MECHANISM FOR RESOLUTION OF DISPUTES IN AIRPORT TARIFFS, TELECOM, BROADCASTING AND CYBER SECTORS

The Airport Regulatory Landscape in India and the Role of TDSAT

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Why Parliament Felt the Need for an Independent Economic Regulator for airports in India?

1. Airports are natural monopolies — a city typically has just one civilian airport controlling all aeronautical services in its catchment area.

2. Before AERA, AAI was both the airport operator and the regulator of the airport tariff and standards.

3. With privatization, major airports like Delhi, Mumbai, Bengaluru and Hyderabad were being handed to private concessionaires, sharpening the need for a regulator independent of both AAI and the new private operators.

4. A level playing field was needed between AAI-run and privately-run major airports, to foster healthy competition across categories.

5. Tariffs had to be transparent and predictable enough to draw private capital, while still protecting the reasonable interests of passengers and airlines as end users.

6. The Naresh Chandra Committee in the Road Map for the Civil Aviation Sector (submitted to the Ministry of Civil Aviation on 30 November 2003) was the genesis of AERA, 5 years before the Act was passed. It first recommended an independent economic regulator for the sector.

Functions of AERA:

- Tariff Determination as per Section 13(1)(a) of the AERA Act, 2008
- Determination of Development Fee
- Determination of Passenger Service Fee
- Monitor and set performance standards
- Any other function related to tariff as may be entrusted by the government

Tariff Determination Process of AERA

1. Submission of MYTP
2. Issuance of Consultation Paper (appointment of experts/independent consultants)
3. Stakeholder Meeting (Airport Operator, Industry bodies and Airlines)
4. Stakeholder's response to CP
5. Airport Operator's reply to stakeholders' comments on CP
6. Tariff Order

Sections 18 & 31 — The Two-Stage Appeal Process

Stage 1 — Section 18

AERA Order → Appellate Tribunal

Any 'person aggrieved' by a determination, order or decision of AERA within 30 days — an airport operator, airline, or other affected party — may appeal to TDSAT, sitting as the Appellate Tribunal under the AERA Act. The AERA Act envisages disposal of such appeals within 90 days.

Stage 2 — Section 31

Appellate Tribunal's Order → Supreme Court

An appeal lies directly to the Supreme Court within 90 days of communication of TDSAT's decision. Section 31 does not use the expression "person aggrieved"; the Supreme Court has held that AERA, as a regulator, as well as parties to the TDSAT proceedings, may maintain an appeal under Section 31.

Instrumental Role of TDSAT in Shaping Airport Regulatory Jurisprudence

- TDSAT has moved from being a Telecom Tribunal with an added airport docket to the primary forum where India's airport economic-regulation principles are actually being written — one control-period dispute at a time.
- **From tariff disputes to regulatory jurisprudence:** TDSAT has progressively clarified how airport tariffs, revenue, costs and regulatory assets should be determined.
- **A check on regulatory overreach:** TDSAT operates as an independent forum to test whether AERA’s decisions remain within the statutory and regulatory framework.
- **Giving meaning to concession frameworks:** TDSAT’s decisions have helped interpret the interaction between the AERA Act, OMDA, SSA, concession agreements and government policy.
- **Protecting regulatory certainty:** Consistent adjudication allows airport operators, airlines and investors to better understand the consequences of regulatory decisions and to make economic decisions on further investments etc.
- **Balancing competing interests:** TDSAT sits at the intersection of passenger interests, airline affordability, airport investment and the financial viability of airport and its operations.

Key Tariff Issues Settled by TDSAT

- **Concession Agreements to be given primacy**: AERA must give effect to pre-existing Concession Agreements while determining tariff. Section 13(1)(a)(vi) expressly requires AERA to take into consideration concessions granted by the Central Government. TDSAT's decision has been affirmed by the Supreme Court.
- **Aeronautical vs Non-Aeronautical Classification:** TDSAT's January 2023 ruling held ground-handling and cargo-handling fall outside AERA's tariff-setting power as non-aeronautical services - a classification now under Supreme Court challenge
- **True-Up of Past Shortfalls & Surpluses:** Where actual revenue misses or exceeds what a tariff order projected, the gap has to be carried into a future control period. True-up is intended to reconcile actual over-recovery or under-recovery against the ARR determined for a control period. TDSAT held that AERA can adjust genuine shortfalls/surpluses in a subsequent control period.
- **Interim revisions to tariffs:** TDSAT has recognized that interim/ad hoc tariff arrangements can be made where necessary pending final tariff determination, particularly to address cash-flow or regulatory gaps. The provision of amendment to tariff orders is also envisioned under Section 13(2), AERA Act.
- **Recognition of actual capital expenditure:** TDSAT held AERA cannot determine tariff by reference to 'normative benchmarks' set through a separate generic order — Section 13(1)(a) requires AERA to ascertain capital expenditure actually incurred, not take a benchmarked estimate.
- **Recognition of actual Cost of Debt**: Where AERA had itself provided that the projected cost of debt would be trued up on the basis of actual interest expenditure, AERA could not subsequently determine a lower normative figure. Cost of debt to reflect the actual interest expenditure incurred.

Key Tariff Issues Settled by TDSAT

- **Deferment of ARR impermissible:** TDSAT held that AERA cannot reduce the ARR determined for a control period and postpone its recovery to the next control period. The true-up mechanism is meant to address actual over- or under-recovery, not to defer an operator's entitlement to recover the ARR determined for that period.
- **AERA can't deduct penalty for project delay:** TDSAT set aside AERA's 1% deduction from ARR for delayed project execution, holding that neither the AERA Act nor the Concession Agreement authorized such a penalty. Any shortfall arising from incomplete expenditure is to be addressed through the true-up mechanism, and AERA cannot unilaterally add a new deduction to the ARR formula.
- **Recovery of Losses due to foreign exchange fluctuations**: Foreign-exchange losses are recoverable only up to the effective cost of comparable rupee borrowing; the operator bears the additional risk arising from its choice to borrow in foreign currency
- **Other income falls outside the Till:** TDSAT held that income which is neither generated from aeronautical services nor constitutes non-aeronautical revenue, such as dividend, interest earned etc. cannot automatically be brought within the regulatory till, as it falls outside the purview of Section 13(1)(a).
- **Treatment of income from real estate development:** TDSAT held that income from real estate development constitutes income from "Non-Airport Activities" and falls outside AERA's tariff jurisdiction.

Can a Regulator Appeal Its Own Tribunal? The SC Says Yes

AERA v. Delhi International Airport Ltd. (2024 INSC 791)

- Arose from a TDSAT order (Jan 2023) holding that AERA lacked jurisdiction to regulate tariffs on ground-handling and cargo services at the Delhi and Mumbai airports.
- Airport operators challenged the maintainability of AERA’s appeal. They argued a quasi-judicial regulator cannot be an 'aggrieved party' with a standing to appeal its own appellate tribunal's decision.
- The Supreme Court held AERA’s appeal to be maintainable and that AERA carries a statutory duty to regulate tariffs so airports remain economically viable without compromising public interest and can appeal under Section 31 of the AERA Act.
- The Supreme Court opined that AERA's tariff-setting under Section 13(1)(a) is a regulatory function, not a quasi-judicial one — the very reasoning now allows AERA to file appeal against its own appellate tribunal's order as an interested party before Supreme Court.

Recurring Challenges in Airport Regulatory Litigation

- **Tariff Orders are often issued belatedly:** On several occasions, AERA has issued tariff orders mid-way through the ongoing control period of five years, which shrinks the recovery period.
- **Litigation outlives Control Period:** Tariffs are set for five-year cycles, but disputes can run over a decade. Section 16 of the AERA Act envisages disposal of appeals within 90 days. AERA appeals often remain pending for years, given their technical complexity and the breadth of issues involved. Four tariff appeals were filed during 2025-26 alone, while in 2025, TDSAT commendably disposed of 13 AERA appeals through three detailed judgments, alongside its substantial telecom docket. With greater institutional capacity and specialized expertise, faster and more effective disposal of an increasingly complex AERA docket will be enabled.
- **Investment Uncertainty:** Prolonged tariff disputes complicate financing and monetization decisions for airport operators pending litigation.
- **Building Technical capacity at TDSAT:** As airport tariff disputes become increasingly technical and economically consequential, TDSAT may benefit from a dedicated member with expertise in airport economics, regulation and infrastructure finance. Such institutional expertise can enable the Tribunal to engage more effectively with complex questions raised in appeals—strengthening both the quality and consistency and speed of appellate review.
- **Judicial Discipline Requires Compliance with TDSAT Orders, Unless Stayed:** On several instances, AERA has not followed TDSAT's judgments on the ground that appeals against the same were pending adjudication before the Supreme Court. TDSAT held that mere filing of an appeal does not operate as a stay on a binding judgment. Unless stayed or set aside, AERA must give effect to TDSAT's binding determination, as any contrary approach would undermine certainty, regulatory consistency and the rule of law.

Innovations for Airport Regulatory Litigation

Time-Bound Determinations

AERA must ensure that tariff orders are issued before the commencement of the relevant Control Period, providing regulatory certainty for that control period. If required, AERA can make mid-Control Period revisions under Section 13(2) to promptly give effect to TDSAT's rulings and correct tariff orders.

A Specialized Bench for airport matters

TDSAT could benefit from dedicated bench with expertise in airport economics, regulation and infrastructure finance.

An Exhaustive and meaningful consultation process

The stage of Consultation process, before issuance of final tariff order, must be comprehensive and meaningful, and an effective opportunity must be provided to stakeholders to make oral submissions if necessary.

Need for greater oversight over Airline fares

Airport tariffs constitute only a relatively small component of the passenger ticket price- often around 7-10% of the ticket price at major airports. Reducing airport tariffs therefore does not necessarily translate into a corresponding reduction in airfares. Thus, greater scrutiny of airline fare-setting may also be necessary.

Fuller use of AERA's power under Section 52

AERA should use its regulation-making power under Section 52, which go through parliamentary scrutiny, to institutionalize and give statutory legitimacy to new regulatory practices, rather than introducing new rules through individual decisions/orders.

Thank You