

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI**

**Reserved on: 08/08/2025**

**Pronounced on: 11/09/2025**

**AERA APPEAL/1/2024**

**With**

**M.A. No. 99 of 2025**

**GMR Goa International Airport Ltd.**

**Versus**

**Airport Economic Regulatory Authority of India**

**BEFORE:**

**HON'BLE MR. JUSTICE DHIRUBHAI NARANBHAI PATEL, CHAIRPERSON  
HON'BLE MR. SUBODH KUMAR GUPTA, MEMBER**

**For Applicants/Appellants/  
Petitioners Advocate**

Mr. Ramji Srinivasan Sr. Adv.  
Mr. Milanka Chaudhury, Adv.  
Ms. Naina Debey, Adv.  
Mr. Ravneet Singh, Adv.  
Mr. Arjun Bhatia, Adv.  
Ms. Shefali Munde, Adv.

**For Respondents Advocate**

Mr. Ankur Sood, Adv.  
Mr. Prajwal Suman, Adv.  
Mr. Dhaman Trivedi, Adv.  
Dr. Anand Kumar, Director Legal  
Dr. Shreya Sharma, Bench Officer  
Mr. Neeraj Sharma For A E R A

**For Intervener:**

Mr. Buddy Ranganathan, Sr. Adv.  
Mr. Prantar Basu Choudhury, Adv. and  
Mr. Shrom Sethi For F I A

## INDEX

<b>SL No.</b>	<b>Particulars</b>	<b>Page No.</b>
<b>1.</b>	<b>Summarium</b>	<b>4-5</b>
<b>2.</b>	<b>Factual Matrix</b>	<b>6-8</b>
<b>3.</b>	<b>Issues raised by the Appellant</b>	<b>8-10</b>
<b>4.</b>	<b>Arguments canvassed by Appellant</b>	<b>10-22</b>
<b>5.</b>	<b>Arguments canvassed by Respondent &amp; Intervener</b>	<b>22-29</b>
<b>6.</b>	<b>Reasons and Analysis</b>	<b>30-114</b>

## LIST OF ABBREVIATIONS

<b>ABBREVIATIONS</b>	<b>FULL FORM</b>
<b>AERA</b>	Airport Economic Regulatory Authority of India
<b>AO</b>	Airport Operator
<b>AAI</b>	Airports Authority of India
<b>ARR</b>	Aggregate Revenue Requirement
<b>BIAL</b>	Bangalore International Airport Ltd
<b>CAPEX</b>	Capital Expenditure
<b>CGF</b>	Cargo, Ground Handling, Fuel Farm
<b>CGH</b>	Cargo, Ground Handling
<b>CoD</b>	Cost of Debt
<b>DIAL</b>	Delhi International Airport Ltd.
<b>EPC</b>	Engineering, Procurement & Construction
<b>FIA</b>	Federation of Indian Airlines
<b>FCP</b>	First Control Period
<b>FAR</b>	Fixed Asset Register
<b>FRoR</b>	Fair Rate of Return
<b>FY</b>	Financial Year
<b>GGIAL</b>	GMR Goa International Airport Limited

<b>ICAO</b>	International Civil Aviation Organization
<b>IMG</b>	Inter-Ministerial Group
<b>ISP</b>	Independent Service Provider
<b>JVC</b>	Joint Venture Company
<b>L-1</b>	Lowest evaluated bidder
<b>LOA</b>	Letter of Award
<b>MIAL</b>	Mumbai International Airport Limited
<b>MCLR</b>	Marginal Cost of Funds-based Lending Rate
<b>MI Airport</b>	Manohar International Airport (Mopa, Goa)
<b>MoCA</b>	Ministry of Civil Aviation
<b>MRO</b>	Maintenance Repairs and Operations
<b>MYTP</b>	Multi-Year Tariff Proposal
<b>NAR</b>	Non-Aeronautical Revenue
<b>NCAP</b>	National Civil Aviation Policy
<b>O&amp;M</b>	Operations & Maintenance
<b>DBFOT</b>	Design, Build, Finance, Operate and Transfer.
<b>P.A.</b>	Per Annum
<b>PMC</b>	Project Management Consultant
<b>PPP</b>	Public-Private Partnership
<b>RAB</b>	Regulatory Asset Base
<b>RBI</b>	Reserve Bank of India
<b>RFP</b>	Request for Proposal
<b>R/w</b>	Read With
<b>RFQ</b>	Request for Qualification
<b>SPV</b>	Special Purpose Vehicle
<b>SSA</b>	State Support Agreement
<b>TBR</b>	Terminal Building Ratio
<b>TR</b>	Target Revenue
<b>TDSAT</b>	Telecom Disputes Settlement & Appellate Tribunal
<b>UDF</b>	User Development Fee
<b>WACC</b>	Weighted Average Cost of Capital
<b>WALR</b>	Weighted Average Lending Rate

## JUDGEMENT

**Per Justice D.N. PATEL, Chairperson**

### **SUMMARY**

1. This appeal has been preferred under Section 18 (2) of the Airport Economic Regulatory Authority of India Act, 2008 ("AERA Act") challenging an **Order No. 27/2023-24 dated 07.12.2023** issued by Airports Economic Regulatory Authority of India ("AERA" "the Authority") in the matter of determination of Aeronautical Tariff for First Control Period i.e. **01.04.2023-31.03.2028**. The order passed by AERA is under Section 13 (1) (a) of the AERA Act, 2008 for **Manohar International Airport Ltd. (MOPA), Goa** (MI Airport) operated by the appellant.
2. The gravamen of the controversy centres upon AERA's alleged overreach beyond its statutory remit under Section 13 (1) (a) of the AERA Act, 2008, the Tariff Guidelines of 2011, and the DBFOT & Concession Agreement, in adjudicating the tariff matrix. The appellant assails ten discrete determinations in the impugned order, including: (i) a 0.5% reduction in PMC expenses; (ii) application of a 90:10 terminal building aero:non-aero ratio instead of actual measurements; (iii) adoption of a normative 9% Cost of Debt rather than actual, floating Rate CoD; (iv) non-recognition of proposed O&M contractor fees as O&M expense; (v) classification of license fees from cargo/ground handling/fuel farm ISPs and airline space rentals

as aeronautical revenue; (vi) treatment of interest income as non-aeronautical at true-up; (vii) prescription of a minimum NAR threshold (₹509.47 cr) with limited true-up; (viii) exclusion of 30% NAR from the aeronautical tax base; (ix) interest-cost methodology and consistency; and (x) finalization of the tariff rate card, including concerns over parity with the nearby Dabolim airport.

- 3.** Meanwhile, AERA maintains that its order faithfully applies Section 13(1)(a) factors and the hybrid-till framework, after consultation and expert review. It has defended the PMC rationalization, the 90:10 terminal allocation as standardized and replicable, the 9% CoD as market-linked, the deferral of O&M-operator fees, the aeronautical classification of certain license charges tied to CGF/airline operations, the treatment of interest income as NAR, the use of a minimum NAR benchmark to safeguard users, the tax computation excluding NAR from the aeronautical base, and the rate card as a mechanical outcome of ARR.
  
- 4.** Thus, against these competing positions spanning cost recognition, asset/space allocation, financial parameters, revenue classification, tax base formulation, and tariff card methodology, this Tribunal, through the present judgment, endeavors to resolve the dispute by examining whether AERA's determinations were within its statutory remit, consistent with the concession framework, DBFOT and aligned with governing guidelines and precedents.

## **FACTUAL MATRIX**

- 5.** The said Impugned order is at **Annexure A-1** to the memo of this appeal.
- 6.** The impugned order is the first ever tariff order issued by AERA for the entire 5 years' control period for MI Airport and hence, the present appeal is the first judicial scrutiny of tariff order passed by AERA for MI Airport by this Tribunal.
- 7.** On 3.10.2014 the Government of Goa invited the proposal for shortlisting bidders for construction, operation and maintenance of a green field airport at MOPA in Goa on Public-Private Partnership (PPP) basis.
- 8.** The bid of GMR airports was accepted on 17.09.2016 and a Letter of Award was issued by Government of Goa.
- 9.** On 8.11.2016, the appellant, incorporated and promoted by GMR Airport Ltd. executed a Concession Agreement with Government of Goa. The appellant submitted its Multi Year Tariff Proposal (MYTP) to AERA on 07.01.2022 and requested AERA to determine tariff from 01.09.2022 to 31.03.2023 as pre-Control Period.
- 10.** AERA issued Tariff Order No.19/2022-23 on 26.08.2022 determining ad-hoc tariff for aeronautical services for MI Airport w.e.f. from Commercial Operation Date (CoD) to 31.03.2023 or till determination of aero tariff for First Control Period whichever is earlier. It must be noted that:

- (i) On 07.12.2022, the MI airport was commissioned and the appellant started levying aeronautical charges as determined by AERA in Order No.19/2022-23, and;
- (ii) On 05.01.2023, appellant commenced Scheduled Commercial Operations at MI airport.

**11.** The tariff for aeronautical services could not be finalized before 31.03.2023 and AERA issued Order No.41/2022-23 dated 22.03.2023 extending the ad-hoc tariff for a further period of six months. Aeronautical charges set in the ad-hoc tariff order were revised through an Addendum to tariff Order No.19/2022-23 dated 11.09.2023. On 29.03.2023, the appellant submitted revised MYTP requesting AERA to determine tariff from 07.12.2022 to 31.03.2023 as pre-Control Period and thereafter, determine tariff for five years' control period from 01.04.2023 to 31.03.2028.

**12.** Consultation Paper no. 11/2023-24 was issued by AERA proposing its views on various building blocks for determination of tariff for appellant for First Control Period. Thereafter on 11.09.2023, AERA issued an Addendum to the order no 19/2022-23 revised the ad-hoc tariff for aero services up to 31.12.2023 or till the determination of regular aero tariff for First Control Period, whichever is earlier.

- 13.** The appellant submitted its response to the Consultation Paper on 29.09.2023 and on 09.10.2023, the appellant submitted responses to the comments submitted by various stakeholders to the Consultation Paper issued by AERA.
  
- 14.** On 07.12.2023, AERA issued the impugned order determining the aeronautical tariff for FCP (01.04.2023-31.03.2028) for MI Airport, this impugned order is at Annexure A-1 to the memo of the present appeal which is under challenge in this AERA Appeal under Sec 18(2) of AERA Act, 2008.

**ISSUES RAISED BY THIS APPELLANT ARE AS UNDER:**

- 15.** It is contented by Ld. Senior Counsel for the Appellant Mr. Ramji Srinivasan, that AERA in the Impugned Order has transgressed its statutory mandate and exceeded its jurisdictional bound by failing to determine tariff in accordance with principles set out in Section 13(1)(a) of the Airport Economic Regulatory Authority Act, 2008 ('AERA Act') and binding law laid down by this Hon'ble Tribunal in its judgements. As such, in the present Appeal, GGIAL has challenged the following decisions of AERA in the Impugned Order:

- I.** Reduction of Project Management Consultancy ("PMC") expenses by 0.5% from the actual expenses incurred by the appellant;

- II.** Application of a Terminal Building Ratio ("TBR") of 90:10 (aero:non-aero) citing IMG norms as against the actual ratio of 91.03:8.97.
  
- III.** Adoption of a normative Cost of Debt ("CoD") at 9% for the entire control period, instead of the appellant's actual CoD for Fair Rate of Return ("FRoR") computation;
  
- IV.** Non-recognition of the proposed fee payable to an Operating & Maintenance (O&M) contractor as O&M expense;
  
- V.** Treatment of License Fees, i.e., Revenue Share and Land License Fee accruing to the Appellant under the licenses granted to Independent Service Providers ('ISPs') undertaking Cargo, Ground Handling ('CGH') and Fuel Farm Services and License Fee from space licensed to airlines at the MI Airport as Aeronautical Revenue.
  
- VI.** Treatment of Interest Income accruing to GGIAL as part of Non-Aeronautical Revenue at the time of true-up of the First Control Period.

- VII.** Determination of Rs.509.47 Crores as minimum threshold of Non-Aeronautical Revenue for the First Control Period and deciding to undertake true-up based on actuals in the Second Control Period only if revenue exceeds the minimum threshold.
  
- VIII.** Non-Consideration of 30% of revenues from Non-Aeronautical Revenue as part of aeronautical revenue base while determining Aeronautical Taxes.
  
- IX.** Inconsistent Approach in Considering Different Interest Costs in the Impugned Order.
  
- X.** Unilateral finalizing the tariff rate card for the First Control Period in disregard of the Tariff Guidelines.

**Arguments canvassed by counsel for the Appellant**

- 16.** It is submitted by Mr. Ramji Srinivasan, learned senior counsel for the appellant that AERA has failed to appreciate Section 13 (1) (a) (i) of AERA Act, 2008 which mandates AERA to consider the "**Capital Expenditure incurred**".
  
- 17.** It is contended that the Project Management Consultancy (PMC) expenses have been disallowed/reduced in the impugned order contrary to the Concession Agreement and the statute, despite competitive procurement and probity safeguards.

- 18.** Learned Senior Counsel for the appellant has placed reliance on Article 5.6.1 R/w. Article 5.6.2. of the Concession Agreement and has submitted that whenever any work exceeding of Rs.25 crores is to be undertaken by this appellant, the same shall be done through Open Competitive Bidding Process. There is a procedure for the contracts for construction and operations of the airport which was followed scrupulously by this appellant through Competitive Bidding Process which was never under challenge neither by AERA nor by any competitor.
- 19.** It is also submitted by learned Senior Counsel for the appellant that the technical criteria for PMC are set out in clause 3.2 of Request for Qualification (RFQ) and that AERA cannot sit in appeal ex post facto over the technical criteria laid down by the Appellant (GGIAL) nor can it prescribe its own technical criteria.
- 20.** AERA cannot question the award of contract to L-1 bidder on the ground that when such tender was reviewed and monitored by an **Independent Probity Auditor** appointed under the Concession Agreement as per Article 5.6.2 and 5.6.3 thereof. The said Independent Probity Auditor has approved the transaction that it was done on arms-length basis. This report is dated 04.07.2018 which has not been appreciated by AERA and hence, decision of AERA to reduce PMC expenses by 0.5% (Rs.41 Lacs) deserves to be quashed and set aside.

- 21.** Learned Senior Counsel for the appellant has submitted that the **Terminal Building Ratio** decided by AERA at 90:10 is wrong, illegal, and dehors the facts of the case as the IMG norms are not applicable to PPP Airports.
- 22.** Learned Senior Counsel for the appellant has taken this Tribunal to IMG norms report and has pointed out that the IMG norms report is not applicable to this appellant looking to Clause-G thereof. Furthermore, the IATA norms are general guidelines and nothing beyond that.
- 23.** These aspects have not been appreciated by AERA while deciding Terminal Building Ratio, in fact that the prevailing situation at the MI Airport, MOPA Goa, is that the ratio of aeronautical to non-aero as per actual measurement comes to 91.03:8.97 (Aero:Non-Aero) for the allocation of the capital expenditure.
- 24.** AERA has failed to appreciate the actual measurement available for Terminal Building Ratio and has followed the standard as laid down in the hypothetical/persuasive norms based on IMG report and IATA norms and hence, the decision of AERA for Terminal Building Ratio Expansion to 90:10 (Aero:Non-Aero) deserves to be quashed and set aside and AERA may be directed to consider the actual ratio of 91.03:8.97 as Terminal Building Ratio based upon actual measurement.

- 25.** It is further submitted that the Cost of Debt arrived at by AERA which is 9%, which is incorrect and dehors the facts of the case and AERA has not appreciated the earlier several decisions rendered by this Tribunal giving guidance to AERA on how to arrive at cost of debt, thereby stultifying the binding directives of the present appeal.
- 26.** Learned Senior Counsel for the appellant has taken this Tribunal to the various facts of the present case and has submitted that appellant has secured debt from Axis Bank led consortium of banks at a rate of A-MCLR+2% which is revised annually. This sanction letter is at annexure A-8 at page 977 and 980 of the memo of the present appeal.
- 27.** It is also submitted that AERA has not appreciated the Actual CoD which is 10.45% which is a floating CoD, subject to revision each year, considering A-MCLR of 8.45%, for the purpose of calculation of FRoR, to be adjusted as per actuals during True-Up.
- 28.** AERA has also not appreciated the Tariff Guidelines issued in 2011 whereby as per Clause 5.1.4 (b) thereof, it requires AERA to forecast future CoD, considering the floating Rate of Interest, whereas, AERA has proceeded to determine CoD, at a fixed rate of 9% per annum, ignoring that appellant has procured date at a floating rate.

- 29.** Learned Senior Counsel for the appellant has taken this Tribunal about sanction letter issued by Axis Bank and MCLR of Axis Bank and also to the fact that present appellant has taken all possible steps to reduce CoD by issuing Non-Convertible Debentures worth Rs.2462 Crores at a fixed coupon rate of 10% p.a. at a credit rating of "A" after commencing commercial operations at MI Airport. This aspect has not been properly appreciated by AERA.
- 30.** Learned Senior Counsel submits that, prior to the impugned order, this Tribunal had already settled the approach to Cost of Debt (COD) by judgment dated 06.10.2023 in AERA Appeal No. 2 of 2021 (MIAL v. AERA), particularly paragraphs 317, 320 and 321. That pronouncement of the aforesaid decision was prior to the impugned order passed in this AERA Appeal. AERA should have followed the aforesaid decision on the point of Cost of Debt (COD).
- 31.** Learned Senior Counsel further points out that this position was reiterated in a factually comparable matter by judgment dated 14.02.2024 in AERA Appeal No. 4 of 2021 (GMR Hyderabad International Airport Ltd. v. AERA). On this footing, the 9% cap merits setting aside with a direction to adopt the appellant's 10.45% weighted-average CoD, subject to true-up in the succeeding control period.

- 32.** It is submitted that AERA has wrongly rejected the claim of this appellant to allow the cost of operation and Maintenance Contractor to be appointed to assist and guide this appellant with specialized functions such as aeronautical operations, cargo operations and slot management.
- 33.** The appellant is desirous to appoint O&M contractor and, therefore, the projected cost of this O&M contractor was proposed in MYTP proposal submitted by this appellant which has been rejected by AERA without appreciating the fact that as per Article 17.1.1 of the Concession Agreement permits the present appellant to perform its obligation of O&M of MI Airport, through O&M contractors for which O&M contractor is entitled to receive O&M fees and, therefore, AERA cannot disallow the O&M fees in view of section 13 (1)(a)(vi) of the AERA Act, 2008.
- 34.** AERA has not appreciated Article 5.2.5 of Concession Agreement which mandates the requirement of prior approval of the Central Government for appointment of O&M contractor. Hence, the decision of AERA of not allowing the cost in the form of Cost of Operation fee is without any justification hence, the same deserves to be quashed and set aside and AERA be directed to appreciate the actual cost of the O&M contractor which is projected as 3% of previous year revenue be allowed while determining the tariff for aeronautical services.

- 35.** It is submitted that AERA's decision to classify License Fee received from **Independent Service Providers (ISPs)** undertaking **Cargo, Ground handling, and Fuel Farm services ("CGF")** and License Fees from space license to airlines at MI Airport as aeronautical revenue. This decision of AERA is patently illegal and dehors the provisions of AERA Act and the Concession Agreement and has submitted that the License Fees accruing from ISPs undertaking CGF services and License Fees from space licensed to airlines are not aeronautical in nature because the appellant has not rendered any aeronautical services.
- 36.** It is submitted that in fact, appellant does not render any services much less aeronautical services for getting a License Fee. This aspect has not been appreciated by AERA. Hence, the impugned order by AERA deserves to be quashed and set aside and these revenues may be treated as non-aeronautical revenues.
- 37.** It is further submitted that the decision of AERA is contrary to AERA Tariff Guidelines, 2011 (Annexure A-4) especially paragraph 5.6.2 thereof. Hence on this ground also the decision of AERA on the aforesaid issue deserves to be quashed and set aside.

- 38.** It is submitted that AERA has wrongly pleaded interest income accruing to this appellant as a part of non-aeronautical revenue at the time of True-Up of First Control Period. AERA has decided to consider interest income as a part of non-aeronautical revenue which is to be calculated on the basis of cash flow based on the final revenue being considered at the first True-Up period. This issue has already been decided by this Tribunal vide judgment dated 21.07.2023 in AERA Appeal No.1 of 2024 as well as in judgment dated 16.10.2023 in AERA Appeal No.2 of 2021 and judgment dated 14.02.2024 in AERA Appeal No.4 of 2021.
- 39.** It is further submitted that as per AERA's Tariff Guidelines, 2011 AERA has no jurisdiction on the revenues which have been accrued from the cash management without rendition of service by Airport Operator. This aspect has not been appreciated by AERA and hence, the decision of AERA treating interest income accruing from cash management as non-aeronautical revenue deserves to be quashed and set aside.
- 40.** It is submitted that AERA has wrongly fixed the minimum threshold of giving aeronautical revenue at Rs.509.47 Crores for the First Control Period and has decided to True-Up in a Second Control Period only if the revenue exceeds the minimum threshold. It is also submitted that AERA cannot presume non-aero revenue and that too at a minimum of Rs.509.47 Crores.

**41.** It is submitted by learned Senior Counsel for the appellant that AERA has no power, jurisdiction and authority to assume or presume the non-aeronautical revenue when actual figures of non-aeronautical revenue is available. In fact, the revenue cannot be presumed by AERA whether it is aeronautical or non-aeronautical. The revenue is based upon actual figures and not on presumptions. There is no guarantee from anybody that appellant shall earn minimum of Rs.509.47 Crores as non-aeronautical revenue during First Control Period. This is an absurd proposition by AERA and same is in violation of AERA Act, 2008 and AERA Tariff Guidelines, 2011 and such a speculated minimum threshold of non-aeronautical revenue at Rs.509.47 Crores deserves to be quashed and set aside from the impugned order. Such speculative presumption of AERA has an adverse effect upon economic and viable operations of the airport. Goa airport is a green field airport, it has no historical data relating to passenger footfall and hence, non-aeronautical revenue cannot be presumed by AERA.

**42.** It is submitted that this aspect of the matter has not been properly appreciated at all by AERA and AERA has taken a chance to impose such minimum non-aeronautical revenue in the country for the first time. AERA must have passed no less than two or three dozen tariff orders for different airports, and for the first time in the country, this type of mischievous, speculative presumption for non-aeronautical revenue has been incorporated

in the tariff order hence, the same deserves to be quashed and set aside because the same is far from actual non-aeronautical revenue and AERA may be directed to appreciate actual amount of non-aeronautical revenue as per provisions of AERA, Act to be read with AERA Tariff Guidelines, to be read with the Concession Agreement and to be read with aforesaid decisions rendered by this Tribunal.

- 43.** It is submitted by learned Senior Counsel for the appellant that non-consideration of 30% of the revenue from NAR as a part of non-aeronautical revenue base while determining aeronautical taxes. Counsel for the Appellant has taken this Tribunal to the formula for ARR which is as under:

$$\mathbf{ARR_t = (FRoR \times RAB_t) + Dt + Ot + Tt - NAR_t}$$

- 44.** It is submitted by learned Senior Counsel for the appellant that AERA has erroneously and beyond the mandate of AERA Act, 2008 has decided that appreciated the decisions by this Tribunal in GGIAL has not fully explored the potential for generating non-aeronautical revenues at the MI Airport and there is a need for GGIAL to focus on growing revenues from non-aeronautical services at MI Airport by exploring innovative approaches and implementing best practices from comparable airports.

- 45.** It is submitted by Ld. Senior Counsel for Appellant that AERA has not considered the binding pronouncements of this tribunal vide judgment dated 21.07.2023 in AA no. 1/2024 as well as judgment dated 16.10.2023 in AA no. 2/2021. By these decisions, it has been decided more than once that 30% of the non-aeronautical revenue should be considered for calculation of taxes as per the aforesaid tariff formula.
- 46.** These judgments have not been understood and followed by AERA while deciding this issue in impugned order on the issue of consideration of 30% of revenues from NAR as a part of aeronautical revenue base while determining aero taxes. It is submitted that when 30% of non-aeronautical revenue is employed in cross-subsidization of the aeronautical tariff it forms an indistinguishable part of aeronautical revenue base which cannot be later distinguished for the purposes of calculating tax components. Hence also, the decision of AERA on aforesaid issues deserves to be quashed and set aside.
- 47.** It is submitted by learned Senior Counsel for the appellant that AERA has not properly and legally computed interest cost for the purposes of arriving at aero taxes. AERA ought to have appreciated that cost of debt should have been calculated at 10.45% and on that basis, aeronautical interest cost should have been calculated on the basis of the following formula:

**Aero Interest Cost = Average Aero RAB × Debt: Equity Ratio × 10.45%**

- 48.** In view of the aforesaid formula, AERA should have calculated the aeronautical interest cost. There is an inconsistency in approach of AERA and the Counsel for the appellant has taken this Tribunal through the methodology of applying asset allocation ratio to the interest cost and hence, submitted that AERA should have computed interest cost on actual interest cost incurred by appellant and it can't be based upon AERA's notional Cost of Debt.
- 49.** Learned Senior Counsel for the appellant has placed reliance upon judgment dated **06.10.2023 in AERA Appeal No.2 of 2021** especially upon paragraph **317** thereof and has submitted that AERA should have considered actual CoD incurred by Airport Operator and had set aside AERA's decision to cap Cost of Debt (CoD).
- 50.** It is submitted by learned Senior Counsel for the appellant that AERA has unilaterally finalized tariff rate card for First Control Period in disregard of the Tariff Guidelines, 2011. It is also submitted that the landing charges and parking charges at Dabolim Airport are lesser in comparison with the appellant's MI Airport, MOPA. AERA ought to have appreciated that discrimination in the landing charges will lead to result that the

present appellant may not get adequate number of airlines for lading at MI Airport MOPA.

- 51.** This inequality cannot be applied unilaterally by AERA which has a direct nexus with aeronautical and non-aeronautical revenue of the appellant. By the impugned tariff, AERA has revised landing charges at MI Airport, MOPA, Goa by an increase of additional 50% from the existing rates whereas similarly situated another airport within Goa has much lesser landing tariff rate and hence, this decision of AERA which is unilateral finalization of tariff rate card deserves to be quashed and set aside which is in violation of AERA Act and AERA Tariff Guidelines.

**Arguments canvassed by counsel for the Respondent**

- 52.** It is submitted by Ld. Counsel for AERA, that current appeal is based on inaccurate and misleading information, lacking substance and clarity and as a result the current appeal is without any merit and is liable to be dismissed.
- 53.** It is submitted by Ld. Counsel for AERA, that under Section 13(1)(a) of the AERA Act, 2008, the Respondent is mandated to determine tariffs for aeronautical services by weighing seven critical factors, including capital expenditure, service quality, efficiency costs, viable airport operations, non-aeronautical revenues, government concessions, and other relevant considerations.

- 54.** It is submitted by Ld. Counsel for AERA, that the impugned Tariff Order faithfully applies Section 13 of the AERA Act and the 2011 Tariff Guidelines, after a full stakeholder consultation and reasoned determination of each regulatory “building block”.
- 55.** It is submitted by Ld. Counsel for AERA, that the 2011 Guidelines, issued under Section 15 of the AERA Act, form the bedrock of tariff determinations and have been scrupulously adhered to in this instance.
- 56.** It is submitted by Ld. Counsel for AERA, that the Authority acted in harmony with the National Civil Aviation Policy, 2016 (NCAP) and ICAO Doc 9082, whereby balancing airport and user interests, ensuring non-discrimination, cost-relatedness, consultation, and reasonable charges.
- 57.** It is submitted by Ld. Counsel for AERA, that the tariff process is exhaustive, starting from MYTP analysis to ARR computation, public consultations, and issuance of a reasoned order, safeguarding stakeholder interests.
- 58.** It is submitted by Ld. Counsel for AERA, that ARR and RAB form core building blocks, incorporating fair returns, efficient costs, and judicious asset inclusions/exclusions, as duly evaluated in the impugned tariff order.

- 59.** It is submitted by Ld. Counsel for AERA, that Consultation Paper No. 11/2023-24 invited stakeholder inputs, followed by virtual meetings and analysis, culminating in a reasoned and transparent order.
- 60.** It is submitted by Ld. Counsel for AERA, that under Clause 5.6.1 of the 2011 Guidelines, non-aeronautical revenues were benchmarked via hybrid till, cross-subsidizing aeronautical charges to ease user burden.
- 61.** Furthermore, the delays caused by the appellant's (including non-submission of the Fixed Asset Register despite reminders) compressed the recovery window of the First Control Period, necessitating sharper tariff trajectories and contributing to stakeholder stress, which are attributable to the Appellant.
- 62.** It is submitted that the PMC rationalization of 0.5% is a modest rationalization, which rests on objective concerns recorded in the Order and reiterated in reply, namely, restrictive RFQ terms for PMC that narrowed competition and a probity review that did not examine the financial value proposition. In such circumstances the Authority was entitled indeed and obliged to temper allowances in the consumer interest.
- 63.** It is submitted by Ld. Counsel for AERA that the Terminal Building Ratio (TBR) allocated by AERA's of 90:10 is a settled and

consistent approach grounded in IMG/IATA guidance. The appellant's "91.03:8.97" allocation is based on unverified ad-hoc measurements and selective inclusions; the Authority rightly preferred a neutral, reproducible ratio to prevent over-allocation to aeronautical assets.

- 64.** It is submitted by the Ld. Counsel for AERA that the Cost of Debt (CoD) as pegged at 9% by AERA, reflects contemporaneous RBI-reported WALR bands. The Authority repeatedly encouraged the appellant to narrow its spread; the figure adopted are reasonable and market linked in nature.
- 65.** It is submitted that no executed O&M arrangement, scope, or pricing basis was placed on record within the consultation window. Allowing a bare projection would offend the "cost-relatedness" and "necessity" tests the Authority must apply. The Order already provides adequate O&M headroom under personnel, R&M expenses; any specific operator fee can be considered on proof and at true-up.
- 66.** It is submitted by the learned counsel that the license charges (CGH/Fuel/airline space) are aeronautical revenue as these are revenues tied to cargo, ground handling, and fuel farm activities whether styled as "revenue share" or "land license" are integrally connected with aeronautical services.

- 67.** It is submitted that Interest income is NAR. Interest arising from airport cash-flow management is appropriately treated as non-aeronautical.
- 68.** It is submitted by the Ld. Counsel for AERA, that while imposing Minimum NAR threshold of ₹509.47 crores with carry-forward the Authority undertook a fresh bottom-up estimation of NAR suited to this airport's dynamics and came to a conclusion that a minimum threshold protects users from under-recovery cross-subsidy claims while preserving the appellant's ability to reconcile at true-up when actuals exceed estimates.
- 69.** It is submitted by the Ld. Counsel for AERA, that taxes and the "30% NAR" cross-subsidy is based on the National Civil Aviation Policy (NCAP) mandated hybrid-till, which uses up to 30% of NAR to moderate aeronautical tariffs; it does not convert NAR into an element of the aeronautical tax base. Thus, AERA has correctly excluded NAR from the taxable aeronautical revenue base while applying the hybrid-till in tariff computation.
- 70.** It is submitted by the Ld. Counsel for AERA, that Rate card finalization means that the tariff card is a mechanical corollary of ARR and building-block determinations made after due consultation. Thus, the Authority considered all cost heads material to safe and efficient operation and issued a comprehensive order; the appellant discloses no prejudice caused to him during the process.

- 71.** It is submitted that Interest/treasury income arises from cash-flow management within airport operations and is appropriately treated as NAR, with actuals captured at true-up. An approach the appellant expressly accepted during consultation and is estopped from resiling.
- 72.** It is submitted that the alleged inconsistency in interest-cost treatment as claimed by the appellant is incorrect. It is pertinent to note that a uniform 9% CoD and average-debt base were used throughout the Order (including for T), and no contrary objection was raised by the appellant during consultation.
- 73.** It is submitted by Ld. Counsel for AERA that in the conspectus of the above, the appeal is premised on selective facts and afterthought positions, thus, deserves to be dismissed as the impugned Tariff Order being lawful, transparent, and user-centric is within the statutory framework.

**ARGUMENTS CANVASSED BY FEDERATION  
OF INDIAN AIRLINES (F.I.A.)**

- 74.** It is submitted by the Ld. Counsel for Federation of Indian Airlines (FIA), that it has preferred M.A. No. 99 of 2024 in Aera Appeal No. 1 of 2024 seeking to impleadment as a party respondent.
- 75.** This M.A. has been preferred by Federation of Indian Airlines (FIA) for joining as a party respondent. This application has been preferred on 01.04.2025 by FIA whereas, the AERA Appeal has

been preferred in 2024, several orders have been passed in this AA prior to filing of this MA. The pleadings had also been completed in this AA. For ready reference, order passed by this tribunal dated 06.02.2025 reads as under:

- "1. The pleadings have been completed in this AERA APPEAL. Counsel appearing for the appellant seeks time. Hence, this matter is adjourned on 03.04.2025*
- 2. Meanwhile, within a period of four weeks from today appellant shall file their written submission and thereafter within further period of three weeks the respondent shall file their written submission."*

**76.** Thus, at the very fag end of the matter, the present application has been preferred, therefore, suffice it will be, looking to the facts of the present case and looking to the interests of FIA, in the present AERA Appeal to join FIA as a party intervener. Hence this application was allowed to the extent that FIA is permitted to argue at the time of final hearing **as an intervener.**

**77.** The Ld. Counsel for F.I.A. submitted that he is adopting all the arguments advanced by the Ld. Counsel for AERA, who is Respondent No.1.

**78.** It is submitted by Ld. Counsel for F.I.A., that he is arguing only on the issue of revenue from rent license fee, in this regard the Ld. Counsel for F.I.A., submits that that rent license fees received by the Airport Operator should be treated as aeronautical revenue.

- 79.** Counsel for F.I.A., has taken this tribunal through the definition of Aeronautical services and submitted that as per AERA Act, 2008, the rental license fees received from airlines etc., should be treated as aeronautical revenue.
- 80.** It is also submitted by the Counsel for F.I.A., that they are submitting compilation of judgements and that they are relying upon the said judgements, which are marked in the separate compilation provided by the F.I.A.
- 81.** We, have perused the compilation of judgements provided by F.I.A., wherein they are relying on following judgements:
- I. Delhi International Airport Ltd. (DIAL) v. Airport Economic Regulatory Authority & Ors. [ Aera Appeal No. 10 of 2012]
  - II. Mumbai International Airport Ltd. (MIAL) v. Airport Economic Regulatory Authority & Ors. [ Aera Appeal No. 04 of 2013]
  - III. Delhi International Airport Ltd. v. Airport Economic Regulatory Authority & Ors. (2024) (1) SCC 716.
  - IV. Delhi International Airport Ltd. (DIAL) v. Airport Economic Regulatory Authority. [ Aera Appeal No. 7 of 2021]
  - V. Bangalore International Airport Ltd. (BIAL) v. Airport Economic Regulatory Authority & Ors. [ Aera Appeal No. 8 of 2018]
- 82.** Thus, the submission of Ld. Counsel for FIA is limited in nature and only to the extent of Rental License Fee and as such counsel has not canvassed argument on any other issue than the one mention herein above.

## **Reasons and Analysis**

### **I. Reduction of Project Management Consultancy (PMC) expenses from the actual expenses incurred by the appellant.**

- 83.** It is an undisputed position emanating from the record that through the Competitive Bidding Process, the present appellant was Lowest number 1 (L1) bidder and was given the exclusive right and authority to develop, operate, and maintain Goa International Airport for the period of forty (40) years, extendable by further period of twenty (20) years based upon the appellant's participation in an international competitive bidding process.
- 84.** The appellant is obliged to develop the Goa International Airport in phase wise manner for which the Master Plan and Development Plan was prepared by appellant and submitted to Government of Goa for its comments. All the development for Goa International Airport is carried out in accordance with Schedule-A of the Concession Agreement which is at Annexure A-3.
- 85.** The appellant is obliged to pay Concession Fee and an annual premium to the government of Goa in terms of Article 30.1 and 30.2 of the Concession Agreement. This airport is situated at MI Airport, MOPA, Goa and is a green field airport i.e. everything is to be constructed from scratch and is to be brought into

operation by this appellant and, therefore, MI Airport Limited, Goa requires proper project management consultancy at the time of construction and operation of the MOP International Airport Limited is required.

**86.** Project Management Consultant was appointed by this appellant to undertake managerial functions and to provide management services during the development phase of MI Airport. Two stage competitive bidding process was followed by this appellant firstly, appellant issued a **Request For Qualification (RFQ)** on 17.10.2017 on its website and business standard newspaper setting out eligibility criteria and technical criteria for bidder (Annexure A-15 to the memo of this appeal) and second stage was technically qualified bidders were called out to submit their bids in the **Request For Proposal (RFP)**.

**87.** The Bidding process was carried out by bid management company- **ABPS Infrastructure Advisory Pvt. Ltd.** In the first stage, **six bidders** submitted **RFQ and their names** are as under:

1. Dorsch Consult (India) Pvt Ltd.
2. GMR Airport Developers Limited
3. Mace Projects & Cost Management Pvt. Ltd.
4. Aecom India Pvt. Ltd.
5. Turner Project Management India Pvt. Ltd.
6. SGS India Pvt. Ltd.

**88.** In the first stage, there was scrutiny of all six bidders, and in second stage the following three companies participated and their names are as under:

- 1. Dorsch Consult (India) Pvt. Ltd.** – possessed experience in developing airports in Sudan, Germany, Thailand and Bangalore International Airport in India
- 2. GMR Airport Developers Limited** – possessed experience in developing airports in Turkey and Hyderabad International Airport, and Delhi International Airport in India
- 3. Mace Projects & Cost Management Pvt. Ltd.** – possessed experience in developing airports in UK, Oman and Mumbai International Airport in India.

- 89.** The contract for PMC services was awarded to L-1 bidder i.e. GMR Airport Developers Ltd and, therefore, the present appellant made a proposal to consider PMC expenses as a part of capital expenditure for First Control Period which is being reduced by AERA by 0.5% i.e. reduced by Rs.41 Lakhs from the actual expenses incurred by the appellant for PMC expenses.
- 90.** AERA took into consideration the report given its own consultant named Kitco and Kitco recommended reduction of 0.5% from PMC fees because Kitco was of the opinion that condition attached with bidding process viz.- "**experience in the management of international airport in more than one country**". This condition in the bidding process restricted the

competition, which has led to an increase in the cost of PMC fees. This recommendation of Kitco was accepted by AERA and, therefore, AERA has deducted 0.5% from PMC fees, the reduction is by Rs.41 Lakhs.

- 91.** Under Section 13(1)(a)(i) of the AERA Act, 2008, there is a mandate for AERA to consider **capital expenditure incurred**. For the ready reference, **Section 13(1)(a)(i) of the AERA Act, 2008** reads as under:

*“13. Functions of Authority. - (1) The Authority shall perform the following functions in respect of major airports, namely:-*

*(a) to determine the tariff for the aeronautical services taking into consideration-*

*(i) the **capital expenditure incurred** and timely investment in improvement of airport facilities;...*”

- 92.** It has been held by this Tribunal in judgment dated 21.07.2023 in **AERA Appeal No.1 of 2021** in case of **DIAL Vs. AERA**, in **paragraph nos. 160, 165, and 166** as under:

*“160. In view of the aforesaid provisions of Section 13(1), AERA has to appreciate actual capital expenditure incurred by the Appellant. As per respondent no.1, the cost which is arrived at by the global bidding process is not an efficient cost and, therefore, AERA has arrived at efficient cost seeking Consultant’s Report and thereafter they have considered the GST credit and the impact of*

*inflation amount and has arrived at a new figure which is Rs. 9126.42 Crores which was allowed as a capital expenditure as a part of RAB. The contention of the respondent no. 1 as well as respondent no. 2 that on the basis of efficient cost to be arrived at by AERA, they have reduced the amount of capital expenditure as suggested by DIAL. This contention is not accepted by this Tribunal mainly for the reason that Phase 3A expansion was principally and technically allowed by MoCA.*

**165.** *Much has been argued by respondent no. 1 and respondent no. 2 that that AERA had also appointed a consultant and as per his report, Rs.7968 Crores should have been a cost. Thereafter, AERA has added Rs.7968 Crores (consultant's figure), the amount of GST credit and the impact of inflation and has arrived at a new figure as an efficient cost at Rs.9126.42 Crores and, therefore, instead of Rs.9782.15 Crores, partially out of this amount, Rs.9126.42 Crores was considered of capital expenditure as part of RAB. This contention of the counsels of respondent no.1 and respondent no.2 (i.e. AERA & FIA) is not accepted by this Tribunal mainly for the reasons that: -*

**(a)** *The global competitive bidding process was never called in question by AERA meaning thereby to there was no allegation of fraud or procedural lapse or any illegality in the bidding process. Thus, bidding process followed by this appellant was transparent;*

- (b)** *As per OMDA, especially as per Clause 8.5.7 (i) (c) of OMDA, if the sub-contract value is more than Rs.50,00,00,000/- (Rs.50 Crores), the JVC has to follow a competitive bidding procedure;*
- (c)** *The cost which is arrived at for Phase 3A expansion for IGIA, Delhi through global bids invited is giving real and efficient cost. It is a market discovered price through competitive and transparent bidding process;*
- (d)** *A separate contract has been entered into between JVC and lowest No.1 for Phase 3A expansion of IGIA. The cost which is to be paid by this appellant to the successful bidder has been reduced in writing, in the contract and, therefore, AERA has no power, jurisdiction and authority to reduce the same nor the AERA has the power to make changes in any of the Clauses of the agreement, much less by giving a vague and arbitrary reason that as per opinion of AERA, efficient cost is Rs.9126.42 Crores instead of contractual amount of capital expenditure, which is arrived at through transparent and legally valid bidding process at Rs.9782.15 Crores;*
- (e)** *The figure of Rs.9126.42 Crores arrived at by AERA is nothing but an estimated cost or a probable cost whereas, Rs.9782.15 Crores is a cost of capital expenditure for Phase 3A capital expansion of IGIA, Delhi is based upon a contract which is crystallized or reduced in writing, after global bidding process. If this figure is allowed to be altered by AERA in the name of "efficient cost", terms of contract will be altered which is not permissible, in the facts of the present case, especially when the bidding process is not challenged by AERA nor there is any allegation*

*that there is a procedural lapse or fraud played by this appellant;*

- (f)** *As per Section 13 (1)(a)(i) of the AERA Act, 2008, it was a power coupled with a duty vested in AERA to determine the tariff for the aeronautical services taking into consideration, "the capital expenditure incurred and timely investment in the improvement of airport facilities" which is on "actual basis" meaning thereby, if the actual capital expenditure is incurred by the appellant, the same has to be considered by AERA as per aforesaid provision of AERA Act and it cannot be so easily brushed and set aside by AERA under the guise of "the efficient cost";*
- (g)** *The figure given by the consultant's report and the final figure arrived at by AERA by addition of impact of inflation and GST credit, per se is not sufficient for reduction of or for disallowance of part of the capital expenditure undertaken by DIAL for Phase 3A expansion of IGIA, Delhi;*
- (h)** *AERA cannot differ the Consideration of price incurred to a subsequent control period when the actual price is available during the relevant control period;*
- (i)** *The cost of expansion works, given by the consultant is only an estimated cost and AERA has treated the same as the efficient cost by adding impact, inflation and GST, which is in fact a violation of Sec. 13(1)(a)(i) of AERA Act, 2008; and ii. Violation of agreement between JVC and lowest no.1 because AERA has in fact altered the terms of the contract. For the aforesaid reasons, the contentions of counsel for respondent nos. 1 and 2 for disallowance of part of Capital Expenditure undertaken by DIAL for Phase 3A expansion of IGIA, Delhi is not*

*accepted by this Tribunal. Looking to the facts of the present case, AERA cannot reduce the Capital Expenditure for Phase 3A expansion from Rs.9782.15 Crores to Rs.9126.42 Crores. We hereby quash and set aside the decision of AERA dated 30th December, 2020 for 3rd Control Period (2019-2024) to the extent it disallows the part of the capital expenditure undertaken by DIAL for Phase 3A expansion of IGI Airport, Delhi. The reasons given by AERA in order dated 30th December, 2020 for 3rd Control Period at paragraphs 4.5.5 and 4.6.1, so far as they relate to the cost for Phase 3A expansion is concerned, are hereby quashed and set aside.*

**166.** *Determination of tariff by the regulatory authority and challenge of the same in the Court or Tribunals is not so unknown in The Electricity Act, 2003. There is a provision to determine tariff in Part VII of the Act, 2003 under Section 61, 62, 63, 64. For the ready reference, Section 63 of The Electricity Act, 2003 reads as under: "Section 63. Determination of Tariff by Bidding Process Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government."*

*(Emphasis Supplied)*

- 93.** As per the aforesaid decision, it is not open for AERA to further question the market discovered price arrived at by competitive bidding process.

**94.** It has been held by this Tribunal in judgment dated **16.04.2025** in **AERA Appeal No.4 of 2016** in the case of **DIAL Vs. UOI** in **paragraphs nos. 49, 50, and 58-67** as under:

*"49. In view of the aforesaid provisions of AERA Act, 2008, AERA shall determine the tariff for aeronautical services taking into consideration "the Capital Expenditure incurred", meaning thereby to, AERA has to verify the Capital Expenditure incurred and if it's found to be true, it has to be considered while determining the tariff for aeronautical services. The verification will be based upon Chartered Accountant's certificates with the help of audited balance sheets etc.*

*50. AERA has no power, jurisdiction and authority to review the "capital expenditure to be incurred". AERA has no power to suggest its own cost of capital expenditure. Similarly, AERA is not empowered to determine the specifications of materials which have to be used while undertaking the capital work. AERA cannot review the capital expenditure to be incurred.*

*58. Looking to the provisions of Section 13(1)(a) of AERA Act, 2008, AERA has to consider the "Capital Cost Incurred" and timely investment in the enforcement of the "Airport Facilities" for determination of tariff for aeronautical services, but, AERA cannot suggest its own capital cost.*

*59. This Hon'ble Tribunal in its judgment dated 23.04.2018 in DIAL Vs. AERA in AERA Appeal No. 10 of 2012 has accepted AERA's contention that capital expenditure can be looked at, from a narrow hole based on the certificates issued by Chartered Accountants or the audited Page 45 of 97 financial statements. For the ready reference, paragraph number 88 of the judgement reads as under:*

*"88. On the other hand, on behalf of AERA, Mr. Dhir has taken a firm stand that in the task of tariff determination, the project cost can be looked at*

*from a narrow hole, only to examine the incurred cost as per available records and see that it relates to the approved and essential parts of the Airport. According to him, this had to be done on the basis of accounts bearing certificates granted or approved by the Chartered Accountant. His clear stand is that such cost cannot be re-examined on the yardstick of efficient cost but has to be taken as the incurred cost only, as appearing in the duly certified books of accounts. This submission appears to be weighty and deserves acceptance."*

**60.** *The aforesaid arguments were reiterated by AERA before this Hon'ble Tribunal in a subsequent appeal. It has been held by this Tribunal in its judgment dated 20.03.2020 in DIAL Vs. AERA in AERA Appeal No.7 of 2012 in Paragraph No. 22 thereof which reads as under:*

*"22. In respect of general issues noted above and flagged by the audit reports, financial and technical, the stand of FIA that there could have been better cost control deserves to be accepted. The OMDA and SSA, by accident or by design have permitted high degree of latitude to the JVC. As a result, the exact project cost came to light much later like a fate accompli. AERA had little or no scope to examine these aspects in exercise of its limited statutory role to determine the amount of DF in respect of major Airports as per Section 13 of the AERA Act. The capital expenditure incurred in the project is one of the factors in determination of the tariff for the aeronautical services and this exercise of determining the tariff for the First Control Period had been done by AERA in respect of the Airport. For some good reasons the appeals against the tariff order for the First Control Period have been already heard and decided by this Tribunal. During the hearing of those appeals,*

*some of the Airlines and FIA had objected to the capital expenditure reflected by the final project cost as accepted by AERA for determining the tariff. Such objections were considered and ultimately the stand of AERA that the capital expenditure found to have been "incurred" in an authorized manner for the permissible purpose relating to the project of developing the Airport at Delhi should be allowed towards the project cost. This was accepted by this Tribunal in the judgment dated 23.04.2018.*

*[Emphasis Supplied]*

**61.** *Thus, in view of the aforesaid decisions, AERA shall take into consideration "the capital expenditure incurred".*

**62.** *Hon'ble the Supreme Court of India in DIAL Vs. AERA reported in (2022) SCC ONLINE SC 850 has upheld the findings of this Tribunal. Paragraph no.138 of the aforesaid decision reads as under: "138. AERA sought to rebut these contentions before the TDSAT. It was contended that the avowed task of determining the Project Cost could only be looked at from a narrow hole - i.e. in order to examine the incurred cost as per available records and verify whether it relates to the approved and essential parts of the Airport. This in turn had to be taken on the basis of accounts bearing certificates granted or approved by the Chartered Accountant. It was vehemently argued that such cost cannot be re-examined on the yardstick of efficient cost but has to be taken as the incurred cost only, as appearing in the duly certified books of accounts. The aforesaid plea of the AERA found favour with the TDSAT and was accepted."*

*[Emphasis Supplied]*

**63.** *Attempt to read the "efficiency principle" of sub-clause (iii) of Section 13(1)(a) of the AERA Act, 2008 (which relates to the cost for improving efficiency) in sub-clause (i) of Section 13(1)(a) of the AERA Act (which relates to capital expenditure incurred and timely investment in improvement of airport facilities) has been rejected in DIAL Supreme*

*Court Judgement, wherein the Hon'ble Supreme Court observed as follows: "148. ...Additionally, there is also some substance in what is contended by the Airport Operators that the terminology in Sections 13(1)(a)(i) and 13(1)(a)(iii) of the said Act cannot be read into each other. The manner of reading of the provision by FIA is to combine sub-para (iii) with sub-para (i) while determining tariff. 149. In our view, the provisions have been separately made because the concept of Section 13(1)(a)(i) requires AERA to determine the tariff by including capital expenditure incurred and timely investment in improvement of airport facilities. One of the other distinct factors to be considered is the cost of improving efficiency as under Section 13(1)(a)(iii). These aspects have no doubt been examined by the authority concerned, although not necessarily in the manner FIA seeks them to. Does it really lie with us to superimpose a view which has not been found feasible in the given conspectus of the large number of reports and documents before the AERA as well as the TDSAT. We thus reject the contention."*

*[Emphasis Supplied]*

**64.** *In view of the aforesaid decisions and the stand taken by AERA, it Page 50 of 97 appears that now AERA cannot be permitted to take contradictory stand with respect to its jurisdiction. There cannot be two different stands or contradictory stands by AERA in different appeals before this Tribunal.*

**65.** *It has been held by this Tribunal in its judgment dated 21.07.2023 in DIAL Vs. AERA in AERA Appeal No.1 of 2021 in paragraph No.165 (f) as under:*

*"As per Section 13 (1)(a)(i) of the AERA Act, 2008, it was a power coupled with a duty vested in AERA to determine the tariff for the aeronautical services taking into consideration, "the capital expenditure incurred and timely investment in the improvement of airport facilities" which is on "actual basis" meaning thereby, if*

*the actual capital expenditure is incurred by the appellant, the same has to be considered by AERA as per aforesaid provision of AERA Act and it cannot be so easily brushed and set aside by AERA under the guise of "the efficient cost."*

**66.** *The very same principle has been applied by this Tribunal in Page 51 of 97 judgment dated 14.02.2024 in the case of GMR Hyderabad International Airport Limited Vs. AERA in AERA Appeal No. 4 of 2021 and it has been held in paragraph no. 372, 373 and 381 as under: "372. Thereafter, global tenders are being invited. Then the lowest no.1 will be chosen, and this is how the "Market Discovered Price" is being found out by the competitive bidding process and this "Market Discovered Price" for the construction in question cannot be so easily brushed aside or given go by on just an opinion given by or just an estimated price of construction is given by another body/committee. As per Section 13(1)(a)(i) of AERA Act,2008, AERA has to keep in mind capital expenditure incurred. 373. In view of the aforesaid provision of Section 13(1), A AERA has to appreciate actual capital expenditure incurred by the appellant. As per Respondent No.1, the cost which is arrived at by the global bidding process is not an efficient cost and, therefore, AERA had arrived at its own efficient cost seeking consultant's report from RITES.Looking to the Section 13(1)(a)(i) of AERA Act, 2008, AERA cannot rely on any notional or estimated price when the actual price is available for the expansion project in question. AERA has relied upon estimated cost for the project in question given by the consultant – RITES - appointed by AERA, ignoring the actual "Market Discovered Price" (MDP) arrived at through competitive bidding process."*

*[Emphasis Supplied]*

**67.** *In view of the aforesaid decisions, it is explicitly clear that under Section 13(1)(a) of the AERA Act, AERA has to consider "the capital expenditure incurred" for*

*determination of tariff for aeronautical services. AERA is not empowered to suggest its own capital costs, determine specifications of materials or regulate the capital expenditure under the guise of 'efficient cost'."*

- 95.** In view of the aforesaid decision, under the AERA Act, 2008, AERA has to verify the capital expenditure incurred and it has no power, jurisdiction and authority to review the capital expenditure to be incurred or suggest its own cost of capital expenditure.
- 96.** It ought to be kept in mind by AERA that condition of the bid cannot be called in question. Moreover, no bidder who has participated has raised any question about the condition of the bid, moreover, AERA has no power, jurisdiction and authority to alter the condition of the bid nor Kitco has any power to seek any clarification or justification or Proprietariness of bid condition.
- 97.** The bidding process was as per the Concession Agreement and the same was transparent and the lowest number one was allotted the contract. This amount has been found out through a competitive bidding process and, therefore, the PMC expenses for the PMC contract is a market discovered price and, therefore, the capital expenditure incurred by the appellant should have been considered as per Section 13(1)(a)(i) of the AERA Act, 2008 by AERA while deciding aeronautical tariff for MI Airport Limited, Mopa, Goa.

- 98.** The deduction by 0.5% of the PMC expenses is absolutely arbitrary and without any basis of law and is in violation of the AERA Act as well as the Concession Agreement (Annexure A-3). We, therefore, quash and set aside the decision of AERA of reduction by 0.5% of actual PMC expenses and we direct AERA to allow actual PMC expenses incurred by this appellant for tariff determination for First Control Period.
- 99.** As per Article 5.6.1 of the Concession Agreement (**Annexure A-3**), this appellant is obliged to procure the contracts in accordance with procurement policy as per Article 5.6.2 of the Concession Agreement, which mandates appellant to undertake open competitive bidding process for awarding any work of exceeding Rs.25 Crores.
- 100.** Thus, in view of these provisions of the Concession Agreement, open bidding process was followed by this appellant and a contract was assigned to the lowest number one (L-1) bidder and therefore the PMC Expenses is a part of capital expenditure and the same cannot be reduced by AERA, this aspect has not been appreciated by AERA while deducting/reducing PMC Expenses by 0.5% on the ground that one of the conditions in the bid process has restricted the competition and has increased the cost of PMC fees.
- 101.** Out of several justifications for the condition in the bid, it is rightly submitted by learned senior counsel for the appellant that MI Airport has been envisaged as **"a world class international**

**airport”** serving both, the tourism and business markets and keeping pace with an increase in air travel segment in India and, therefore, appellant has to shortlist only those bidders who have prior experience in development and management of international airports and associated airport infrastructure such as **cargo, Maintenance and Repair Operations (MRO) and Fuel Farm facilities** and, therefore, the technical criteria for PMC set out in Clause 3.2 of the RFQ was in line with the scope of the Concession Agreement.

- 102.** Thus, criteria in Clause 3.2 of RFQ cannot be termed as restrictive. AERA cannot sit in appeal over the technical criteria laid down by this appellant, AERA cannot replace or omit any technical criteria for PMC set out in Clause 3.2 of the Request for Qualification (RFQ) was in the line with the scope of Concession Agreement. Thus, the criteria in Clause 3.2 of RFQ cannot be termed as restrictive.
- 103.** AERA cannot sit in appeal over the technical criteria laid down by this appellant, AERA cannot replace or omit any technical criteria on its own, for the work to be undertaken at the airport. AERA cannot dilute the technical criteria, merely on the assumption to elicit more applications.
- 104.** AERA cannot question the award of the contract to the lowest number one bidder because the lowest-one bidder was a related party, when the tender was reviewed and monitored, by **an Independent Probity Auditor** appointed under the Concession Agreement especially under Clauses 5.6.2 and 5.6.3.

- 105. The Independent Probity Auditor** has approved that the transaction was done on an arms-length basis, moreover, the consent of Government of Goa vide communications dated 27.09.2018, and approval of auditing committee constituted by board of directors of this appellant was also taken before awarding the contract of PMC. The Chairman of the audit committee is the nominee of the Government of Goa in terms of Article 5.6.3 of the Concession Agreement; the consent of Government of Goa is at Annexure A-16 to the memo of this appeal.
- 106.** Moreover, the Appellant has pointed out in paragraph 2.8.4 of the impugned order that Engineers India Ltd. (a Government of India Enterprise) has been appointed as an independent engineer by the Government of Goa for the project has reviewed the capital expenditure and relevant contracts. Further, the related party transaction has been approved by the Government of Goa in terms of the Concession Agreement. This aspect of the matter has not been properly appreciated by AERA.
- 107. In view of the facts, reasons, and judicial pronouncements, hereinabove, We, hereby quash and set aside the 0.5% reduction from PMC Fees, done by AERA which is arbitrary and without any basis. We hereby direct AERA to allow the actual PMC expenses incurred by the appellant.**

## **II. Consideration of Terminal Building Ratio as 90:10 for aero:non-aero in line with IMG norms**

- 108.** It is submitted by learned senior counsel for the appellant that AERA has allowed aeronautical: non-aeronautical ratio 90:10 as per IMG norms (Annexure R-A-2) and as per other similar airports. This appellant has made a proposal for 91.03 : 8.97 as per the actual condition of aeronautical: non-aeronautical percentage at the MI Airport Limited, Mopa, Goa.
- 109.** AERA ought to have considered the percentage of aeronautical: non- aeronautical percentage on actual basis and not on hypothetical basis. The actual percentage of aeronautical: non-aeronautical is 91.03 : 8.97 whereas AERA has allowed 90:10 ratio in line with IMG norms (Annexure R-A-2).
- 110.** Looking to the facts of the case, IMG norms (Annexure R-A-2) are not applicable to the PPP airports. For ready reference, **Clause E & G of IMG norms (Annexure R-A-2)** reads as under:

***"E. Unit Area Norms:** Overall space/area norm should be such as to provide a reasonable level of service for all components required in a Terminal Building. Commercial or Retail area providing amenities like food & beverages, book shops, counters for car rental, vending machines, public rest rooms etc., normally **require 8-12 per cent of the overall area, and should be planned and provided accordingly.** In bigger airports, i.e., with annual passenger traffic exceeding 10 million, commercial area could be upto 20 per cent of overall area.*

**G. Airports developed through Public Private Partnerships:** *In the case of airports developed through Public Private Partnerships, the project authorities may adopt a case by case approach with respect to norms relating to unit area and unit costs. Based on the judicious consideration of international best practices and financial viability, the norms may be specified in each case prior to inviting bids for private participation.*”

**111.** Moreover, IMG norms will serve as guidelines for implementation of projects by Airport Authority of India and they are not applicable to PPP airports. It has been held by this Tribunal in **judgment dated 16.04.2025 in AERA Appeal No.4 of 2016**, in case of **DIAL Vs. UOI**, in **paragraph nos. 69-72 and 96** as under:

*"69. In view of the aforesaid impugned order, it appears that IMG Norms have been relied upon by AERA while passing the impugned order. These **IMG Norms** are at **Annexure A-7** to the memo of AERA Appeal No.4 of 2016. It has been mentioned in the preface of the IMG Norms report as under:*

*"For rationalizing the capital costs of airport expansion and at the same time providing world-class services, it was felt that norms and standards may be evolved and adopted so as to serve as a guideline for formulating projects and for appraising and approving the same. With a view to recommending norms and standards for determining the terminal capacity of airports, the Empowered Sub-Committee of the Committee on Infrastructure (ESCOI) chaired by Deputy Chairman, Planning Commission, constituted an Inter-Ministerial Group (IMG) under the chairmanship of Secretary, Ministry of Civil Aviation. The IMG submitted its recommendations that were considered and accepted by ESCOI in its meeting held on April 13, 2009. **The***

***norms and standards specified in the Report of the IMG are expected to serve as a guideline for formulation and implementation of projects by AAI with a view to ensuring a judicious use of resources as also to ensure that airports of different categories follow uniform norms and standards across the country and are built to world class standards."***

***[Emphasis Supplied]***

***70.*** *As per paragraph 3, there are certain recommendations in the IMG Norms report and **Paragraph – G** thereof reads as under: "**G. Airports developed through Public Private Partnerships** In the case of airports developed through Public Private Partnerships, the project authorities may adopt a **case-by-case approach** with respect to norms relating to unit area and unit costs. **Based on the judicious consideration of international best practices** and financial viability, the norms may be specified in each case **prior to inviting bids for private participation.***

***71.*** *In view of the aforesaid paragraph–G of IMG Norms recommendations, it is not applicable to PPP Airports which are governed by their own specifications and standards as mentioned in **OMDA (Annexure A-3)** to be read with **SSA (Annexure A-4)**. The Report recognizes that cost of construction is dependent on various variables including the location. Therefore, cost of construction must be benchmarked across projects being implemented with similar planning horizon for AAI Airports. The IMG Norms recommend that unit **cost of construction for PPP Airports should be decided on a case-to-case basis and there cannot be a benchmarking exercise for new developments and that the benchmarking should be set prior to inviting bids for the airport.** The Impugned Order subjects DIAL to IMG Norms even*

*though the IMG Norms itself acknowledge that the same are wholly inapplicable to PPP Airports and the bidding process of IGI Airport did not propose any Unit Costs for assets.*

*72. Moreover, as per the aforesaid paragraph–G which is the recommendation by IMG Norms, it has been categorically mentioned that these norms may be specified in each case prior to inviting bids for private participation.*

**96. Thus, under the SSA, AERA is mandated to accept the Master Plan and Major Development Plan and AERA cannot question nor change the approach to development if it is consistent with the Master Plan and Major Development Plan [Clause 8 of Schedule I of the SSA]. However, AERA by passing the Impugned Order is not only questioning/refusing to accept the Master Plan but is also dictating the manner of development of IGI Airport by way of the Impugned Order. As such, the Impugned Order is in breach of the SSA, which in turn is a breach of Section 13(1)(a)(vi) of the AERA Act, 2008. "**

***[Emphasis Supplied]***

**112.** It ought to be kept in mind that Manohar International Airport Ltd. is a green field airport and the present tariff order is for First Control Period. There is no history of the annual footfall at the airport and hence, it cannot be held by AERA that 10% of the Terminal Building Area must be non-aeronautical. The construction of Terminal Building is as per Master Plan which is approved by Govt. of Goa and the construction has been carried out as per the master plan.

- 113.** The increase in non-aeronautical area depends upon the non-aeronautical activities and non-aeronautical activities depend upon the use of airport by the passengers and by the airlines as stated hereinabove, MI Airport is a green field airport, slowly the footfall is being increased and therefore, Airport Operator at present thought it fit that non-aeronautical area in the Terminal Building will be 8.97%. AERA cannot presume non-aeronautical area on the basis of hypothetical figures as 10% when actual figures are available.
- 114.** AERA cannot accept hypothetical figures and that too on the basis of IMG report, which in fact is not applicable to PPP airports. IMG norms (Annexure R-A-2) are meant for airports which are under the control of AAI. These aspects of the matter have not been properly appreciated by AERA while deciding Terminal Building Ratio as 90:10, we hereby quash and set aside the decision and direct AERA to allow the Terminal Building Ratio as 91.03:8.97.
- 115.** Looking to IMG norms report, non-aeronautical area allocation is 8-12% meaning thereby to, between 8-12% there can be non-aeronautical area at the Terminal Building. In the facts of the present case, this appellant has suggested 8.97% of non-aeronautical which is within the IMG norms even if it is made applicable to PPP airports. It ought to have been kept in mind that Terminal Building Ratio varies from airport to airport, there cannot be a straight-jacket formula of 90:10 percent Terminal Building Ratio.
- 116.** The non-aeronautical area will increase by an increase in total footfall at the airport. Non-aero area depends upon the total

number of passengers and airlines, etc. and, therefore, AERA should have gone as per actual measurement rather than presumptive measurement. Actually, the Terminal Building Ratio is 91.03:8.97 as per IMG norms, AERA has fixed it at 90:10. AERA should not have done such micro planning for airport Terminal Building. AERA should not have interfered in small operations at the airport.

- 117.** The "Free Momentive in Joints" should have been given to Airport Operator. Every now and then, for the smallest things, interference by AERA is hereby deprecated. The Airport Operator should be allowed to have space for experiment and effective management of a green field airport built on PPP Basis.
- 118.** Every time AERA cannot put **water tight compartment** or **straight jacket formulas** based on some norms or reports which do not match with hard reality at the concerned airports. These types of interferences by AERA are not permitted in tariff determination process under Section 13 of AERA Act, 2008.
- 119.** **In view of the aforesaid facts, reasons, and judicial pronouncements, we hereby quash and set aside AERA's fixation of the Terminal Building Ratio at 90:10 (aeronautical:non-aeronautical) for MI Airport.**
- 120.** **We hereby direct AERA to apply the actual measured Terminal Building Ratio of 91.03:8.97 (aeronautical:non-aeronautical) for the First Control Period (01.04.2023–31.03.2028).**

### **III. Consideration of Cost of Debt (CoD) at 9% for First Control Period**

- 121.** It is submitted by learned Senior Counsel for appellant that AERA has rejected the proposal of this appellant to consider the Cost of Debt at 10.45% and has considered the Cost of Debt at 9%, this decision of AERA is under challenge.
- 122.** As per Clause 5.1.4 (b) of the AERA Tariff Guidelines, it requires AERA to forecast future CoD considering the floating Rate of Interest. For ready reference, **Clause 5.1.4 (b) of the AERA Tariff Guidelines, 2011** reads as under:

*"5.1.4. Cost of Debt..*

*(b) The Authority shall consider the forecast for future cost of: (i) debt proposed to be raised during the Control Period; or (ii) **such debt which may be subject to a floating rate of interest subject to the Authority being assured of the reasonableness of such costs**, based on a review including of its source(s), procedure(s) and method(s) to be used for raising such debt(s).."*

- 123.** In the facts of the present case, this appellant has secured debt from Axis Bank led consortium of banks at the rate of A-MCLR+2% which is revised annually. The said Concession Letter is at **Annexure A-8** to the memo of the present appeal. As per this, appellant has secured the debt with 10.45% of the CoD whereas AERA has disregarded the actual CoD and has calculated FRoR considering 9% of the CoD. This is in violation of Section 13(1)(a)(i) of the AERA Act, 2008. As per this section, AERA is

required to determine the tariff in accordance with **actual capital expenditure incurred**.

**124.** It has been held by this Tribunal in **judgment dated 06.10.2023** It has been held by this Tribunal in **judgment dated 06.10.2023** in **AERA Appeal No.2 of 2021** in case of **MIAL Vs. AERA** in **paragraph nos. 317, 320 and 321** which as under in case of **MIAL Vs. AERA** in **paragraph nos. 317, 320 and 321** which reads as under:

***"317.** In view of the aforesaid borrowings by the airport operator - MIAL – appellant, it appears that the debt of Rs. 6141 Crores was availed from the reputed lenders and therefore, the rate of interest which has been prevailing, is being demanded by this appellant instead of a cap of 10.30% as cost of debt. Meaning thereby to that AERA ought to have allowed actual cost of debt incurred by this appellant for 3rd Control Period because all the debt has been taken from reputed lenders.*

***320.** In view of this, actual cost of debt shall be allowed by AERA for 3rd Control Period especially looking to the provisions of Section 13(1)(a)(i) of the AERA Act, 2008. For the ready reference, Section 13(1) of AERA Act, 2008 reads as under:*

*- "POWERS AND FUNCTIONS OF THE AUTHORITY*

*13. Functions of Authority. - (1) The Authority shall perform the following functions in respect of major airports, namely:*

*- (a) to determine the tariff for the aeronautical services taking into consideration-- (i) the capital expenditure incurred and timely investment in improvement of airport facilities; (ii) the service provided, its quality and other relevant factors; (iii) the cost for improving efficiency; (iv) economic and viable operation of major airports; (v) revenue received from services other than the aeronautical*

*services; (vi) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise; (vii) any other factor which may be relevant for the purposes of this Act: Provided that different tariff structures may be determined for different airports having regard to all or any of the above considerations specified at sub-clauses (i) to (vii); (b) to determine the amount of the development fees in respect of major airports; (c) to determine the amount of the passengers service fee levied under rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934 (22 of 1934); (d) to monitor the set performance standards relating to quality, continuity and reliability of service as may be specified by the Central Government or any authority authorised by it in this behalf; (e) to call for such information as may be necessary to determine the tariff under clause (a); (f) to perform such other functions relating to tariff, as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of this Act.”*

*(Emphasis Supplied)*

**321.** *In view of the aforesaid provision, AERA ought to have allowed actual cost of debt incurred by the appellant especially looking to the fact that debt availed by this appellant is from reputed lenders. Putting a cap upon cost of debt is uncalled for, as AERA has in fact, allowed actual interest rate for First Control Period and Second Control Period and therefore the same methodology should be applied for Third Control Period as well. We therefore direct AERA to consider actual cost of debt and necessary true up shall be done accordingly. Further, this action of AERA is also in violation of provisions of AERA Act, 2008 especially Sec. 13 thereof because the expenditure incurred ought to be allowed to be recovered as per formula of Target Revenue given in SSA.”*

**125.** In view of the aforesaid decision, AERA was directed to consider the actual CoD incurred by Airport Operator from the reputed lenders instead of deciding to cap the Cost of Debt (CoD). This view of this Tribunal has been reiterated in **judgment dated 14.02.2024** in **AERA Appeal No.3 of 2024** in **paragraph nos. 462-466** thereof which reads as under:

*"462. In view of the aforesaid facts, it appears that the actual interest expenditure incurred by HIAL for the FY 2018 is 9.28% and AERA has reduced the same at 7.94%. This is not permissible mainly for the reason that while passing the tariff order for the 2nd Control Period, it has already been decided by AERA as per paragraph number 4.3.6 of the impugned order that tentatively the Cost of Debt has been considered at 7.90% but the true up shall be given in 3rd Control Period based on actual interest expenditure incurred by HIAL.*

*463. HIAL has already pointed out in its MYTP that during FY 2018, this appellant has incurred actual interest expenditure at 9.28% and hence, this aspect of the matter has not been appreciated Page 249 of 292 by AERA and hence, the Impugned decision of AERA of not to give correction in Cost of Debt is hereby quashed and set aside.*

*464. Looking to paragraph number 4.3.30 of the impugned order, the Cost of Debt which was proposed in table number 39 had to be revised in view of the revised Cost of Debt as submitted by this appellant, considering Debt drawl. But AERA has failed to revise the Cost of Debt for FY 2018 and has continued with FRoR at 7.94% instead of 9.28%.*

**465.** *It has been decided by this Tribunal vide judgment and order dated 06.10.2023 in case of MIAL Vs. AERA, in AERA Appeal No. 2 of 2021 & AERA Appeal No. 9 of 2016, paragraph number 313, 316 and 317 as under:*

*"313. This contention of respondent no.1 is not accepted by this Tribunal mainly for the reason that there cannot be a fixed cost of debt for the entire 3rd Control Period of five years which is from 2019-2024. The cost of debt which is actually incurred by the appellant should have been considered by AERA. The cost of debt depends upon marginal cost of funds based lending rate and the time period within which the loan is to be repaid. Inflation is one of the most important factor for determination of market forces for further determination of MCLR rates. Moreover, the spread for the time within which loan is to be repaid depends upon the credit profile of the entity.*

*316. Much has been argued out by learned senior counsel appearing for respondent no.1 that wherever airport operator is incurring debt, it must be efficient in nature and, therefore, if any debt is incurred with a higher cost of debt than 10.30%, in a target revenue, only 10.30% cost of debt will be appreciated. This contention is not accepted by this Tribunal mainly for the reason that the debt which has been incurred by this appellant has been pointed out by learned senior counsel appearing for the appellant as under:  
Project Term Loan Sanctioned Limit (Rs Cr)*

<b>Name of the Bank</b>	<b>Proportion</b>
<i>SBI</i>	<i>51%</i>
<i>Union Bank</i>	<i>6%</i>
<i>Indian Bank</i>	<i>3%</i>
<i>Exim Bank</i>	<i>4%</i>
<i>PNB</i>	<i>12%</i>
<i>Canara Bank</i>	<i>5%</i>
<i>Central Bank</i>	<i>5%</i>
<i>Vijaya Bank</i>	<i>8%</i>
<i>Bank of India</i>	<i>7%</i>

*317. In view of the aforesaid borrowings by the airport operator - MIAL – appellant, it appears that the debt of Rs. 6141 Crores was availed from the reputed lenders and therefore, the rate of interest which has been prevailing, is being demanded by this appellant instead of a cap of 10.30% as cost of debt. Meaning thereby to that AERA ought to have allowed actual cost of debt incurred by this appellant for 3rd Control Period because all the debt has been taken from reputed lenders”.*

*(Emphasis Supplied)*

**466.** *In view of this judgment, AERA must consider Cost of Debt actually incurred by the airport operator. These aspects of the matter have not been properly appreciated by AERA while passing the impugned order especially in the correction of Cost of Debt especially in FY 2018 and has wrongly considered the cost of Debt at 7.94% instead of 9.28%. We, therefore, direct AERA to consider 9.28% for Cost of Debt for FY 2018 as stated in table number 40 of the impugned order.”*

- 126.** Thus, the sanction letter issued by Axis Bank led consortium of banks at the rate of A-MCLR+2% of Lending Rate which is dated 18.09.2024 (Annexure A-8). Since MCLR of Axis Bank range between 8.95% to 9.3%, the appellant could not have procured CoD at 9% as claimed by AERA. In fact, the CoD as per Annexure A-8 is A-MCLR+2% which is an admitted and actual CoD .
- 127.** It is submitted to our satisfaction that AERA's approach to Cost of Debt (CoD) in the impugned order is legally untenable. By exhorting the appellant to "avail the synergies and benefits owed to it by its strong shareholding and balance sheet of its parent companies," AERA has proceeded on an extraneous premise. The concessionaire and its parent are separate juridical persons operating at arm's length.
- 128.** In the absence of an express parental guarantee or binding sponsorship undertaking on record, the regulator cannot impute the parent's balance sheet to depress the regulated entity's CoD. Such imputation re-allocates risk post-bid, and travels beyond the prudence review contemplated by Section 13(1)(a) of the AERA Act.
- 129.** The market reality at MI Airport is salient. This is a greenfield airport operating in a dual-airport environment with Dabolim as a proximate competitor. Competition of this kind typically manifests in tighter aeronautical yields and higher financing

risk premia. AERA's comparators drawn from PPP airports without an in-vicinity competitor do not present a like for-like risk profile and, therefore, are not of probative of what constitutes a reasonable CoD for this asset.

- 130.** Equally infirm is AERA's reliance on AAI averages. AAI's cost of funds is not a market proxy for a private SPV, it carries the imprimatur of sovereign ownership and access to public funding channels. To benchmark a private concessionaire's CoD against a sovereign-backed statutory authority is to conflate distinct credit signatures and offends the principle of cost-relatedness.
- 131.** The record placed before us shows that, even at other PPP airports cited by AERA, the actual CoD incurred sat in a band materially above the 9% cap AERA adopted in its tariff orders; yet AERA persisted with 9% as a normative input. This inconsistency undercuts the evidentiary foundation of the cap and discloses a departure from the building-block method, which demands grounded, record-based parameters rather than aspirational targets.
- 132.** This Tribunal has already ruled on the method of determining CoD in AERA Appeal No. 2 of 2021 (MIAL v. AERA), judgment dated 06.10.2023, wherein we set aside AERA's normative approach and directed adoption of the actual weighted-

average CoD, with forecasting for floating instruments and true-up.

- 133.** AERA's subsequent insistence on a 9% cap for MI Airport without identifying a material distinction or any supervening legal change disregards the binding precedent.
- 134.** The Section 13(1)(a)(iv) obliges the regulator to secure the "economic and viable operation of major airports." A CoD below actual market incidence achieved by transplanting a parent's credit or by cherry-picked comparators does not serve viability; it suppresses legitimate financing costs, strains debt covenants, and can destabilise the regulated enterprise, particularly in the ramp-up years of a greenfield asset. That outcome is antithetical to the statutory object.
- 135.** The Authority may expect the concessionaire to pursue efficient financing. But efficiency cannot be conflated with an imputed group rate or a flat cap detached from the SPV's own credit curve, security package, traffic risk, and dual-airport competitive context.
- 136.** On these principles, the fixation of 9% in the impugned order cannot stand. It misdirects itself by importing parental balance-sheet strength, misapplies comparators, ignores the dual-airport risk factor, and departs from binding authority without reasons. It also fails the statutory command of Section 13(1)(a)(iv) to maintain economic and viable operations.

- 137.** For avoidance of doubt, it is made clear that nothing prevents AERA from recognizing demonstrated refinancing gains or from disallowing imprudent debt costs (e.g., related-party premiums) where proved on record. What is impermissible is a pre-set ceiling that substitutes the regulator's preference for the operator's contracted market cost.
- 138.** In consequence, the CoD determination at 9% in the impugned order is set aside. AERA shall issue a revised determination in conformity with this opinion and with the ratio of MIAL (06.10.2023), and effect consequential adjustments to ARR and the tariff card.
- 139. In view of the aforesaid facts, reasons, and judicial pronouncements, we, hereby quash and set aside the decision of AERA to normatively cap the Cost of Debt at 9% for the First Control Period and to compute FRoR/ARR on that basis.**
- 140. We hereby direct AERA to consider the actual weighted average cost of debt at 10.45% , subject to true-up on an actual basis in the next control period, and to carry out all consequential recalculations of FRoR, ARR (including "T"), and the tariff card.**

**IV. Non-Consideration of Fee Payable to Operation and Maintenance (O&M) Contractor proposed to be incurred by appellant as an Operating and Maintenance Expense.**

- 141.** It is contended by counsel for appellant that AERA has not allowed the proposed cost of O&M Contractor/Airport Operator. This decision is under challenge in this AERA Appeal.
- 142.** Having heard the counsels for both the sides and looking to the **Concession Agreement (Annexure A-3)** especially **Article 17.1.1** thereof which reads as under:

***17.1. O&M obligations of the Concessionaire***

***17.1.1*** *During the Operation Period, the Concessionaire shall operate and maintain the Airport in accordance with this Agreement either by itself, or through O&M Contractors and if required, modify, repair or otherwise make improvements to the Airport to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:*

- 143.** In view of the aforesaid provision of the Concession Agreement, the Concessionaire-appellant itself can perform the function of O&M of Goa airport or the Concessionaire can appoint O&M Contractors.
- 144.** Looking to the facts of the case, it appears that the Concessionaire-appellant has proposed Airport Operator's Fees

projected to be 3% of the previous year's revenue. AERA has rejected this proposal mainly on the ground that this fees payable to Airport Operator/O&M Contractor will increase the cost for the users. The reasoning is given by AERA in the impugned order.

- 145.** It ought to be kept in mind that AERA cannot alter the terms of the Concession Agreement, AERA has to respect the Concession Agreement as it is, without any modifications. AERA cannot replace the terms of the Concession Agreement, even for better reasons. In fact, as per Section 13(1)(a) of the AERA Act, 2008, AERA has to consider the Concession Agreement.
- 146.** As per Section 13(1)(a)(vi) of the AERA Act, 2008, AERA has to determine tariff taking into consideration the concession offered. Meaning thereby to, the Concession Agreement has to be followed by AERA, no clause of the Concession Agreement can be altered, amended, abridged, or replaced by AERA for any reason whatsoever, the Clauses of the Concession Agreement should be read as it is by AERA.
- 147.** Hence, reading Article 17.1.1 of the Concession Agreement, it permits this appellant-Concessionaire to perform its obligation of O&M of the MI airport, Goa through O&M Contractors for which O&M Contractor is entitled to receive O&M Fees.
- 148.** Moreover, the **Article 5.2.5** of the **Concession Agreement** reads as under:

**"5.2.5** *Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of all EPC Contractors or O&M Contractors and execution of all EPC Contracts or O&M Contracts shall be subject to the prior approval of the Government of India from national security and public interest perspective, the decision of the Government of India in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Government of India. For the avoidance of doubt, it is expressly agreed that approval of the Government of India hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavor to convey the decision of Government of India thereon expeditiously. It is also agreed that the Authority and the Government of India shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement."*

- 149.** In view of the aforesaid approval to be taken from the Central Government, after the appointment of the O&M Contractor, we see no reason to disapprove the proposal of this appellant for appointment of Airport Operator/O&M Contractor.
- 150.** The MI Airport Limited, Mopa, Goa is a green field airport. The impugned order is for First Control Period and, therefore, during the initial stages, there are several types of teething problems

even for an expert body and, therefore, though the present appellant is chosen after due care and caution as an Airport Operator still, as per Concession Agreement, it is permissible to appoint O&M Contractor.

**151.** This aspect of the matter has not been properly appreciated by AERA while rejecting the proposal of the present appellant. We, therefore, quash and set aside the decision of AERA of disallowing the proposal of this appellant for appointment of O&M Contractor or AERA ought to have appreciated that even technically sound person requires help for several technical aspects, even one expert also requires help of another expert, to have more accuracy in the O&M and, therefore, it was rightly allowed under Article 17.1.1 of the Concession Agreement that a Concessionaire-appellant can appoint O&M Contractors. What is allowed by the Concession Agreement, cannot be taken away by AERA.

**152.** Now, the only thing left out is about the quantum of the O&M Contractor Fees and, therefore, the appellant may supply reasons and justification for O&M Contractor Fees, either by way of Probity Audit Report or by way of any other documents.

**153.** It ought to have been kept in mind by AERA that O&M Contractor's selection or replacement is always subject to prior approval of Government of India. Thus, the appointment of O&M Contractor must get approval from Central Government which will also be done by the present appellant thus, Clauses of

Concession Agreement 17.1.1 to be read with Clause 5.2.5 shall be followed by present appellant scrupulously and is permitted to appoint O&M Contractor and the appellant shall provide Probity Audit Report for justification of O&M Contractor's Fees.

- 154.** We are of the considered view that Article 17.1.1 of the Concession Agreement, read with the contractual definition of "O&M Expenses," authorizes the Concessionaire to discharge its operation-and-maintenance obligations either itself or through an O&M contractor, and that the consideration payable for such outsourced services forms part of allowable O&M expenses.
- 155.** In terms of Section 13(1)(a)(vi) of the AERA Act, the Authority is obliged to have due regard to the concession while determining tariff. A categorical disallowance of the O&M/Airport Operator Fee, merely because outsourcing is proposed, trenches upon the contractual framework and travels beyond AERA's remit.
- 156.** Moreover, **Article 5.2.5** stipulates that appointment of an O&M Contractor is subject to prior approval of the Government of India, inter alia on public-interest considerations. It is also noted from **Article 5.2.2** that the O&M contract being the Project Agreement, will also be subject to the review and comments from Government of Goa where such agreement is reviewed and also the approval is obtained, the legitimacy of outsourcing stands affirmed at the highest executive level; AERA must then accord due deference and proceed to evaluate the reasonableness of the fee within the building-block framework, rather than refuse recognition in limine.

**157. In view of the aforesaid facts, reasons, and judicial pronouncements, we hereby quash and set aside the decision of AERA to disallow the proposed Airport Operator/O&M Contractor fee from recognition as an allowable O&M expense on the mere ground that outsourcing would increase user charges. We hereby direct AERA to:**

- a.** acknowledge the appellant's entitlement under Article 17.1.1 of the Concession Agreement (Annexure A-3) to engage an O&M Contractor, subject to prior approval of the Government of India under Article 5.2.5;
- b.** provisionally include the Airport Operator/O&M Contractor fee as an allowable O&M expense in ARR computations for the First Control Period at the rate proposed by the appellant, and;
- c.** upon receipt of the executed contract, requisite governmental approvals, and supporting probity/benchmarking material, true-up the allowance on an actual basis in the succeeding control period.

V. **Treatment of License Fees, i.e., Revenue Share and Land License Fee accruing to the Appellant under the licenses granted to Independent Service Providers ('ISPs') undertaking Cargo, Ground Handling and Fuel Farm Services ('CGF') and License Fee from space licensed to airlines at the MI Airport as Aeronautical Revenue.**

**158.** Looking to the facts of the present case this Appellant has granted licences to Independent Service Providers ('ISPs') for undertaking services of cargo, ground handling and fuel ('CGF') at the MI Airport. In lieu of grant of such license, this Appellant receives License Fee from ISPs which consists of:-

- i. Revenue Share and;
- ii. Land License Fee, which is akin to the land rental.

**159.** Moreover, this Appellant has licensed space to airlines operating at MI Airport, which is utilised by such airlines to carry out their operations. In lieu of the space provided by this Appellant, airlines pay Land License Fee to GGIAL.

**160.** The Section 2 (a) of the AERA Act, 2008 sets out an exhaustive list of "aeronautical services". For ready reference, **Section 2 (a) of the AERA Act, 2008** reads as under:

**2. Definitions.** —*In this Act, unless the context otherwise requires, —*

**(a) "aeronautical service"** means any service provided—

- i. for navigation, surveillance and supportive communication thereto for air traffic management;*
- ii. for the landing, housing or parking of an aircraft or any other ground facility offered in connection with aircraft operations at an airport;*
- iii. for ground safety services at an airport;*
- iv. for ground handling services relating to aircraft, passengers and cargo at an airport;*
- v. for the cargo facility at an airport;*
- vi. for supplying fuel to the aircraft at an airport; and*
- vii. for a stake-holder at an airport, for which the charges, in the opinion of the Central Government for the reasons to be recorded in writing, may be determined by the Authority*

**161.** In view of the aforesaid definition which is exhaustive in nature, provisioning of land which enables the Appellant to earn License Fee does not form part of Section 2 (a) of the AERA Act, 2008. Therefore, AERA cannot expand the scope of "**Aeronautical Services**" under the AERA Act, 2008.

**162.** Even if land serves as an active enabler for ISPs and airlines to perform their services, the License Fees received by the Airport Operator, cannot be treated as revenue from aeronautical services. There is a distinction between services provided by Airport Operator-appellant and those provided by ISPs and airlines. The services provided by ISPs and airlines to the Airport

Users is entirely different from services performed by Airport Operator-Appellant. **AERA is issuing standalone Tariff Orders for the ISPs, who are operating at MI Airport, MOPA, Goa.**

**163. These “standalone Tariff Orders” especially meant for ISPs operating at MI Airport establishes the fact that such services are being rendered by the respective ISPs and not by the Airport Operator -Appellant.**

**164.** The **Clause 5.6** of the **AERA Tariff Guidelines, 2011** reads as under:

***5.6. Revenues from services other than aeronautical services (NAR)***

***5.6.2.*** *The Authority shall also include all revenues (including revenue share, royalty and dividend) earned by the Airport Operators from independent service provider(s) for service(s) provided for ground handling services relating to aircraft, passengers and cargo at a Major Airport; the cargo facility at a Major Airport; and supplying fuel to the aircraft at a Major Airport, for calculation of overall passenger yield.*

**165.** This Tribunal in **DIAL Vs. AERA-** AERA Appeal No.10 of 2012 judgment dated 24.04.2018, **MIAL Vs. AERA-** AERA Appeal No.4 of 2013, judgment dated 15.11.2018 which was upheld by

Hon'ble the Supreme Court of India in **DIAL Vs. AERA** reported in (2024) 1 SCC 716 and this tribunal's judgment dated 13.01.2023 in **DIAL Vs. AERA**- AERA Appeal No.7 of 2021 held that color of revenue from Aeronautical Service cannot get changed to that of revenue from Non-Aeronautical Service by an act of delegation or leasing out by the Concessionaire in terms of provisions of Concession Agreement in that case i.e., OMDA/SSA and in circumstances where AERA's Tariff Guidelines were inapplicable as expressly stated in paragraph 1.4 of the Tariff Guidelines. Hence, the judgments upon which reliance is placed by the learned counsel of FIA are of no help to FIA.

**166.** In view of the aforesaid Tariff Guidelines, the revenues earned from ISPs as revenue share or royalty or otherwise and the rentals from land and space licensed to the ISPs and airlines shall be treated as part of Revenue from services other than aeronautical services, to be utilized towards cross subsidization. Thus, AERA has not properly appreciated the aforesaid judgments and the provisions of AERA Tariff Guidelines while deciding the aforesaid issue of treatment of license fee from ISPs and for the license fee received from space licensed to the airlines, and they have been wrongly treated as Revenue from aeronautical services.

**167. We, therefore quash and set aside the decision of AERA, to treat license fee received from ISPs undertaking CGF Services and Airlines as Aeronautical Revenue.**

**168. We, hereby direct AERA to treat License Fees received from ISPs and Land License Fee accruing to the appellant under the licenses granted to ISPs for CGF services and License Fee from Space License to airlines at MI Airport Limited, MOPA, GOA, as a part of revenue from services other than aeronautical services and the same shall be utilized towards cross-subsidization i.e. these revenues earned from ISPs and Land License Fees received from airlines shall be treated as non-aeronautical revenue (NAR).**

**VI. Treatment of Interest Income as a part of Non-Aero Revenue at the time of true-up of First Control Period.**

**169.** It is contended by Mr. Ramji Srinivasana, learned senior counsel for the appellant that the interest income earned by this appellant cannot be treated as a part of non-aeronautical revenue. In fact, this issue has been decided by this Tribunal in more than in one decision and has treated interest income as the same has not been relatable to rendition of any service and, therefore, it cannot be included as non-aeronautical revenue for cross-subsidization.

**170.** We are in full agreement with the contentions raised by the appellant. The income from interest earned by this appellant is not by rendition of aeronautical services. Similarly, income earned from interest is not because of rendition of non-

aeronautical services. Therefore, interest income should be treated as "**Other Income**" and the same cannot be used for cross-subsidization.

**171.** In fact, the interest income earned by the appellant is outside the purview of AERA's jurisdiction. In view of the decisions rendered by this Tribunal in case of DIAL in AERA Appeal No. 1 of 2021 dated 21.07.2023, in AA 2/2021 in case of MIAL dated 06.10.2023 and in case of GHIAL in AERA Appeal No.4 of 2021 judgment dated 14.02.2024 and the relevant para of the aforesaid judgements have already been incorporated in preceding paras of this judgement. As per these judgments, the interest income is not relatable to rendition of any service and, therefore, it should be treated at "**Other Income**" and, therefore, it is outside the jurisdiction of AERA under the AERA Act, 2008.

**172.** It has been held by this Tribunal in case of **DIAL Vs. AERA** in **AERA Appeal No.1 of 2021** judgment dated **21.07.2023** in **paragraph no. 88** as under:

**"88.** *The contention raised for the counsel for Respondent No.1 to the effect that the income of "dividend" and "interest" are in fact from the income derived by the respondent by performing aeronautical and non-aeronautical services and, therefore, "other income" has rightly been treated as part of revenue, from "Revenue Share Assets". It is also contended by the counsels for respondents that the "dividend income" as a part of other income is a part of 3rd Control Period because dividend income is earned by DIAL*

*through joint ventures set up with other group entities of DIAL who are carrying non-aeronautical related services and other non-aeronautical services provided in OMDA which if carried out by DIAL itself, would have earned surplus non-aeronautical income. These contentions are not accepted by this Tribunal mainly for the reason that "other income" is not relatable to and generated from the provision of any service by this Appellant and, therefore, it cannot be considered for cross subsidization of aeronautical charges (i.e. as a part of revenue from Revenue Share Assets)."*

**173.** In view of the aforesaid decision, if revenue is earned by Airport Operator without rendition of a service, are outside of AERA's regulatory purview and the contention of AERA that dividend and interest income earned by performing aeronautical and non-aeronautical services and they are performed by the Airport Operator itself and this contention was not accepted by this Tribunal.

**174.** It has been held by this Tribunal in the case of **MIAL Vs. AERA** in **AERA Appeal No.2 of 2021** judgment dated **16.10.2023** especially in **paragraph nos. 209 and 210** as under:

**"209.** *Respondent No.1 has raised the contention that the income of "dividend" and "interest" are in fact from the income derived by the respondent by performing aeronautical and non-aeronautical services and, therefore, "other income" has rightly been treated as part of revenue, from "Revenue Share Assets". It is also contended by the counsels for respondents that the "dividend income" as a part of other income is a part of 3rd Control Period because dividend income is earned by MIAL through joint ventures set up with other group entities of MIAL who are carrying non-*

*aeronautical related services and other non-aeronautical services provided in OMDA which if carried out by MIAL itself, would have earned surplus non-aeronautical income. These contentions are not accepted by this Tribunal mainly for the reason that "other income" is not relatable to and generated from the provision of any service by this Appellant and, therefore, it cannot be considered for cross-subsidization of aeronautical charges (i.e. as a part of revenue from Revenue Share Assets).*

**210.** *Learned Senior Counsel for the respondent has further contended that interest income is derived by investing surplus funds which is primarily from aeronautical services and, therefore, interest income is a part of revenue from revenue share assets. This contention is also not accepted by this Tribunal mainly for the reason that "bank interest", "interest on Fixed Deposit Receipts" (FDRs) are not included in Schedule-6 of OMDA because they are not arising out of Revenue Share Assets. Such type of income is to the appellant because of Cash Management Process (CMP). In fact, there is no legal base to treat "other income" as a part of revenue, from "Revenue Share Assets" for calculation of cross-subsidization (for calculation of "S" factor)."*

**175.** It has been held by this Tribunal in **GMR Hyderabad International Airport Limited Vs. AERA** in **AERA Appeal No.4 of 2021** judgment dated **14.02.2024** in **paragraphs nos. 346 and 347** as under:

**"346.** *The impugned decision of AERA treating income of dividend and interest income from Cargo Subsidiary as aeronautical revenue and from duty free subsidiary as non-aeronautical revenue is not tenable in law mainly for the reason that the interest income and interest from treasury (e.g. income from fixed deposit/mutual fund etc.) in general, accruing to*

*HIAL is not relatable to and generated from the provision of any service being provided by HIAL. This aspect of the matter has not been appreciated by AERA while passing the impugned order and hence, the same deserves to be quashed and set aside for the aforesaid point.*

**347.** *In the present case, AERA's decision to treat dividend and interest income received by HIAL from investments made in HMA CPL (providing cargo service) as aeronautical revenue is based on a misconceived premise that because AERA has decided to treat cargo services as aeronautical in nature any income incidental therefrom is also to be treated as aeronautical. Similarly, for investment made by HIAL in other entity which provides duty free services, AERA has proceeded to treat such income as non-aeronautical in nature and consider it for cross subsidization. HIAL itself does not provide these services and the interest income received by HIAL does not correspond to any services rendered by HIAL and as such, it is beyond the regulatory ambit of AERA.*

**176.** In view of the aforesaid decisions, the revenue earned by the Airport Operator without rendition of any services, either aeronautical or non-aeronautical, the same shall be treated as Other Income.

**177.** This aspect of the matter has not been properly appreciated by AERA and we, therefore, quash and set aside the decision of AERA to treat interest income as a part of non-aeronautical revenue. We, hereby direct AERA to treat interest income as **"Other Income"** and AERA has no power, jurisdiction and authority to control "Other Income" i.e. income from interest.

**178.** Earlier decisions rendered by this Tribunal are binding upon AERA. AERA must have followed the decision given by this Tribunal. All the decisions given by this Tribunal are binding even in the cases where appeal has been preferred by AERA and no stay has been granted by Hon'ble the Supreme Court of India. The Judgments are delivered by this Tribunal not only for reading but for understanding it and for following the same.

**179.** Though this Tribunal is not bound to follow strictly the provisions of the code of civil procedure, 1908. However, there are certain salient features of the Code, which apply to legal standards prevailing in India, it would be wise to revert to Order 41 Rule 5 (1) of the Code of Civil Procedure, 1908, which reads as under:

***"ORDER XLI APPEALS FROM ORIGINAL DECREES..***

*Stay of proceedings and of execution*

***5. Stay by Appellate Court.—***

***(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.."***

**180.** It has been held by Hon'ble the Supreme Court in ***Collector of Customs v. Krishna Sales (P) Ltd.***, reported in **1994 Supp (3) SCC 73** as observed in **para no 6**, wherein the Hon'ble Supreme Court has held as follows:

" 6. According to the said para 4, the goods will not be released even where the party succeeds in cases where the Customs authorities decide to go in appeal before the Tribunal or the Supreme Court. They will consider the issuance of such certificate only after the decision of the Tribunal or the Supreme Court, as the case may be. The learned counsel for the respondent characterises the said direction as arbitrary and contrary to law. We see the force in his submission. **If the authorities are of the opinion that the goods ought not to be released pending the appeal, the straightforward course for them is to obtain an order of stay or other appropriate direction from the Tribunal or the Supreme Court, as the case may be. Without obtaining such an order they cannot refuse to implement the order under appeal. As is well-known, mere filing of an appeal does not operate as a stay or suspension of the order appealed against.** Moreover, such detention is likely to create several complications relating to the demurrage charges besides the possible deterioration of the machinery and goods. We hope and trust that the Collector of Customs, Bombay shall appropriately revise the said public notice in the light of the observations made herein. If he does not do so, there is a likelihood of the Customs authorities being themselves made liable for demurrage charges in appropriate cases."

**181.** It has been held by Hon'ble the Supreme Court in ***Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.***, reported in **(2005) 1 SCC 705** as observed in **Para no 8**, which reads as under:

“8. **It is well settled that mere preferring of an appeal does not operate as stay on the decree or order appealed against nor on the proceedings in the court below.** A prayer for the grant of stay of proceedings or on the execution of decree or order appealed against has to be specifically made to the appellate court and the appellate court has discretion to grant an order of stay or to refuse the same. **The only guiding factor, indicated in Rule 5 aforesaid, is the existence of sufficient cause in favour of the appellant on the availability of which the appellate court would be inclined to pass an order of stay.** Experience shows that the principal consideration which prevails with the appellate court is that in spite of the appeal having been entertained for hearing by the appellate court, the appellant may not be deprived of the fruits of his success in the event of the appeal being allowed. **This consideration is pitted and weighed against the other paramount consideration: why should a party having succeeded from the court below be deprived of the fruits of the decree or order in his hands merely because the defeated party has chosen to invoke the jurisdiction of a superior forum.** Still the question which the court dealing with a prayer for the grant of stay asks itself is: why the status quo prevailing on the date of the decree and/or the date of making of the application for stay be not allowed to continue by granting stay, and not the question why the stay should be granted.”

**182.** It has been held by Hon’ble the Supreme Court in ***Shreenath Corpn. v. Consumer Education & Research Society***, reported in **(2014) 8 SCC 657** as observed in **para no 10**, wherein the Hon’ble Supreme Court has observed that hearing of an Appeal and Grant of stay stand on different footings:

**"10.** *It is not the case of any of the appellants that the Consumer Forum, including the State and National Commissions, has no power to pass interim order of stay. If the National Commission after hearing the appeal of the parties in its discretion wants to stay the amount awarded, it is open to the National Commission to pass an appropriate interim order including conditional order of stay. Entertainment of an appeal and stay of proceeding pursuant to order impugned in the appeal stand on different footings, at two different stages. One (pre-deposit) has no nexus with merit of the appeal and the other (grant of stay) depends on prima facie case, balance of convenience and irreparable loss of party seeking such stay."*

**183.** It has been held by Hon'ble the Supreme Court in ***Madan Kumar Singh v. Distt. Magistrate, Sultanpur***, reported in **(2009) 9 SCC 79** as observed in **para no 14**, which reads as under:

**14.** *It is trite to say that mere filing of a petition, appeal or suit, would by itself not operate as stay until specific prayer in this regard is made and orders thereon are passed.* *There is nothing on record to show that any stay was granted in favour of any party, restraining the respondents not to deliver the papers of the truck to the appellant. It would go to show that the respondents were unlawfully holding back the papers with them, for which, otherwise they were not entitled to do so.*

**184.** It has been held by Hon'ble the Supreme Court in ***Naguba Appa v. Namdev***, reported in **1950 SCC 726** as observed in **para no 4**, which reads as under:

**"4.** *Mere filing of an appeal does not suspend the decree of the trial Judge and unless that decree is altered in any manner by the court of appeal, the pre-emptor is bound to comply with its directions. In our opinion,*

*the High Court was right in holding that the pre-emptor's suit stood dismissed by reason of his default in not depositing the pre-emption price within the time fixed in the trial court's decree."*

- 185.** That the aforesaid proposition of law has again been recently reiterated by the Hon'ble Supreme Court in the case of "**Sanjiv Kumar Singh versus The State of Bihar & Ors**", in **SLP (C) No. 19038 of 2022** vide order dated **23-01-2023** has held as follows:

*"...Though, such contention is put forth by the respondents, **keeping in view the provisions as contained in Order 41 Rule 5 of CPC, unless the appeal is listed and there is an interim order, the mere filing of the appeal would not operate as a stay.** If that be so, the judgment and decree dated 25.08.2021 would enure to the benefit of the petitioner as on today and the rejection of the NOC only on the ground that the appeal has been filed, would not be justified. In that view, the High Court was also not justified in rejecting the petition. Accordingly, the Order dated 18.08.2022 passed by the High Court of Patna in Civil Writ Jurisdiction Case No. 11593 of 2022 is set aside..."*

- 186.** It is trite to state that it is elementary principle of law that the determinations of this Tribunal **binds AERA** unless and until stayed or set aside by the Hon'ble Supreme Court. The mere pendency of an appeal does not dilute the ratio decidendi. Where no interim stay is in force, the Tribunal's pronouncement operates proprio vigore and must be implemented inter partes in the very matter decided and, on parity, in cognate cases presenting the same point.

- 187.** That non-adherence to a binding precedent constitutes a jurisdictional error and a breach of judicial discipline in the statutory hierarchy. The emerging practice of deferring obedience on the footing of a pending but unstayed appeal is deprecated. If the Authority considers a prior ratio inapplicable, it must identify the material distinctions, record reasons, and, where necessary, seek clarification; it may not simply ignore the ruling.
- 188.** The AERA tariff framework already contains a safety-valve in the form of true-up. Should the Hon'ble Supreme Court subsequently vary the governing law, symmetrical adjustments can be effected at the next determination without unsettling settled accounts. The availability of true-up removes any rationale for holding back compliance with binding Tribunal law in the interim.
- 189.** In the present case, the binding pronouncements dated 21.07.2023 and 06.10.2023 were in the Authority's knowledge when it framed the impugned order. In the absence of a stay, AERA is obliged to align its determinations with those rulings both for this appellant and for other similarly situated airports.
- 190.** Persistent non-compliance breeds multiplicity of proceedings compels the Tribunal to revisit identical questions, and undermines the rule of law and regulatory certainty values that are foundational in a capital-intensive sector operating under long-term PPP concessions.

- 191.** Delay also inflicts irremediable economic prejudice as airlines and passengers are inherently transient; non-aeronautical users (F&B, retail) are diffuse; and over a span of four- or five-years retrospective recovery becomes, in practice, illusory. Deferral of compliance therefore distorts competitive dynamics and burdens the very users whom the statute seeks to protect.
- 192.** Accordingly, AERA shall give immediate effect to the controlling decisions of this Tribunal specifically the judgments dated 21.07.2023, 06.10.2023 and 14.02.2024 in this matter and in all like cases, subject only to any express order to the contrary passed by the Hon'ble Supreme Court. If the law is later modified, AERA shall apply the true-up mechanism to reconcile accounts in the succeeding control period.
- 193.** For future guidance, the Authority shall ensure internal compliance protocols so that field-level tariff teams apply binding Tribunal ratios uniformly. Wilful non-compliance may invite consequences in law. We forbear further observation in the present appeal in the expectation of strict adherence hereafter.
- 194.** The gravamen is apparent as the regulatory inconsistency breeds uncertainty, and uncertainty is the sworn enemy of orderly, civil, corporatized development of markets, institution and also society, in facts of the present case a greenfield airport has been developed on PPP basis.

- 195.** The State, acting in its sovereign capacity through a competitive bid, conferred on the appellant a concession to operate and maintain the airport for 40 years, extendable by a further 20 years. That long tenure framework is not incidental; it is the very investment inducement. The appellant's substantial outlays in conceptualizing, financing, constructing and commissioning the airport were made in reliance on that sovereign compact. In such a setting, regulatory certainty and fidelity to the concession are not matters of grace but obligations flowing from the rule of law.
- 196.** The AERA Act reflects this discipline under Section 13(1)(a) and in particular clause (vi) requires the Authority, in determining tariff, to have regard to the concession offered. That statutory command is a recognition that, in PPP infrastructure, regulation must operate within the contractual architecture the State itself has fashioned. Prudence review may examine necessity, efficiency and quantum; it may not rewrite bargain terms or impose post-bid normative that unsettle agreed risk allocation or asset configuration.
- 197.** Any tariff order that cuts across the concession's express permissions and risk allocation strays beyond jurisdiction. To say so is not to elevate contract over statute; it is to give effect to the statute's own direction that the concession is a mandatory relevant consideration. AERA Ignoring it whether by prescribing ratios alien to the approved plan, by disallowing contract-permitted O&M arrangements, or by importing ex-post

benchmarks constitutes a jurisdictional error and corrodes legitimate expectations.

- 198.** The public interest runs the mutually cooperative manner. Airports are capital-intensive, debt-funded assets. Regulatory whiplash changing methodologies mid-stream, capping financial parameters divorced from record, or recasting classifications inflates the cost of capital, distorts business plans, and, in the end, burdens users. In a first control period, with traffic nascency, operational ramp-up and dual-airport dynamics, the law expects the regulator to accommodate practical constraints through the building-block method and symmetric true-up, not by executive fiat.
- 199.** The concession agreement vests the construction, development, operation and maintenance of the MI airport in the appellant for the foreseeable future, subject to regulatory oversight consistent with statute and contract. That is the sovereign promise that enabled financing and delivery of the asset. AERA's decisions must therefore balance all stakeholders' i.e. passengers, airlines and operator within that frame. Where the Authority departs from the concession without lawful basis, it not only undermines certainty but also defeats the very legislative purpose of creating an appellate regime tethered to transparent, consistent predictable conduct based on rule of law.
- 200.** In sum, three rules follow. First, the concession's risk-allocation and operational liberties form the baseline for tariff determination. Second, prudence review means testing necessity and quantum on record, not re-engineering the project. Third, when adjustment is

warranted, the proper instruments are reasoned benchmarking and transparent true-up, not post-hoc prescriptions that unsettle the PPP bargain.

201. Keeping in mind these peculiar facts of the stakeholders at the airport, the judgment given by TDSAT must be followed scrupulously, whenever no stay is granted by the Hon'ble the Supreme Court of India in an appeal preferred by AERA against the judgment of TDSAT.
202. Thus, AERA cannot wait till the final decision is given by the Hon'ble the Supreme Court of India to comply with directions given by TDSAT because sometimes airlines are winding up and those passengers will not be available at all for recovery. **AERA should not have treated the mere filing of appeal as a stay granted by the Hon'ble the Supreme Court of India.**
203. Truing-Up of the over collection and under collection can always be considered with time value during the next Control Period and as a routine phenomena, truing-up is being done by AERA in almost all Tariff Orders for different airports in India.
204. **In view of the aforesaid facts, reasons, and judicial pronouncements; we, hereby, quash and set aside the decision of AERA to classify and include the appellant's interest/treasury income as non-aeronautical revenue for ARR computation and cross-subsidisation.**
205. **We hereby direct AERA to treat interest/treasury income as "Other Income," and to exclude it from NAR .**

**VII. Determination of Rs.509.47 Crores as a minimum threshold of Non-Aero Revenue for First Control Period and deciding to undertake true-up based on actuals in the Second Control Period, only if revenue exceeds the minimum threshold.**

- 206.** It has been vehemently contended by Mr. Ramji Srinivasan, learned senior counsel for the appellant that to decide minimum threshold of non-aeronautical revenue, is beyond the power, jurisdiction and authority of AERA is de hors the provisions of AERA Act, 2008 and de hors the AERA Tariff Guidelines, 2011, and is also in violation of the provisions of the Concession Agreement.
- 207.** We have heard the counsels for both sides at length and it appears that AERA has to take into consideration non-aeronautical revenue for cross-subsidization because of Hybrid-Till Mechanism to be followed while deciding tariff as per Section 13(1) of the AERA Act, 2008 for which guidance has been given in AERA Tariff Guidelines, 2011 keeping in mind the Concession Agreement by AERA.
- 208.** Looking to the provisions of AERA Act, 2008, whenever actual figures are available for any expenditure or revenue, AERA has to accept the actual figures instead of accepting hypothetical figures of expenditure or revenue. Herein the facts of the present case, AERA has determined the minimum threshold of non-aeronautical revenue by green field airport- Manohar

International Airport, Goa while deciding tariff for the First Control Period at Rs.509.47 Crores.

- 209.** This is not within the purview of AERA, AERA is acting in excess of its jurisdiction, it cannot presume the minimum revenue as non-aeronautical revenue. Actual non-aeronautical revenue should have been appreciated by AERA instead of Rs.509.47 Crores as non-aeronautical revenue.
- 210.** While AERA may forecast revenues from services other than Aeronautical Services through scrutiny of bottom-up projections of such revenues prepared by the Appellant, benchmarking of revenue levels, commissioning experts to consider where opportunities for such revenues are under exploited, etc. as provided for in clause 5.6.1 of the Tariff Guidelines, however, it must ultimately consider the revenues "**received**" in accordance with Section 13(1)(a)(v) of the AERA Act, 2008. In any case, the benchmarking referred to in the Tariff Guidelines, refers to benchmarking for the purpose of projections and not set a threshold or benchmark of non-aeronautical revenue that the appellant must achieve. AERA has acted in excess of its statutory mandate by prescribing Rs.509.47 Crores as the minimum threshold of NAR for the First Control Period and deciding that it shall take True Up only, if actual NAR exceeds, such minimum threshold.
- 211.** The figure of Rs.509.47 Crores is decided arbitrarily and whimsically by AERA as minimum threshold of non-aeronautical

revenue and that too for the very First Control Period. There is no history of footfall at a brand-new airport. There is no history of aeronautical or non- aeronautical revenue earned by this brand-new airport though everything appears to be nice and accurate at the airport but the revenue cannot be presumed by AERA. The actual figures ought to have been considered and later on true- up can be given in the next Control Period.

- 212.** There cannot be a minimum threshold of non- aeronautical revenue. It has been observed by AERA in impugned order that true-up will be given in Second Control Period only if revenue exceeds minimum threshold, this is also beyond the power, jurisdiction and authority of AERA under the AERA Act, 2008 to be read with AERA Guidelines, 2011 to be read with provisions of the Concession Agreement.
- 213.** The minimum threshold of non- aeronautical revenue could not have been determined by AERA. Even as per the Concession Agreement, AERA should have determined only aeronautical charges for the use of aeronautical services. Fixing the minimum non-aeronautical revenue, tantamount to assuming more powers than what is given under Section 13(1) of the AERA Act. AERA can decide aeronautical charges but it cannot decide the minimum aero revenue under the provisions of AERA Act, 2008.
- 214.** For the ready reference, **Section 13 (1) (a) of the AERA Act, 2008** reads as under:

*“13. Functions of Authority. - (1) The Authority shall perform the following functions in respect of major airports, namely:-*

*(a) to determine the tariff for the aeronautical services taking into consideration-*

*(i) the capital expenditure incurred and timely investment in improvement of airport facilities;*

*(ii) the service provided, its quality and other relevant factors;*

*(iii) the cost for improving efficiency;*

*(iv) economic and viable operation of major airports;*

*(v) **revenue received from services other than the aeronautical services;***

*(vi) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise;*

*(vii) any other factor which may be relevant for the purposes of this Act:*

*Provided that different tariff structures may be determined for different airports having regard to all or any of the above considerations specified at sub-clauses (i) to (vii);”*

**215.** In view of the aforesaid provision of Section 13(1)(a)(v) of the AERA Act, 2008, AERA has to appreciate “**revenue received**” from services other than aeronautical services, meaning thereby to, AERA has to accept the figures of revenue from services other than aeronautical services, as it is. AERA cannot fix minimum non-aeronautical revenue, it is beyond the powers conferred upon AERA under Section 13 of the AERA Act, 2008.

**216.** Nowhere, neither in AERA Act, 2008 nor in AERA Guidelines, 2011 nor under the Concession Agreement, AERA has been conferred with a power to decide/determine minimum non-aeronautical revenue and nowhere power has been given to AERA for truing up

of non-aeronautical revenue only if such revenue exceeds the minimum threshold at the time of determination of tariff for Second Control Period.

- 217.** The Manohar International Airport is a new green field airport and slowly gaining pace for its operation and development. There is no data relating to passenger footfall. Similarly, there is no data for non- aeronautical revenue and AERA is deciding for the first time, the tariff for this new airport that is MI Airport, Goa and, therefore, it is absolutely arbitrary and patently illegal for AERA to decide minimum threshold of non-aeronautical revenue.
- 218.** In fact, even for brown field airport, AERA has no power to specify minimum threshold of non-aeronautical revenue because Section 13 of the AERA Act, 2008 does not permit AERA to presume/decide minimum threshold of non-aeronautical revenue because under this section, there is no distinction between brown and green field airports.
- 219.** Thus, neither for brown nor for green field airports and neither in first nor subsequent control periods, AERA has power, jurisdiction and authority to determine minimum threshold of non-aero revenue and to decide that in next Control Period true-up will be given only if the revenue exceeds the minimum threshold.
- 220.** Looking to paragraphs 9.2.19 and 9.2.21 of the impugned order, AERA has pointed out that Airport Operator has not fully explored the potential for generating non-aeronautical revenues at the MI Airport and there is a need for this appellant to focus for increasing

non-aeronautical revenues by exploring innovative approaches which are being implemented as base practices from comparable airports.

- 221.** These types of observations are not required for determination of minimum non-aeronautical revenue otherwise there will be no end for AERA for micro-planning of the non-aeronautical revenue. AERA cannot decide that there must be a minimum particular amount of non-aeronautical revenue, to be earned by an Airport.
- 222.** AERA has never fixed the minimum threshold of non-aeronautical revenue for Mumbai, Delhi, Bangalore, Hyderabad, etc. Airports nor has AERA fixed the minimum non-aeronautical revenue which are being operated by AAI. This experiment of deciding/determining minimum non-aeronautical revenue is nowhere implemented by AERA except for this airport i.e. Manohar International Airport, Goa.
- 223.** It ought to be kept in mind by AERA that such type of arbitrary or speculative determination of minimum threshold of non-aeronautical revenue, below which, it will be forced to bear the burden of under recovery, by the airport operator, will have an adverse effect on economic and viable operations of the airport.
- 224.** In fact, the exercise of "**truing-up projections based on actuals**", is an essential regulatory practice to account for any over recovery and any under recovery. Such mechanism is

recognized and has been followed by AERA while exercising its power of tariff determination for almost all airports except MI Airport, Goa and, therefore, the practice which is followed by AERA for rest of the airports in India of "**truing-up projections based on actuals**" should be adhered to by AERA with respect to non-aeronautical revenues also.

**225.** The proposal for the same has already been given in MYTP for MI airport. The appellant has already given estimated non-aeronautical amount of Rs.401.16 Crores in the First Control Period "FY 2023-2028". The appellant has already given **non-aeronautical activities** at GGIAL in its MYTP for MI Airport had estimated to earn non-aeronautical revenue of Rs.401.16 Crores in the First Control Period. These non-aeronautical activities include:

- a) *In Flight Kitchen*
- b) *Retail*
- c) *Car Park*
- d) *Advertisement*
- e) *Food and Beverage*
- f) *Duty Free*
- g) *Lounge*
- h) *Rentals*

**226.** For each of the aforesaid activities, details have been given in MYTP by the appellant. With the help of this figure of Rs.401.16

crores as non-aero revenue, the calculation of ARR should have been done on the basis of following formula:

$$\text{ARR}_t = (\text{FRoR} \times \text{RAB}_t) + \text{D}_t + \text{O}_t + \text{T}_t - \text{NAR}_t$$

227. In view of the aforesaid calculation, determination of tariff shall be done by AERA which is subject to true-up in Second Control Period based on actual non-aeronautical revenue. The concept of minimum threshold of non-aeronautical revenue in the impugned order dated 07-12-2023 at Annexure A-1 to the memo of this appeal is hereby quashed and set aside.
228. **For the aforesaid reasons and looking to the provisions of the AERA Act, 2008 to be read with AERA Tariff Guidelines, 2011 to be read with Concession Agreement (Annexure A-3), we hereby quash and set aside decision of AERA for determination of Rs.509.47 Crores for minimum threshold for non-aeronautical revenue for First Control Period.**
229. **We also quash and set aside the decision of AERA to undertake true-up based on actual in Second Control Period only if the revenue exceeds the minimum threshold.**
230. **We hereby direct AERA the true-up exercise for the next Control Period shall be based upon actual non-aeronautical revenue irrespective of the fact that whether it exceeds or not, the minimum threshold of Rs.509.47 Crores, as fixed by AERA towards non-aeronautical revenue.**

**VIII. Non-Consideration of 30% of revenues from non-aeronautical revenue (NAR) as a part of Aero Revenue Base while determining Aeronautical Taxes.**

- 231.** It is contended by Mr. Ramji Srinivasan, learned senior counsel on behalf of the appellant that this appellant had proposed and requested AERA to consider 30% of revenues from services, other than aeronautical services that is non- aeronautical revenue as a part of aeronautical revenue for computing 'T'.
- 232.** Counsel for appellant has pointed out that this proposal though it was based on several decisions rendered by this Tribunal in different AERA Appeals, the same has not been accepted by AERA and this decision is under challenge in this AERA Appeal.
- 233.** Having heard counsels for both sides and looking to the facts and circumstances of this case, it appears that the calculation of the ARR has been mentioned in Clause 4.3 of Tariff Guidelines (Annexure A-3), the said formula reads as under:

$$\text{"ARR} = (\text{FRoR} \times \text{RAB}) + \text{D} + \text{O} + \text{T} - \text{NAR}"$$

- 234.** In the aforesaid formula, the calculation of 'T' which stands for Tax affects the ARR, the aforesaid issue has been argued at length in previous **AERA Appeal No.1 of 2021** and we have already decided this issue vide our judgment dated **21.07.2021** in case of **DIAL Vs. AERA** which reads as under:

*"135. We are in full agreement with the contention of this appellant mainly for the reason that...:*

*c. Once the amount of "S-factor" which is 30% of the gross revenue generated from Revenue Share Asset becomes part and parcel of the target revenue, it also having a color of aeronautical revenue and, therefore, tax-T ought to be calculated even upon amount equal to "S" factor.*

**145.** *It ought to be kept in mind that in the formula of Target Revenue ( $TR_i = RB_i \times WACCI + OMi + Di + Ti - Si$ ), T is to be calculated as an amount equal to corporate taxes on earnings pertaining to aeronautical services as defined in SSA meaning thereby to irrespective of the fact that tax is actually paid or not, but, amount equal to corporate taxes on the earnings pertaining to aeronautical services (including upon the amount of S-factor should be added as T in the formula of Target Revenue) and, therefore, one of the reason given by AERA for the aforesaid issue that DIAL is not likely to pay income tax on the revenue earned during the 3rd Control Period is devoid of any merit. It has been further observed by AERA in the impugned order that as and when DIAL will pay the Income Tax for the 3rd Control Period in the true up process in the next control period, the said amount of tax will be taken into consideration. This observation is also devoid of any merit for the reason that in the formula of target revenue as stated hereinabove, the component of an amount equal to "T" has to be added and the methodology to calculate "T" is an amount equal to corporate taxes on earnings pertaining to aeronautical services (including the amount upon "S" factor), irrespective of the fact that whether actually the taxes are paid or not. The*

*payment of tax to income tax authority and calculation of target revenue are two different things. The formula of a target revenue is an agreed formula as per the agreements between the 155 appellant and the Government of India. Thus, the T factor is equal to an amount of corporate taxes. This definition cannot be amended nor the formula can be amended by AERA. AERA has presumed that T is equal to amount of corporate taxes paid by the appellant. This definition cannot be amended nor the formula can be amended by AERA. AERA has presumed that T=corporate taxes paid by appellant. This addition of the words, neither in the definition nor the formula is permissible because it is an agreement between the appellant and the Government of India. We, therefore, quash and set aside observations of AERA for 2nd Control Period as well as for 3rd Control Period, so far as they are related to exclusion of "S" factor as part of aeronautical base, while determining aeronautical taxes (i.e. T). We, hereby hold to include "S"-factor as part of aeronautical revenue base while determining aeronautical taxes (i.e. T), for 2nd as well as 3rd Control Period. Thus, in view of the aforesaid facts and reasons, Issue No. IV is answered in affirmative. "S-factor" should be considered as a part of Aeronautical Revenue Base while determining Aeronautical 156 taxes (i.e. T), and consequently true up has to be given for the earlier control periods also."*

- 235.** It has been held by this Tribunal in **AERA Appeal No.2 of 2021** judgment dated **16.10.2023** in case of **MIAL Vs. AERA** especially **paragraph 390** which reads as under:

**"390.** *We do not agree with the aforesaid reasons by AERA mainly for the reason that because the target revenue as per the aforesaid formula is determined, based on aeronautical building block post cross subsidy of 30% revenue from Revenue Share Assets and, therefore, out of total target revenue, 30% has been recovered from the revenue generated by JVC from Revenue Share Assets. In view of this formula of Target Revenue, it is abundantly clear that in a recovery of Target Revenue for aeronautical services, "S-factor" is one of the mechanism of calculation in the formula of TR thus, the amount of "S-factor" partakes the character of aeronautical revenue and, therefore, once the part of aeronautical revenue has been recovered from 30% of revenue from Page 246 of 253 Revenue Share Assets, the effect of "S-factor" should also be given in "T" (i.e. corporate tax pertaining to aeronautical services)."*

**236.** It has been held by this Tribunal in **AERA Appeal No. 4 of 2021** vide judgment dated **14.02.2024** in **paragraph nos. 418-421** thereof which reads as under:

**"418.** *In view of the aforesaid decision, the amount of 30% of Non-Aeronautical Revenue (NAR) partakes in the character of Aeronautical Revenue and, therefore, in case of HIAL, the tax calculated on NAR ought to be included in "T". NAR becomes part and parcel of ARR and has a colour of aeronautical revenue when used for cross-subsidization of Aeronautical Revenue. For ready reference it is pertinent to peruse the formula for the same which reads as under:*

$$\text{"ARR} = (\text{FRoR} \times \text{RAB}) + \text{D} + \text{O} + \text{T} - \text{NAR}"$$

**419.** *Thus, ARR is determined, based on aeronautical building blocks, post cross-subsidy of NAR, meaning thereby to part of aeronautical revenue has been recovered from non-aeronautical revenue (NAR). In view of this formula for arriving at ARR, it is amply clear that NAR is a mechanism of recovery of ARR. In view of these facts, NAR is a subset of Aeronautical Revenue. Thus, once the part of Aeronautical Revenue has been recovered from NAR, the effect of NAR should always be given in "T".*

**420.** *Looking to Clause 5.5 of the Tariff Guidelines, (which has been incorporated in para 395 of this judgment), AERA has to compute taxation by taking into consideration all incomes utilized in ARR. Therefore, as NAR is also used for computing the ARR, the same ought to have been taken into account while computing taxation.*

**421.** *Computation of ARR involves reduction of aeronautical building blocks, therefore, taxation should be computed on aggregate of aero building blocks before it is reduced by NAR. Much has been argued out by the Respondent No.1 that consideration of 30% Non-Aeronautical profit before tax (PBT) will result in artificial tax benefit or reduction in crosssubsidy. This contention is misconceived and not tenable at law. This Tribunal has considered this contention and rejected the same in our judgment and order dated 21st July 2023 in AERA Appeal No.1 of 2021 in the case of DIAL Vs. AERA in paragraph number 140 and 141 as follows:*

*"140. AERA's contention that including S-Factor in calculation of Tax will result in an artificial tax benefit and overstate aeronautical tax is also misconceived and misleading. S factor has been considered in aeronautical Profit & Loss to arrive at Aeronautical Profit Before Tax (PBT) and the allocation of actual tax paid by DIAL is in the ratio of Aeronautical and Non-Aeronautical PBT and thus will not result in creation of artificial tax. Further, inclusion of S Factor in Tax and consequent consideration of S Factor as aeronautical revenue will provide true aeronautical profit and accurate base to calculate 'T'.*

*141. AERA's observation regarding reduction in the level of cross subsidy is also misconceived in as much as the non-aeronautical revenue cross subsidizes aeronautical revenue and the tax is only resultant on the profit earned and thus, the cross subsidy is nothing but a part of recovery of eligible aeronautical revenue only and thus has to be considered while drawing aeronautical Profit & Loss."*

**237.** In view of the aforesaid decisions rendered by this Tribunal, 30% of non-aeronautical revenue partakes the character of aeronautical revenue and is used in cross-subsidizing the aeronautical tariff. The 30% of non-aeronautical revenue becomes an indistinguishable part of aeronautical Revenue Base, therefore, tax shall be calculated on this 30% of the non- aeronautical revenue as well which is used for cross-subsidization of aeronautical tariff.

- 238.** The 30% of NAR becomes part and parcel of aeronautical revenue. The 30% of non- aeronautical revenue gets the color of aero revenue and it becomes aeronautical revenue for all the purposes and, therefore, also tax ought to have been calculated upon 30% of non- aeronautical revenue which has been used in calculation of ARR in the aforesaid formula given in the Tariff Guidelines especially in Clause 4.3 thereof.
- 239.** The aforesaid aspects of the matter and the judgments of this Tribunal have not been appreciated by AERA, we, therefore, quash and set aside the decision of AERA to not include 30% of non-aeronautical revenue which cross-subsidizes the aeronautical tariff for calculation of component of taxes under the formula for calculation of ARR. We, hereby direct AERA to calculate tax 'T' on the amount of 30% of non-aeronautical revenue as well which is used for cross-subsidizing the aeronautical tariff.
- 240.** **In view of the aforesaid facts, reasons, and judicial pronouncements, we hereby, quash and set aside the decision of AERA to exclude the 30% of Non-Aeronautical Revenue (NAR) used for cross-subsidisation from the aeronautical revenue base for computation of taxes ("T") under the ARR formula.**
- 241.** **We hereby direct AERA to include the said 30% NAR in the aeronautical tax base while computing "T".**

**IX. Approach of AERA in considering different Interest Costs in the impugned order**

**242.** AERA has computed Interest Cost for the Control Period (FY 2023-28) by considering Cost of Debt at 9% as per following formula:

$$\text{Aero Interest Cost} = \text{Average Debt of GGIAL} \times 9\% \times \text{Asset Allocation Ratio}$$

**243.** Whereas, the appellant has submitted that Interest Cost for the purpose of arriving at the aeronautical taxes should be computed considering Cost of Debt at 10.45% as per the following formula:

$$\text{Aero Interest Cost} = \text{Average Aero RAB} \times \text{Debt:Equity Ratio} \times 10.45\%$$

**244.** For computing 'Taxation' for the purposes of determining ARR, Interest Cost must be considered as an expense subtracted from Aeronautical Revenues to arrive at Profits Before Tax.

**245.** In the facts of the present case, AERA has calculated Interest Cost for Taxation by considering cost of debt at 9%, further, AERA has applied such Cost of Debt to the Average Debt of the Appellant and multiplied it by Asset Allocation Ratio to arrive at the Cost of Debt as opposed to calculating Interest Cost by applying the Cost of Debt to the product of Average RAB and Debt:Equity Ratio. The same can be observed from Table 143 of the impugned order, which is reproduced below:

**Table 143: Interest cost as per MYTP submissions and Interest cost considered in Aeronautical P&L by GIAL, Mopa, Goa. (Rs. in Crores)**

Particulars	Reference	FY24	FY25	FY 26	FY 27	FY 28	Total
Interest cost to be							
Average Debt as per GIAL, Mopa, Goa.	A	2,358.74	2,491.90	2,588.79	2,475.83	2,302.27	
Interest Cost estimated at 9%	$B=A*9\%$	212.2	224.27	232.99	222.82	207.20	1,099.58
Asset Ratio as per GIAL, Mopa, Goa	C	97.60 %	97.60 %	97.60 %	97.60 %	97.60 %	
Aero Interest Cost as per above	$D=B*C$	207.19	218.89	227.40	217.48	202.23	1,073.19
Interest Cost Considered							
Average Aeronautical RAB	E	3,497.34	3,462.92	3,559.70	3,643.69	3,472.04	
Debt: Equity Ration	F	62.07 %	61.99 %	57.77 %	51.15 %	43.77 %	
Basic Value for Interest	$G=E*F$	2,170.96	2,146.70	2,056.41	1,863.77	1,519.58	
Aero Interest Cost considered at 10.45 %	$H=G*10.45\%$	226.87	224.33	214.90	194.76	158.80	1,019.65

**246.** AERA has considered Interest Cost 'D' in Table 143 instead of 'H' in Table 143 as proposed by the Appellant.

**247.** In view of the above decision under the heading "Consideration of Cost of Debt at 9% while determining of Fair Rate of Return (FRoR)", AERA has erred in considering Cost of Debt at 9% and it must consider the Cost of Debt actually incurred by the Appellant for the purpose of computing Interest Cost for Taxation.

**248.** Further, AERA's methodology of computing Interest Cost based on Average Debt and instead of aeronautical RAB and Debt:Equity Ratio results in inconsistency since AERA while computing taxes must consider the regulatory accounts of the Airport Operator as observed by Hon'ble the Supreme Court of India in **DIAL Vs. AERA** reported in **(2024) 1 SCC 716**, especially in **paragraph no. 117** thereof which reads as under:

*"117. In the overall scenario, it is TR which is crucial where 'T' is only a component. No one is saying that a different methodology and not the common practice has to be followed for payment of tax. It is for the component 'T' to be calculated in the formula for TR that 'T' has been defined. 'T' has to be computed based solely on regulatory accounts prepared by AERA for the TR formula. If the annual fee is the component which is taken out of aeronautical services, the definition of 'T' would have to be read completely differently."*

**249.** These aspects of the matter have not been properly appreciated by AERA while passing the impugned order, especially while calculating Interest Cost for determination of Aeronautical Taxes. We therefore direct AERA to consider the regulatory accounts of

the appellant and the actual Cost of Debt for calculating the Interest Cost for the purpose of determining Aeronautical taxes.

- 250.** We have already held in issue III discussed hereinabove that the Cost of Debt shall be the Actual Cost of Debt which is 10.45% and the reasons have already been given in our order while discussing issue III. Earlier decisions rendered by this Tribunal have been pointed out and therefore, Cost of Debt shall be taken as 10.45% which shall be made applicable to the aforesaid formula of *Average Aero RAB x Debt: Equity Ratio* for arriving at Aeronautical Interest Cost.
- 251.** In view of the aforesaid facts, reasons, and judicial pronouncements, we, hereby quash and set aside the decision of AERA to compute aeronautical interest cost for taxation by applying a normative 9% Cost of Debt to the appellant's average debt multiplied by the asset-allocation ratio.
- 252.** We hereby direct AERA to compute the aeronautical interest cost for taxation strictly on the basis of the regulatory accounts by applying the actual Cost of Debt of 10.45% to the product of Average Aeronautical RAB and the applicable Debt:Equity ratio for each year of the First Control Period, and to recast the taxation component "T", ARR, and the tariff card accordingly.

**X. Finalization of Tariff Rate Card for**  
**the First Control Period**

- 253.** AERA has published a rate card as per the impugned order for Manohar International Airport, Goa. The dispute is about landing charges fixed by AERA which are 50% increase from the existing landing charges/rates.
- 254.** It is submitted by learned senior counsel for appellant that AERA ought to have appreciated the fact that within Goa, there is another airport which is operated by Airport Authority of India, the landing charges cannot be increased for MI International Airport, Goa, which is operated by the present appellant and that too without giving any opportunity of being heard, to this appellant.
- 255.** Having heard counsel for both sides and looking to the facts and circumstances of the case, it appears that within Goa, at a distance of approx. 59 kms, there is another airport named Dabolim International Airport which is being operated by AAI and the present airport is MI Airport, Goa, which is in the southern part of Goa and landing charges are remarkably different than hearing ought to have been given to the appellant because landing charges have direct effect upon the operations of the airports.

- 256.** The tariff rate card published by AERA having different landing charges for two airports within Goa affects the present appellant especially when the landing charges have been increased by 50% from the existing landing charges for this appellant at MI Airport, Goa the appellant should have been heard by AERA in this type of a situation.
- 257.** AERA ought to have appreciated that if at MI Airport, Goa, operated by present appellant, if landing charges are remarkably higher then flights may be diverted to Dabolim International Airport which is at a distance of 59 km, operated by Airport Authority of India. This type of issue could have been resolved by AERA, very effectively if a hearing would have been awarded to the appellant instead of taking decision unilaterally.
- 258.** The facts of the present case make it different, from the facts of the case upon which reliance is placed by AERA.
- 259.** AERA has not appreciated the fact that appellant has a right to propose a rate card setting out competitive tariff to attract airlines that assumes greater importance in the context of MI Airport, Goa considering the fact that it faces stiff competition from Dabolim Airport, owing to its proximity to the Dabolim Airport. Thus, in the peculiar facts of the present case, there is another airport within a radius of 59 km, an opportunity

ought to have been given to the present appellant to comment upon AERA's proposal of rate card.

**260. We, therefore, quash and set aside the rate card issued by AERA so far as the landing rate is concerned and we hereby direct AERA to give an opportunity to this appellant to make a representation upon the proposed rate card issued by AERA, till then the landing rate will be the same, which is prevailing at Dabolim Airport, Goa.**

#### **CONCLUDING REMARKS & GRAVE DISQUIETUDE**

**261.** However, before we depart, it is made incumbent upon our judicial conscience to reflect upon the deliberate non application of the ratio of the judgements to settled issues of disputes which have been decided, followed and reiterated in multiple judgements of this tribunal, by Respondent Aera.

**262.** The AERA Act vests this Tribunal with appellate authority over AERA's directions, decisions and orders. Section 17(b) read with Section 18(2) explicitly confers a statutory right of appeal upon "any person aggrieved" by an order of the Authority. Upon seisin of such appeal, Section 18 (4) empowers this Tribunal to pass such orders as it thinks fit after hearing the parties; and Section 18 (7) authorizes examination of the legality, propriety and correctness of the impugned decision.

**263.** The appellate remit thus extends beyond mere correction of error in arithmetic terms; it encompasses scrutiny of fidelity to statute, guidelines, precedent and the concession framework. For ready Reference Section 17 (b) & 18 of the Aera Act, 2008, reads as under:

*17. Appellate Tribunal----The Telecom Disputes Settlement and Appellate Tribunal established under section 14 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017 (7 of 2017), be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act to—...*

*(b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act.*

*18. Application for settlement of disputes and appeals to Appellate Tribunal.—*

- 1) The Central Government or a State Government or a local authority or any person may make an application to the Appellate Tribunal for adjudication of any dispute as referred to in clause (a) of section 17.*
- 2) The Central Government or a State Government or a local authority or any person aggrieved by any direction, decision or order made by the Authority may prefer an appeal to the Appellate Tribunal.*
- 3) Every appeal under sub-section (2) shall be preferred within a period of thirty days from the date on which a copy of the direction or order or decision made by the Authority is received by the Central Government or the State Government or the local authority or the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as*

*may be prescribed: Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.*

- 4) On receipt of an application under sub-section (1) or an appeal under sub-section (2), the Appellate Tribunal may, after giving the parties to the dispute or the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.*
- 5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the dispute or the appeal and to the Authority, as the case may be.*
- 6) The application made under sub-section (1) or the appeal preferred under sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application or appeal finally within ninety days from the date of receipt of application or appeal, as the case may be: Provided that where any such application or appeal could not be disposed of within the said period of ninety days, the Appellate Tribunal shall record its reasons in writing for not disposing of the application or appeal within that period.*
- 7) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness, of any dispute made in any application under sub-section (1), or of any direction or order or decision of the Authority referred to in the appeal preferred under sub-section (2), on its own motion or otherwise, call for the records relevant to disposing of such application or appeal and make such orders as it thinks fit.*

**264.** The AERA's tariff determinations are quasi-judicial in character. They are required to be reasoned, to exhibit due consideration of the mandatory statutory factors, and to adhere to binding authority. As a specialized appellate body placed above AERA in

the statutory hierarchy, this Tribunal's pronouncements on questions of law and principles bind AERA unless stayed or set aside by a superior court. This follows from the constitutional architecture of judicial hierarchy and is a core element of the rule of law.

- 265.** The doctrine of certainty in judicial decision making is often expressed through stare decisis and judicial discipline demands consistency in like cases. The regulators and subordinate authorities are not at liberty to ignore controlling & binding decisions of their appellate forum on the mere ground that an appeal is contemplated or has been filed.
- 266.** In the present context, several issues concerning tariff building blocks have already been considered by this Tribunal. In particular, by judgment dated **06.10.2023** in **AERA Appeal No. 2 of 2021 (MIAL v. AERA)**, this Tribunal settled the approach to the **Cost of Debt**, emphasizing use of the operator's weighted-average cost with forecasting and true-up for floating instruments and deprecating arbitrary caps which are divorced from record.
- 267.** Again, by judgment dated **21.07.2023** in **AERA Appeal No. 1 of 2024**, this Tribunal addressed the treatment of "other income" and the coherence required between hybrid-till cross-subsidy and the tax computation in regulatory accounts. Both

decisions pre-date or are contemporaneous with the impugned order dated **07.12.2023**.

- 268.** Judicial hierarchy is not a mere formality. AERA, as the first-instance decision-maker within a statutory scheme that expressly provides for appellate oversight, is obligated to internalize the ratio of the Tribunal's decisions while exercising its quasi-judicial and regulatory functions. Departure from binding authority, without articulating legally sustainable reasons or identifying distinguishing features, amounts to jurisdictional error as it offends the rule of law, undermines regulatory certainty and destabilizes settled expectations in a capital-intensive sector.
- 269.** That the Legislative Intent as expressed through the Parliament's design in Sections **17(b)** R/w. **18 (2)** is deliberate. The Parliament recognized that tariff orders have a blend regulatory policy with adjudicative determination, and thus the legislature created an efficacious appellate mechanism to ensure uniformity of principle and correction of error.
- 270.** An approach by which the Authority ignores or sidelines binding pronouncements despite knowledge and in the absence of a stay would reduce this Tribunal to a mere stepping stone, which frustrates the legislative intent, and stultify the very certainty for which the appellate layer was crafted to secure.

**271. As a cumulative effect of aforesaid facts, reasons and judicial pronouncements we hereby quash and set aside the impugned order dated 07.12.2023 passed by AERA (Annexure A-1) to the aforesaid extent. The directions given to AERA in this judgment and order for different issues as stated hereinabove shall be complied with by AERA at the earliest. This appeal is allowed and disposed of.**

---

**(JUSTICE D. N. PATEL)  
CHAIRPERSON**

---

**(SUBODH KUMAR GUPTA)  
MEMBER**

/NS/