiations with L-1.

Reference is invited to the Commission's circulars of even number, dated 25.10.2005 and 3.10.2006, on the above cited subject. In supersession of the instructions contained therein, the following consolidated instructions are issued with immediate effect:-

- (i) As post tender negotiations could often be a source of corruption, it is directed that there should be no post-tender negotiations with L-1, except in certain exceptional situations. Such exceptional situations would include, procurement of proprietary items, items with limited sources of supply and items where there is suspicion of a cartel formation. The justification and details of such negotiations should be duly recorded and documented without any loss of time.
- (ii) In cases where a decision is taken to go for re-tendering due to the unreasonableness of the quoted rates, but the requirements are urgent and a re-tender for the entire requirement would delay the availability of the item, thus jeopardizing the essential operations, maintenance and safety, negotiations would be permitted with L-1 bidder(s) for the supply of a bare minimum quantity. The balance quantity should, however, be procured expeditiously through a re-tender, following the normal tendering process.
- (iii) Negotiations should not be allowed to be misused as a tool for bargaining with L-1 with dubious intentions or lead to delays in decision-making. Convincing reasons must be recorded by the authority recommending negotiations. Competent authority should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated so that the time taken for according requisite approvals for the entire process of award of tenders does not exceed one month from the date of submission of recommendations. In cases where the proposal is to be approved at higher levels, a maximum of 15 days should be assigned for clearance at each level. In no case should the overall timeframe exceed the validity period of the tender and it should be ensured that tenders are invariably finalised within their validity period.

- (iv) As regards the splitting of quantities, some organisations have expressed apprehension that pre-disclosing the distribution of quantities in the bid document may not be feasible, as the capacity of the L-1 firm may not be known in advance. It may be stated that if, after due processing, it is discovered that the quantity to be ordered is far more than what L-1 alone is capable of supplying and there was no prior decision to split the quantities, then the quantity being finally ordered should be distributed among the other bidders in a manner that is fair, transparent and equitable. It is essentially in cases where the organisations decide in advance to have more than one source of supply (due to critical or vital nature of the item) that the Commission insists on pre-disclosing the ratio of splitting the supply in the tender itself. This must be followed scrupulously.
- (v) Counter-offers to L-1, in order to arrive at an acceptable price, shall amount to negotiations. However, any counter-offer thereafter to L-2, L-3, etc., (at the rates accepted by L-1) in case of splitting of quantities, as pre-disclosed in the tender, shall not be deemed to be a negotiation.
2. It is reiterated that in case L-1 backs-out, there should be a re-tender.
3. These instructions issue with the approval of the Commission and may please be noted for immediate compliance.



(Vineet Mathur)
Deputy Secretary

All Chief Vigilance Officers

No.005/CRD/12
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A',
GPO Complex, INA,
New Delhi- 110 023
Dated the 3rd October, 2006

Circular No. 37/10/06

Subject: Tendering process – negotiation with L1.

Reference is invited to Commission's instructions of even number dated 25.10.2005 on the above subject. A number of references have been received in the Commission, asking for clarification on issues pertaining to specific situations.

2. The Commission's guidelines were framed with a view to ensuring fair and transparent purchase procedure in the organizations. The guidelines are quite clear and it is for the organizations to take appropriate decision, keeping these guidelines in view. In case they want to take action in deviation or modification of the guidelines, to suit their requirements, it is for them to do so by recording the reasons and obtaining the approval of the competent authority for the same. However, in no case, should there be any compromise to transparency, equity or fair treatment to all the participants in a tender.

3. The above instructions may be noted for strict compliance.


(V. Kannan)
Director

All Chief Vigilance Officers

No.005/CRD/12
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block-A,
GPO Complex, I.N.A,
New Delhi-110 023.
Dated : 25/10/2005

Office order No.68/10/05

Sub:- Tendering Process – Negotiation with L-1.

A workshop was organised on 27th July 2005 at SCOPE New Delhi, by the Central Vigilance Commission, to discuss issues relating to tendering process including negotiation with L-1. Following the deliberations in the above mentioned Work Shop, the following issues are clarified with reference to para 2.4 of Circular No. 8(1) (h)/98(1) dated 18th November, 1998 on negotiation with L-1, which reflect the broad consensus arrived at in the workshop.

- (i) There should not be any negotiations. Negotiations if at all shall be an exception and only in the case of proprietary items or in the case of items with limited source of supply. Negotiations shall be held with L-1 only. **Counter offers tantamount to negotiations and should be treated at par with negotiation.**
- (ii) Negotiations can be recommended in exceptional circumstances only after due application of mind and recording valid, logical reasons justifying negotiations. In case of inability to obtain the desired results by way of reduction in rates and negotiations prove infructuous, satisfactory explanations are required to be recorded by the Committee who recommended the negotiations. The Committee shall be responsible for lack of application of mind in case its negotiations have only unnecessarily delayed the award of work/contract.

2. Further, it has been observed by the Commission that at times the Competent Authority takes unduly long time to exercise the power of accepting the tender or negotiate or re-tender. **Accordingly, the model time frame for according such approval to completion of the entire process of Award of tenders should not exceed one month from the date of submission of recommendations. In case the file has to be approved at the next higher level a maximum of 15 days may be added for clearance at each level. The overall time frame should be within the validity period of the tender/contract.**

3. In case of L-1 backing out there should be re-tendering as per extant instructions.

4. The above instructions may be circulated to all concerned for compliance.



**(Anjana Dube)
Deputy Secretary**

All Chief Vigilance Officers.

IMMEDIATE

No. 8(1)(h)/98(1)
CENTRAL VIGILANCE COMMISSION

.....

**Jaisalmer House, Man Singh Road,
New Delhi – 110011
Dated the 18th November, 1998**

SUB: Improving vigilance administration

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The Central Vigilance Commission Ordinance 1998 under Section 8(1)(h) directs that the power and function of the CVC will be the following:

“exercise superintendence over the vigilance administration of the various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government”.

2. Improving vigilance administration is possible only if system improvements are made to prevent the possibilities of corruption and also encourage a culture of honesty. In exercise of the powers conferred on the CVC by Section 8(1)(h), the following instructions are issued for compliance:

2.1 Creating a culture of honesty

Many organisations have a reputation for corruption. The junior employees and officers who join the organisations hopefully may not be so corruption minded as those who have already been part of the corrupt system. In order to ensure that a culture of honesty is encouraged and the junior officers do not have the excuse that because their seniors are corrupt, that they have to also adopt the corrupt practices, it is decided with immediate effect that junior employees who initiate any proposal relating to vigilance matters which is likely to result in a reference to the CVC can send a copy directly to the CVC by name. This copy will be kept in the office of the CVC and data fed into the computer. If within a reasonable time of say three to six months, the reference does not come to the CVC, the CVC then can verify with the concerned

authorities in the department as to what happened to the vigilance case initiated by the junior employee. If there is an attempt to protect the corrupt or dilute the charges, this will also become visible. Above all the junior officers will not have the excuse that they have to fall in line with the corrupt seniors. Incidentally, the seniors also cannot treat the references made directly to the CVC as an act of indiscipline because the junior officers will be complying with the instructions issued under Section 8(1)(h) of the CVC Ordinance 1998. However, if a junior officer makes a false or frivolous complaint it will be viewed adversely.

2.2 Greater transparency in administration

2.2.1 One major source of corruption arises because of lack of transparency. There is a scope for patronage and corruption especially in matters relating to tenders, cases where exercise of discretion relating to out of turn conferment of facilities/ privileges and so on. Each Organisation may identify such items which provide scope for corruption and where greater transparency would be useful. There is a necessity to maintain secrecy even in matters where discretion has to be exercised. But once the discretion has been exercised or as in matters of tenders, once the tender has been finalised, there is no need for the secrecy. A practice, therefore, must be adopted with immediate effect by all organisations within the purview of the CVC that they will publish on the notice board and in the organisation's regular publication the details of all such cases regarding tenders or out of turn allotments or discretion exercised in favour of an employee/party. The very process of publication of this information will provide an automatic check for corruption induced decisions or undue favours which go against the principles of healthy vigilance administration.

2.2.2 The CVC will in course of time take up each organisation and review to see whether any additions and alterations have to be made to the list of items which the organisation identified in the first instance for the monthly communications for publicity in the interests of greater transparency. This may be implemented with immediate effect.

2.3 Speedy departmental inquiries

2.3.1 One major source of corruption is that the guilty are not punished adequately and more important they are not punished promptly. This is because of the prolonged delays in the departmental inquiry procedures. One of the reasons for the departmental inquiry being delayed is that the inquiry officers

have already got their regular burden of work and this inquiry is to be done in addition to their normal work. The same is true for the Presenting Officers also.

2.3.2 Each organisation, therefore, may immediately review all the pending cases and the Disciplinary Authority may appoint Inquiry Officers from among retired honest employees for conducting the inquiries. The names of these officers may be got cleared by the CVC. The CVC will also separately issue an advertisement and start building a panel of names all over India who can supplement the inquiry officers work in the department. In fact, it will be a healthy practice to have all the inquiries to be done only through such retired employees because it can then be ensured that the departmental inquiries can be completed in time. If any service/departmental rules are in conflict with the above instructions they must be modified with immediate effect.

2.3.3 In order to ensure that the departmental inquiries are completed in time, the following time limits are prescribed:

(i) In all cases which are presently pending for appointment of Inquiry Officer and Presenting Officer, such appointment should be made within one month. In all other cases, the Inquiry Officer and the Presenting Officer should be appointed, wherever necessary, immediately after the receipt of the public servant's written statement of defence denying the charges.

(ii) The Oral inquiry, including the submission of the Inquiry Officer's report, should be completed within a period of 6 months from the date of appointment of the Inquiry Officer. In the preliminary inquiry in the beginning requiring the first appearance of the charged officers and the Presenting Officer, the Inquiry Officer should lay down a definite time-bound programme for inspection of the listed documents, submission of the lists of defence documents and defence witnesses and inspection of defence documents before the regular hearing is taken up. The regular hearing, once started, should be conducted on day-to-day basis until completed and adjournment should not be granted on frivolous grounds.

2.3.4 One of the causes for delay is repeated adjournments. Not more than two adjournments should be given in any case so that the time limit of six months for departmental inquiry can be observed.

2.3.5 The IO/PO, DA and the CVO will be accountable for the strict compliance of the above instructions in every case.

2.4 Tenders

Tenders are generally a major source of corruption. In order to avoid corruption, a more transparent and effective system must be introduced. As post tender negotiations are the main source of corruption, post tender negotiations are banned with immediate effect except in the case of negotiations with L1 (i.e. Lowest tenderer).

3. Hindi version will follow.


(N. VITTAL) 18-11-98

CENTRAL VIGILANCE COMMISSIONER

To

- (i) The Secretaries of All Ministries/Departments of Government of India
- (ii) The Chief Secretaries to All Union Territories
- (iii) The Comptroller & Auditor General of India
- (iv) The Chairman, Union Public Service Commission
- (v) All Chief Vigilance Officers in the Ministries/Departments/PSEs/Public Sector Banks/Insurance Companies/ Autonomous Organisations/Societies
- (vi) President's Secretariat/Vice-President's Secretariat/Lok Sabha Secretariat/Rajya Sabha Secretariat/PMO

GENERAL FINANCIAL RULES 2017

Rule 173 - Transparency, competition, fairness and elimination of arbitrariness in the procurement process.

- (xiv) Negotiation with bidders after bid opening must be severely discouraged. However, in exceptional circumstances where price negotiation against an ad-hoc procurement is necessary due to some unavoidable circumstances, the same may be resorted to only with the lowest evaluated responsive bidder.
- (xv) In the Rate Contract system, where a number of firms are brought on Rate Contract for the same item, negotiation as well as counter offering of rates are permitted to the bidders and for this purpose special permission has been given to the Directorate General of Supplies and Disposals (DGS&D).

Rule 219 - Disposal through Advertised Tender.

- (ii) (d) The bid of the highest acceptable responsive bidder should normally be accepted. However, if the price offered by that bidder is not acceptable, negotiation may be held only with that bidder. In case such negotiation does not provide the desired result, the reasonable or acceptable price may be counter offered to the next highest responsive bidder(s).

MANUAL FOR PROCUREMENT OF GOODS 2017

7.5.9 Negotiations (Rule 173 (xiv) of GFR 2017)

- i) Normally, there should be no negotiation. Negotiations should be a rare exception rather than the rule and may be resorted to only in exceptional circumstances. If it is decided to hold negotiations for reduction of prices, they should be held only with the lowest acceptable bidder (L1), who is techno-commercially responsive for the supply of a bulk quantity and on whom the contract would have been placed but for the decision to negotiate. In no case, including where a cartel/pool rates are suspected, should negotiations be extended to those who had either not tendered originally or whose tender was rejected because of unresponsiveness of bid, unsatisfactory credentials, inadequacy of capacity or unworkable rates. The circumstances where negotiations may be considered could be:
 - a) Where the procurement is done on nomination basis;
 - b) Procurement is from single or limited sources;
 - c) Procurements where there is suspicion of cartel formation which should be recorded; and

- d) Where the requirements are urgent and the delay in re-tendering for the entire requirement due to the unreasonableness of the quoted rates would jeopardise essential operations, maintenance and safety, negotiations with L1 bidder(s) may be done for bare minimum quantum of requirements. The balance bulk requirement should, however, be procured through a re-tender, following the normal tendering process.
- ii) The decision whether to invite fresh tenders or to negotiate and with whom, should be made by the tender accepting authority based on the recommendations of the TC. Convincing reasons must be recorded by the authority recommending negotiations. The CA should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated;
- iii) Normally all counter offers are considered negotiations by other means and the principles of negotiations should apply to such counter offers. For example, a counter offer to L1, in order to arrive at an acceptable rate, shall amount to a negotiation. However, any counter offer to L2, L3, and so on (at the rates accepted by L1) in case of splitting of quantities shall not be deemed to be a negotiation;
- iv) After the CA has decided to call a specific bidder for negotiation, the following procedure should be adopted:
- a) It must be understood that, if the period of validity of the original offer expires before the close of negotiations, the original offer will not be available for acceptance. The period of validity of the original offer must, therefore, be extended, wherever necessary, before negotiations;
- b) The tenderer to be called in for negotiations should be addressed as per the format of letter laid down in Annexure 12, so that the rates originally quoted by him shall remain open for acceptance in the event of failure of the contemplated negotiation;
- c) A negotiations meeting should be started only after obtaining a signed declaration from the negotiating supplier as per Annexure 12; and
- d) Revised bids should be obtained in writing from the selected tenderers at the end of the negotiations in the format of letter laid down in Annexure 13. The revised bids so obtained should be read out to the tenderers or their representatives present, immediately after completing the negotiations. If necessary, the negotiating party may be given some time to submit its revised offer. In case, however, the selected bidder prefers to send a revised bid instead of being present at the negotiation, the offer should be taken into account. In case a bidder does not submit the revised bid, its original bid shall be considered.

7.6.8 Evaluation of Bids and Award of Contract - Risks and Mitigations

Risk	Mitigation
Unwarranted negotiations: negotiations are called without justification. Sometimes a counter-offer is made to discourage lowest acceptable bidder.	Normally, there should be no post-tender negotiations. In certain exceptional situations, for example, procurement of proprietary items, items with limited sources of supply, and items where there is suspicion of a cartel formation, negotiations may be held with L-1. In case of L-1 backing out, there should be re-tendering.

10.7 Disposal through Tender

- x) e) The bid of the highest acceptable responsive bidder should normally be accepted and an acceptance/sale order be issued. However, if the price offered by that bidder is not acceptable, a negotiation may be held only with that bidder.

MANUAL FOR PROCUREMENT OF CONSULTANCY & OTHER SERVICES 2017
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6.10 Negotiations and Award of Contract

- 6.10.1 In the Consultancy Services contract, the accepted ToR and methodology etc are laid down in form of 'Description of Service'. Therefore, before the contract is finally awarded, discussions may be necessary with the selected bidder to freeze these aspects, especially when, it is discouraged during evaluation of technical proposals to seek clarifications on these matters. However such technical discussions do not amount to negotiations in the sense, the word is used in Procurement of Goods and Works. However in Procurement of Consultancy, this discussion is termed as Negotiations, since these discussions may have some financial ramifications at least for the bidder. Negotiations are not an essential part of the selection process. In many cases, however, it is felt necessary to conduct negotiations with the selected consultant for discussions of the ToR, methodology, staffing, Government Ministry/Department's inputs and special conditions of the contract. These discussions shall not substantially alter (or dilute) the original ToR or terms of the offer, lest the quality of the final product, its cost and the initial evaluation be vitiated. The final ToR and the agreed methodology shall be incorporated in "Description of Services," which shall form part of the contract.

- 6.10.2 Financial negotiations shall only be carried out if, due to negotiations, there is any change in the scope of work which has a financial bearing on the final prices or if the costs/ cost elements quoted are not found to be reasonable. In such negotiations, the selected firm may also be asked to justify and demonstrate that the prices proposed in the contract are not out of line with the rates being charged by the consultant for other similar assignments. However, in no case such financial negotiation should result in an increase in the financial cost as originally quoted by the consultant and on which basis the consultant has been called for the negotiations. If the negotiations with the selected consultant fail, the Procuring Entity shall cancel the bidding procedure and re-invite the bids.
- 6.10.3 The name of the successful bidder along with details of costs and so on, shall be posted on the departmental website after award of work to the successful bidder has been made and communicated to him in writing.



That policeman who caught the gangster was caught taking bribe from the gangster!