

Subject : 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 KaPT Books of Accounts (excluding)

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 31-03-2019) 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 repossessed 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 a 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.

