**TELECOM DISPUTES SETTLEMENT AND APPELLATE TRIBUNAL**

**NEW DELHI**

**Reserved on: 31.07.2026**

**Pronounced on: 18.09.2026**

**AERA APPEAL NO. 1 OF 2025**

Delhi International Airport Limited …Appellant

*Versus*

1. Airports Economic Regulatory Authority of India;

2. Federation of Indian Airlines …Respondents

## BEFORE:

**HON'BLE MR. JUSTICE DHIRUBHAI NARANBHAI PATEL (CHAIRPERSON)**

**HON'BLE DR. SANJEEV BANZAL (MEMBER)**

**FOR APPELLANT**

**In AERA Appeal No.1/2025**
**For DIAL**

Mr Ramji Srinivasan, Senior Advocate
Ms Naina Dubey
Mr Ravneet Singh
Ms Shefali Munde
Mr Arjun Bhatia

**FOR RESPONDENT(S)**

**In AERA Appeal No. 1/2025**
**For AERA (R-1)**

Mr Ritesh Kumar
Mr Dheerendra Singh Bisht
Ms Yashasvini Chandra
Ms Shalini Prasad

**For FIA(R-2)**
Ms Nishtha Kumar
Mr Prantar Basu Choudhury
Mr Shrom Sethi

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## JUDGEMENT

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

## SUMMARIUM

The present appeal has been preferred by the Appellant namely, **Delhi International Airport Limited ("DIAL")**, **the operator of the Indira Gandhi International Airport, New Delhi ("IGIA")**, **under Section 18 (2)** of the Airports Economic Regulatory Authority of India Act, 2008 ("AERA Act"), **assailing Order No. 20/2024-25 dated 28.03.2025 passed by the Airports Economic Regulatory Authority of India ("AERA").** By the Impugned Tariff Order, AERA has **undertaken the true-up of the Third Control Period** and **determined the aeronautical tariff for IGIA for the Fourth Control Period commencing on 01.04.2024 and ending on 31.03.2029**.

The appeal raises several issues concerning the regulatory treatment of capital expenditure, Regulatory Asset Base, depreciation, Interest During Construction, Cost of Debt, Refundable Security Deposits, Operation and Maintenance expenditure and revenue accruing from Revenue Share Assets inter alia.

DIAL contends that various determinations made in the Impugned Tariff Order are contrary to the provisions of the AERA Act, the

Operation, Management and Development Agreement, the State Support Agreement and the tariff principles governing IGIA. It is further contended that AERA has, in several instances, substituted actual and audited expenditure with notional assumptions, adopted allocation methodologies lacking a demonstrable nexus with the relevant cost or revenue, and declined to give effect to issues already concluded by binding judicial pronouncements.

The Respondent No.1/AERA, conversely, supports the Impugned Tariff Order by asserting that the determinations have been made in discharge of its statutory functions under Section 13 of the AERA Act. AERA contends that, as the sectoral regulator entrusted with safeguarding economic viability, efficiency and public interest, it is empowered to scrutinise the necessity, prudence and reasonableness of expenditure, adopt appropriate allocation methodologies and ensure that airport users are not burdened with inefficient or inadmissible costs.

This Tribunal is, therefore, called upon to examine the competing submissions of the parties and determine whether the impugned regulatory treatment of the respective tariff building blocks is legal, proper and correct. The issues are required to be adjudicated within the framework of the AERA Act, the governing concession documents, the established principles of tariff regulation and the binding precedents of this Tribunal and the Hon'ble Supreme Court.

# ABBREVIATIONS INVOLVED

| Abbreviations | Expansion |
|---|---|
| AAI | Airports Authority of India |
| AERA Act,2008 | Airports Economic Regulatory Authority of India Act, 2008 |
| AERA | Airports Economic Regulatory Authority of India |
| AF | Annual Fee |
| AO | Airport Operator |
| AGL | Airfield Ground Lighting |
| ARR | Aggregate Revenue Requirement |
| BAC | Base Airport Charges |
| BIAL | Bangalore International Airport Limited |
| CAPM | Capital Asset Pricing Model |
| CMP | Cash Management Process |

| | |
|---|---|
| CSR | Corporate Social Responsibility |
| CoD | Cost of Debt |
| CoE | Cost of Equity |
| DAFFPL | Delhi Aviation Fuel Facility Private Limited |
| DF | Development Fee |
| DGCA | Directorate General of Civil Aviation |
| DIAL | Delhi International Airport Limited |
| ECB | External Commercial Borrowing |
| EPC | Engineering, Procurement and Construction |
| FDR | Fixed Deposit Receipts |
| FIA | Federation of Indian Airlines |
| F&B | Food & Beverage |
| FRoR | Fair Rate of Return |
| FY | Financial Year |
| GST | Goods and Services Tax |

| | |
|---|---|
| HIAL/GHIAL | Hyderabad International Airport Limited/<br><br>GMR Hyderabad International Airport Limited |
| H-RAB | Hypothetical Regulatory Asset Base |
| IDC | Interest During Construction |
| IGIA | Indira Gandhi International Airport |
| JVC | Joint Venture Company |
| MCLR | Marginal Cost of Funds based Lending Rate |
| MIAL | Mumbai International Airport Limited |
| MoCA | Ministry of Civil Aviation |
| MYTP | Multi Year Tariff Proposal |
| NAR | Non-Aeronautical Revenue |
| NCD | Non-Convertible Debenture |
| O&M | Operation and Maintenance Expenses |
| OMDA | Operation, Management and Development Agreement |
| PPP | Public Private Partnership |
| PV | Present Value |

| | |
|---|---|
| RAB | Regulatory Asset Base |
| RoI | Return on Investment |
| RBI | Reserve Bank of India |
| RSA | Revenue Share Assets |
| RSD | Refundable Security Deposit |
| RTL | Rupee Term Loan |
| SBI | State Bank of India |
| SCP | Second Control Period |
| SPV | Special Purpose Vehicle |
| SSA | State Support Agreement |
| TAMP | Tariff Authority for Major Ports |
| TCP | Third Control Period |
| TDSAT | Telecom Disputes Settlement and Appellate Tribunal |
| TR | Target Revenue |
| WACC | Weighted Average Cost of Capital |

**AERA APPEAL NO. 1 OF 2025**

**1.** The present appeal has been preferred under **Section 18(2)** of the **Airports Economic Regulatory Authority of India Act, 2008** (hereinafter referred to as the '**AERA Act, 2008'** for the sake of brevity), by the Appellant, Delhi International Airport Ltd, (hereinafter referred to as DIAL), challenging the order passed by Respondent No.1 -**Airports Economic Regulatory Authority of India**, (hereinafter referred to as **'AERA'** for the sake of brevity) dated 28.03.2025, being Order No. 20/2024-25, whereby, the Respondent has determined **Aeronautical Tariff** for the **Fourth Control Period i.e. from 01.04.2024 to 31.03.2029**.

**2.** The impugned order has been passed by Respondent No.1, in exercise of its powers under **Section 13 (1) (a) of the AERA Act, 2008** for Indira Gandhi International Airport, Delhi (hereinafter referred to as **'IGIA'** for the sake of brevity) the said order is at **Annexure A-1** to the Memo of this AERA Appeal.

## FACTUAL MATRIX

**i.** For the IGIA, a consortium led by the GMR Group was awarded the contract for operating, maintaining, developing, designing, constructing, upgrading, modernizing, financing and managing the IGIA.

**ii.** Post selection of the GMR consortium based on the highest technical rating and highest revenue share offered, a special purpose vehicle, namely Delhi International Airport Limited ('DIAL'), the Appellant herein, was incorporated on 01.03.2006 with Airports Authority of India ('AAI') holding 26% equity stake and the balance 74% of equity capital being acquired by members of the GMR consortium.

**iii.** Airports Authority of India executed Operation, Management and Development Agreement (OMDA) with the Appellant on 04.04.2006 (Annexure A2 of the memo of AERA Appeal). The term of OMDA is 30 years which is further extendable for a period of 30 years.

**iv.** The Government of India has entered into a State Support Agreement (SSA) with the appellant on 26.04.2006 (Annexure A-3). By virtue of this SSA, the principles of tariff fixation have been enumerated.

**v.** Under OMDA, AAI granted the Appellant, the exclusive right and authority during the Term to undertake some of the functions of AAI being the functions of operations, maintenance, development, design, construction, upgradation, modernizing, finance and management of the IGIA and to perform services and activities constituting aeronautical services and non-aeronautical services (but excluding Reserved activities) at IGIA.

**vi.** Besides other rights, the Appellant has been granted the exclusive right under Article 2.1.2 (iii) of OMDA to determine, demand, collect, retain and appropriate charges from the users of the IGIA subject to the provisions of Article 12 of the OMDA. Further, Article 12.1.2 under Chapter XII dealing with Tariff and Regulation specifically provides that the charges to be levied for the provision of Aeronautical Services (Aeronautical Charges) shall be determined as per the provisions of the SSA.

**vii.** The OMDA under Article 12.2 also recognizes the exclusive liberty of the Appellant to determine the charges for Non-Aeronautical Services and accordingly the regulation thereof has been specifically kept out of the regulatory domain of the Respondent.

**viii.** On 29.05.2024, DIAL submitted its Multi-Year Tariff Proposal ("MYTP") to AERA for determination of the aeronautical tariff for IGIA for the Fourth Control Period (01.04.2024 to 31.03.2029). This document is on record as Annexure A-6 to the memo of AERA Appeal.

**ix.** The consultation paper No. 07/2024-25, was issued by AERA for determination of Aeronautical Tariff for IGIA on 31.01.2025. This Consultation Paper is at Annexure A-7 to the memo of AERA Appeal. By virtue of this Consultation Paper, AERA invited written comments on the Consultation Paper. DIAL has also submitted its response on 03.03.2025 and its response to the comments of the stakeholders was also submitted by DIAL on 13.03.2025.

**x.** Thereafter, on 28.03.2025, AERA issued the impugned order which is at Annexure A-1. This tariff determination order passed by AERA under Section 13(1)(a) of the AERA Act, 2008.

**xi.** The Appellant-DIAL has challenged this order passed by AERA dated 28.03.2025 under Section 18(2) of the AERA Act on the ground that the principles of OMDA, SSA read with AERA Act, 2008 have been disregarded.

## ARGUMENTS CANVASSED BY APPELLANT- DIAL

**3.** Mr. Ramji Srinivasan, learned Senior Advocate appearing on behalf of the Appellant–DIAL, submitted that the following determinations made by AERA in the Impugned Tariff Order have been challenged in the present appeal:

**I.** *Refusal to implement the Judgment of this Tribunal dated 21.07.2023 in Delhi International Airport Limited Vs. Airports Economic Regulatory Authority of India, AERA Appeal No. 1 of 2021.*

**II.** *Non-consideration of the actual Cost of Debt incurred by the Appellant while undertaking true-up for the Third Control Period.*

**III.** *Non-Consideration of Actual Cost of Debt to be Incurred by Appellant if the same exceeds SBI's MCLR + 150 bps in the Fourth Control Period.*

**IV.** *Setting off Interest During Construction against Interest Income accrued to the Appellant.*

**V.** *Non-Consideration of IDC on Equipment Procured Through Lease Finance by the Appellant.*

**VI.** *Determination of Rs.21,899 Crores as the Minimum Revenue from Revenue Share Assets for the Fourth Control Period.*

**VII.** *Non-Consideration of Corporate Social Responsibility Expenditure incurred by the Appellant as Operation and Maintenance Cost.*

**VIII.** *Re-Classification of Dividend Income from the Appellant's Fuel Farm Subsidiary as revenues from Aeronautical Services.*

**IX.** *Non-Consideration of Costs Relating to Civil, Electrical & associated work for Apron stands between L1 & M1 including AGL system upgrade.*

**X.** *Deviation from Asset-Based Allocation to Revenue-Based Apportionment of Legal Costs.*

**XI.** *Double Counting of the Deleted Asset while computing True-up of RAB for the Third Control Period.*

**XII.** *Reduction of 1% of uncapitalized project cost from the Target Revenue in case any particular capital project is not completed/capitalized as per approved capitalization schedule in the next Control Period.*

**XIII.** *Non-consideration of expenditure pertaining to beautification of airport gateways and other areas as an Operation and Maintenance Cost pertaining to Aeronautical Services.*

**XIV.** *Consideration of Refundable Security Deposits ('RSD') at the rate of Cost of Debt instead of Cost of Equity.*

**4.** It is submitted by the Learned Senior Advocate appearing on behalf of the appellant that several issues have already been decided by this Tribunal in AERA Appeal No.1 of 2021 judgment dated 21.07.2023 as well as by the decision of Hon'ble the Supreme Court of India reported in (2024) 1 SCC 716.

**5.** This aspect of the matter was already highlighted by DIAL in their MYTP for the 4th Control Period but AERA has decided not to implement the judgment delivered by this Tribunal in AERA Appeal No.1 of 2021 judgment dated 21.07.2023 in case of DIAL Vs. AERA and, therefore, several issues have to be argued again before this Tribunal.

**6.** Learned Senior Advocate for the appellant has submitted that except issue V, issue X and issue XI, all other issues which are raised in the present appeal have already been decided by this Tribunal in AERA Appeal No.01 of 2021 judgment dated 21.07.2023 and other AERA appeals being AERA Appeal No. 2 of 2021 judgment dated 06.10.2023, in case of MIAL Vs. AERA. Several issues have been decided by this Tribunal in AERA Appeal No. 4 of 2021 judgment dated 14.02.2024 in the case of GMR Hyderabad International Airport Ltd. Vs. AERA.

**7.** Likewise, these issues have been crystalized and decided by this Tribunal in AERA Appeal No.1 of 2023 judgment dated 11.09.2025 in the case of Mangaluru International Airport Limited Vs. AERA, AERA has not followed judgments delivered by this Tribunal in the case of DIAL Vs. AERA for the previous Control Periods.

**8.** It is submitted that AERA's decision to not implement the judgments of this Tribunal without obtaining a stay of the Judgement of this tribunal and merely on the basis that an appeal has been preferred and is pending before the Hon'ble Supreme Court of India is arbitrary and contrary to law. In the absence of any stay on the judgement of this Tribunal, AERA ought to have given effect to the same.

**9.** It is submitted that AERA has overlooked the actual cost of debt and AERA has decided to consider an arbitrary debt rate at 10.37% whereas the actual cost of debt which is incurred by DIAL was 10.55%, which should have been allowed by AERA. AERA has ignored the judgment delivered by this Tribunal in AERA Appeal No.2 of 2021 judgement dated 06.10.2023 in case of MIAL Vs. AERA whereby AERA was directed to consider **actual cost of debt**, incurred by the

Airport Operator as per **Section 13(1)(a)(i) of the AERA Act** which mandates AERA to consider the "**capital expenditure incurred**".

**10.** It is submitted that this principle has been reiterated by this Tribunal in the decisions and judgments of this Tribunal in AERA Appeal No.4 of 2021 judgment dated 14.02.2024, in case of GMR Hyderabad International Airport Limited Vs. AERA; as well as in AERA Appeal No.1 of 2023 in case of Mangaluru International Airport Limited Vs. AERA. This principle was also laid down by this Tribunal in case of GMR Goa International Airport Limited Vs. AERA in AERA Appeal No.1 of 2024. All these decisions have been ignored by AERA while passing the impugned order at Annexure A-1 and hence, the impugned order deserves to be quashed and set aside.

**11.** Learned Senior Counsel for the appellant has taken this Tribunal through the various facts and tables for the actual cost of debt incurred by the appellant for the true-up of tariff determined in 3rd Control Period to consider the cost of debt at 10.55% based on actual cost of debt incurred by DIAL during 3rd Control Period.

**12.** It is also submitted that AERA's decision to impose an arbitrary ceiling on cost of debt is illegal because **Section 13(1)(a)(i) of the AERA Act**, mandates AERA to consider "**capital expenditure incurred…….**". In fact this issue has been covered by this Tribunal in various AERA Appeals. DIAL has projected a Weighted Average Cost of Debt of 10.24% for 4th Control Period based on its existing and proposed loan portfolio. AERA has failed to appreciate this aspect of the matter while passing the impugned order.

**13.** It is submitted that DIAL, during 3rd Control Period has incurred interest during construction at Rs.2,122 Crores as against its initial estimated IDC of Rs.650 Crores due to various reasons. However, AERA has decided to set off actual IDC incurred by DIAL against interest income accrued to DIAL. Thus, DIAL was allowed to recover only notional IDC, in fact revenue generated through interest cannot be set off for IDC incurred by the appellant, this issue has also been decided by this Tribunal in AERA Appeal No.1 of 2021 dated 21.07.2023 in case of DIAL Vs. AERA. This issue has also been decided in AERA Appeal No.4 of 2021 dated 14.02.2024 in case of GMR Hyderabad International Airport Limited Vs. AERA. In fact, interest income

constitutes **"other income"** and, is outside AERA's regulatory jurisdiction and therefore, it cannot be set off against IDC incurred by the appellant.

**14.** It is submitted that DIAL had opted to procure certain equipment through a finance lease arrangement whereby the equipment was leased from a Lease Equipment Financier with an option to purchase at the end of the lease term.

**15.** It is submitted that AERA's decision not to consider interest during construction on leased equipment is absolutely contrary to the principles of tariff as pointed out under Section 13 of the AERA Act, 2008. IDC on a finance-leased equipment is not "notional". In fact, it represents genuine financing cost within the lease payments. DIAL has incurred total borrowing cost at Rs.1,710 crores which includes Rs.17.45 Crores towards Leased Electrical Installations and Equipment and the borrowing cost of Rs.19.83 Crores towards Leased Plant and Machinery.

**16.** Thus, total IDC will be Rs.37.28 Crores, this makes this explicitly clear that DIAL has incurred borrowing costs towards Leased Equipment and, therefore, this appellant is entitled to recover IDC towards leased equipment. In fact, finance lease

arrangement is more capital-efficient method that ultimately lowered the tariff burden on the passengers as, by leasing equipment, the asset was **not** made part of DIAL's RAB. Thus, meaning thereby to, the cost of such equipment was **not** recovered from the users at the rate of Weighted Average Cost of Capital (WACC) on this asset over its entire life.

**17.** It is submitted by Learned Senior Counsel for the appellant that AERA has no power, jurisdiction and authority to decide minimum revenue from Revenue Share Asset for 4th Control Period. AERA has determined Rs.21,899.23 Crores as a minimum revenue from Revenue Share Asset for 4th Control Period which is absolutely illegal and dehors the provisions of AERA Act, 2008.

**18.** This issue has also been decided by this Tribunal in AERA Appeal No.1 of 2023 in Mangaluru Vs. AERA as well as in AERA Appeal No.1 of 2024 in GMR Goa International Airport Limited Vs. AERA. There cannot be a presumption of minimum revenue from Revenue Share Assets. There are no such provisions under the AERA Act nor there are any provisions under OMDA and SSA (Annexure A-2 and Annexure A-3 respectively).

**19.** It is submitted that AERA has failed to appreciate Corporate Social Responsibility expenditure incurred by DIAL for true-up as Aeronautical Operation and Maintenance Expenses. This issue has also been decided by this Tribunal in AERA Appeal No.1 of 2021 dated 21.07.2023 in DIAL Vs. AERA. CSR expenses incurred by the appellant are statutory expense which ought to have been considered by AERA as per TR formula in Schedule-I of the SSA (Annexure A-3).

**20.** It is also submitted by Learned Senior Counsel for the appellant that the revenues from the dividend income cannot be considered as revenue from the aeronautical services. This issue has also been decided by this Tribunal in AERA Appeal No.2 of 2021 dated 06.10.2023 in case of MIAL Vs. AERA and in AERA Appeal No.4 of 2021 dated 14.02.2024 in case of GMR Hyderabad International Airport Limited Vs. AERA.

**21.** The dividend income is because of the cash management process. This income has not been generated from employment of any Revenue Share Assets. Similarly, this fuel farm services as performed by distinct and legal entities, this income is because of investment done by Airport Operator. This aspect of the matter has not been properly appreciated by

AERA while passing the impugned order. For the earlier Control Periods, AERA had not included dividend income as aeronautical income. Thus, there is no consistency in the decision-making process by AERA.

**22.** It is further submitted that during the 3rd Control Period, DIAL had incurred capital expenditure of Rs.96.80 Crores towards construction of apron stands between taxiways L1 and M1, including AGL (Airfield Ground Lighting) system upgrade. AERA has not properly appreciated this aspect of the matter and has not appreciated the contemporaneous evidence submitted by DIAL for the expenditure and amount of GST for the aforesaid work. AERA has allowed only part of expenditure at Rs.84.34 Crores as against actual expenditure of Rs.96.80 Crores. As such, AERA should have considered the actual expenditure incurred by DIAL towards construction of L1 & M1, including AGL system upgrade.

**23.** It is submitted that AERA has wrongly excluded Legal Expenses from professional and consultancy expenses incurred by DIAL and decided to allocate legal expenses between aeronautical and non-aeronautical based upon proportion of aeronautical revenue to the total income of DIAL. This decision of AERA is

contrary to the provisions of the AERA Act, 2008 as well as contrary to the principles of determination of tariff. This approach of AERA is in zig-zag manner, because, in previous Control Periods, AERA had allowed the Legal Expenses.

**24.** It is stated that this type of regulatory uncertainty cannot be allowed especially looking to the Principle of Consistency as mentioned in Schedule-I of SSA (Annexure A-3) which requires AERA to have *"....a consistent approach in terms of underlying principles*." Learned Senior Counsel for the appellant has given an example that because of the sound & diligent advocacy before Delhi Cantonment Board the property tax amount was reduced from Rs.800 Crores p.a. to Rs.9-10 Crores p.a., the benefit of lower property tax was passed by DIAL to the users, enhancing the efficiency of operation at the airport. Thus, Legal expenses are necessary and it reduces the burden upon the users of the Delhi International Airport (IGIA).

**25.** It is further submitted that DIAL in accordance with Statutory Auditor's certificate had pointed out to AERA that one of the assets in the capitalization of Phase 3A projected being deleted and after deletion of aeronautical asset valued at Rs.33.61 Crores, the total capitalized amount in the 3rd Control Period under Phase 3A expansion was Rs.11,864.09 Crores, **but**, looking

to AERA's decision (Annexure A-1) in the impugned order, AERA has deleted the value of the asset, twice, while computing true -up of RAB for 3rd Control Period.

**26.** Learned Senior Counsel for the appellant has taken this Tribunal to the financial statements which are annexed with RA-5 as well as to the table 80 of the impugned order to be read with tables 78 and 71 of the impugned order.

**27.** It is submitted that reduction of 1% of uncapitalized project cost from the Target Revenue in case of any particular capital project is not completed/capitalized, as per approved capitalization schedule in the next Control Period. This decision is contrary to the provisions of AERA Act, AERA has no power, jurisdiction and authority to impose a penalty of 1% neither under AERA act nor under OMDA (Annexure A-2) nor under SSA (Annexure A-3), if the delayed execution of the capital works is due to several reasons which are beyond the control of the Airport Operator. There is no provision of penalty under the law and no penalty can be imposed except expressed provision of law. AERA has also not followed the decision rendered by this Tribunal in AERA Appeal No.2 of 2021 dated 06.10.2023 in case of MIAL Vs. AERA.

**28.** It is submitted that AERA has wrongly disallowed the expenditure pertaining to beautification of airport gateway and other areas as an Operation and Maintenance cost pertaining to aeronautical services. AERA ought to have followed the decision rendered by this Tribunal in AERA Appeal No.4 of 2021 dated 14.02.2024 in case of GMR Hyderabad International Airport Limited Vs. AERA.

**29.** AERA has failed to appreciate that despite the decision rendered by this Tribunal in AERA Appeal No.2 of 2021 dated 06.10.2023 in case of MIAL Vs. AERA, AERA has decided to consider Refundable Security Deposit (RSD) at the rate of cost of debt instead of cost of equity for the determination of WACC.

**30.** In view of the aforesaid submissions, it is pointed out by the learned senior counsel for the appellant that the impugned decision of AERA dated 28.03.2025 for the 4$^{th}$ Control Period (01.04.2024 to 31.03.2029) deserves to be quashed and set aside and the said order deserves to be modified in pursuance of the earlier decisions and in pursuance of the provisions of the AERA Act, 2008 to be read with the provisions of OMDA (Annexure A-2) and in view of SSA (Annexure A-3).

## ARGUMENTS CANVASSED BY R.1 – AERA

**31.** Ld. Counsel appearing for AERA Mr. Ritesh Kumar submitted that no error has been committed by AERA while passing the tariff order for 4th Control Period (Annexure A-1) especially for deciding the cost of debt for true-up for 3rd Control Period. AERA has allowed cost of debt at 10.37% by applying a 50-basis point premium (0.50%) to the determined rate 9.87% vide AERA's tariff determination order dated 30.12.2020 for 3rd Control Period.

**32.** It is further submitted that cost of debt as determined by AERA in the impugned order for the 4th Control Period is absolutely in accordance with law. The projected cost of debt for 4th Control Period is at 10.24% which is much higher and, therefore, keeping in mind the achievement of the efficient cost of borrowings, AERA has allowed 10.15% of cost of debt for 4th Control Period.

**33.** It is submitted that SSA does not expressly provide for inclusion of any financing allowance (commonly referred to as 'interest during construction') in tariff determination and, therefore, no error has been committed by AERA while passing the impugned tariff order. Accordingly, it is rightly observed by AERA in the

impugned order that IDC on leased equipment is a notional cost and it being hypothetical and does not represent actual cash outlays or real financial obligations and, therefore, IDC does not qualify for capitalization and, therefore, no error has been committed by AERA in disallowing IDC on leased equipment.

**34.** It is submitted that for the 4th Control Period AERA has decided that projected revenue from Revenue Share Assets should be Rs.21,899.23 Crores and true-up of the Revenue from the Revenue Share Assets shall be done in the next Control Period only if the Revenue from Revenue Share Assets for 4th Control Period is higher than Rs.21,899.23 Crores meaning thereby to that AERA has assessed minimum Revenue to be generated by the Airport Operator from Revenue Share Assets at Rs.21,899.23 Crores.

**35.** It is submitted that AERA has to keep in mind the efficient management of the airport resources and, therefore, no error has been committed by AERA while fixing the minimum Revenue from Revenue Share Assets.

**36.** AERA has decided not to consider Corporate Social Responsibility expenses as aeronautical Operation and Management expenses. The previous decision rendered by this Tribunal in AERA Appeal

No.8 of 2018 judgment dated 16.12.2020 as well as judgment in AERA Appeal No.1 of 2021 judgment dated 21.07.2023 is under challenge before Hon'ble Supreme Court of India and, therefore, effect to those decisions have not been given by AERA.

**37.** It is submitted that the dividend income from DIAL's Fuel Farm Subsidiary has been treated as aeronautical revenue because Fuel Farm Subsidiary is rendering aeronautical services. On this issue also, AERA has not followed the judgment rendered by this Tribunal in AERA Appeal No.1 of 2021 judgment dated 21.07.2023 and other similar judgments as these are under challenge in Hon'ble the Supreme Court of India.

**38.** It is submitted that on the basis of purchase orders submitted by DIAL for the costs relating to civil, electrical and associated work for apron stands between L1 and M1 including AGL system was only for Rs.84.34 Crores and, therefore, this amount was allowed by AERA towards cost, the demand of DIAL for this cost is at Rs.96.80 Crores but the purchase orders were submitted only for Rs.84.34 Crores and hence, no error has been committed by AERA in allowing this cost in Rs.84.34 Crores.

**39.** It is submitted that for the true-up of the 3rd Control Period, AERA excluded legal expenses from professional and consultancy expenses incurred by DIAL and decided to allocate legal expenses between aeronautical and non-aeronautical based on the proportion of aeronautical revenue to the total income of DIAL. DIAL has not provided the break-up of legal expenses for the cases pertaining to aeronautical and non-aeronautical matters.

**40.** It is further submitted that there is no double counting of the deleted asset while computing true-up of RAB for 3rd Control Period moreover, DIAL did not raise any issue with respect to calculation of RAB at the consultation stage. Counsel has placed reliance upon table 78, 80 and 71 of the impugned order (Annexure A-1). On the basis of the aforesaid tables, it is submitted that no error has been committed by AERA while computing the true-up of RAB for the 3rd Control Period.

**41.** It is submitted that AERA has decided under **Section 13 (1) (a) & (f) to be read with section 14 (4) of AERA Act, 2008** AERA is duly empowered to carry out such rationalization in tariff in case of delayed execution of capital

works and, therefore, looking to the facts of the present case, no error has been committed by AERA in reduction of 1% of uncapitalised project cost from the Target Revenue in case any particular capital project is not completed or capitalised.

**42.** It is further submitted that AERA has rightly decided not to consider the expenditure pertaining to beautification of airport gateways and other areas as an Operation and Management cost as this beautification does not add any tangible benefit to the users.

**43.** It is further submitted that Refundable Security Deposit has been considered at the rate of cost of debt instead of cost of equity for the determination of Weighted Average Cost of Capital (WACC). The decision rendered by this Tribunal in AERA Appeal No.2 of 2021 judgment dated 06.10.2023 in case of MIAL Vs. AERA is under challenge before the Hon'ble the Supreme Court of India and hence, effect has not been given by AERA to this judgment.

**44.** In view of the aforesaid submissions, it is submitted that there is no substance in the present AERA Appeal and the same ought to be dismissed by this Tribunal.

## ARGUMENTS CANVASSED BY FEDERATION OF INDIAN AIRLINES (FIA) – RESPONDENT NO.2

**45.** Mr. Prantar Basu Choudhury, Learned Counsel appearing on behalf of Respondent No. 2–Federation of Indian Airlines ("FIA"), adopted the submissions advanced on behalf of Respondent No. 1–AERA and supported the determinations contained in the Impugned Order.

**46.** Learned Counsel submitted that AERA had committed no error in passing Order No. 20/2024-25 dated 28.03.2025 for determination of the aeronautical tariff for IGIA for the Fourth Control Period.

**47.** In addition, it was submitted that aeronautical charges ultimately constitute a cost borne by airlines and passengers and, therefore, only efficient, prudent and duly substantiated expenditure ought to be passed through in tariff. According to FIA, the actual expenditure or borrowing cost incurred by the airport operator cannot automatically be treated as an efficient cost recoverable from airport users.

**48.** It is submitted that they are supporting the case of Respondent No.1-AERA.

## REASONS & ANALYSIS

**49.** In the present AERA appeal; as many as 14 issues have been raised, most of them have already been decided by earlier decisions rendered by this Tribunal in different AERA Appeals. Despite the decisions rendered by this Tribunal, the same has not been implemented at all by AERA, for the reasons that AERA has preferred appeal against the decisions rendered by this Tribunal in the Hon'ble Supreme Court of India.

**50.** Upon hearing learned Counsel for the parties and considering the pleadings and material on record, the following issues arise for determination:

**I.** Whether the refusal of Respondent No. 1/AERA to implement the judgment dated 21.07.2023 of this Tribunal in *Delhi International Airport Limited Vs. Airports Economic Regulatory Authority of India*, AERA Appeal No. 1 of 2021, while passing the impugned order, is sustainable in law and facts?

**II.** Whether the Respondent No.1/AERA erred in law and facts in not considering the actual cost of debt incurred by the Appellant for the purposes of true-up of tariff for the Third Control Period?

**III.** Whether the Respondent No.1/AERA erred in not considering the actual cost of debt to be incurred by the Appellant for the

Fourth Control Period, where the same exceeds SBI's Marginal Cost of Funds based Lending Rate (MCLR) plus 150 basis points?

**IV.** Whether the Respondent No.1/AERA was justified in setting off Interest During Construction incurred by the Appellant against interest income accrued to the Appellant?

**V.** Whether the Respondent No.1/AERA erred in not considering Interest During Construction on equipment procured by the Appellant through finance lease?

**VI.** Whether the determination by the Respondent No.1/AERA of Rs. 21,899.23 Crores as the minimum revenue from Revenue Share Assets for the Fourth Control Period is sustainable in law?

**VII.** Whether the Respondent No.1 AERA erred in not considering Corporate Social Responsibility expenditure incurred by the Appellant as Operation and Maintenance expenditure pertaining to aeronautical services?

**VIII.** Whether the Respondent No.1/AERA was justified in re-classifying dividend income received by the Appellant from its Fuel Farm Subsidiary as revenue from aeronautical services?

**IX.** Whether the Respondent No.1/AERA erred in not considering the costs incurred by the Appellant relating to civil, electrical and associated work for apron stands between taxiways L1

and M1, including the Airfield Ground Lighting system upgrade?

**X.** Whether the Respondent No.1/AERA erred in departing from asset-based allocation to revenue-based apportionment of legal costs incurred by the Appellant?

**XI.** Whether the Respondent No.1/AERA erred in law and facts in double-counting the value of the deleted asset while computing the true-up of the Regulatory Asset Base for the Third Control Period?

**XII.** Whether the Respondent No.1/AERA has the power, jurisdiction and authority to reduce 1% of uncapitalised project cost from the Target Revenue, where a particular capital project is not completed or capitalised as per the approved capitalisation schedule, in the next Control Period?

**XIII.** Whether the Respondent No.1/AERA erred in law in not considering the expenditure incurred by the Appellant towards beautification of airport gateways and other areas as an Operation and Maintenance cost pertaining to aeronautical services?

**XIV.** Whether the Respondent No.1/AERA erred in considering the Refundable Security Deposit at the rate of cost of debt instead of cost of equity for the determination of the Weighted Average Cost of Capital?

**ISSUE NO.I: Refusal to implement the Judgment of this Tribunal dated 21.07.2023 in Delhi International Airport Limited Vs. Airports Economic Regulatory Authority of India, AERA Appeal No. 1 of 2021**

**51.** That AERA, being subject to the appellate jurisdiction of this Tribunal as per **Section 17 (b) R/w. 18 (2) & (7) of the AERA Act,2008,** is bound to follow the judgments and operative directions of this Tribunal unless their operation has been stayed or they have been modified or set aside by the Hon'ble Supreme Court. The principle applies inter partes and, as precedent, to materially similar issues arising in relation to other airports, subject to any relevant factual or contractual distinction.

**52.** It ought to be kept in mind by AERA that when no stay has been granted by the Hon'ble Supreme Court of India, the judgment delivered by this Tribunal ought to have been followed in the similar issues which are raised for the very same airport and for different airports also.

**53.** In the facts of the present case, the impugned tariff order of AERA, which is under challenge, is dated **28.03.2025 for the Fourth Control Period (01.04.2024 to 31.03.2029)**.

**54.** The 'Multi-Year Tariff Proposal' (MYTP) for Fourth Control Period was submitted by DIAL on 29.05.2024 (which is at Annexure A-6 to the memo of this AERA appeal) and it was pointed out by the appellant DIAL, that judgment delivered by Hon'ble the Supreme Court of India in DIAL Vs. AERA, reported in (2024) 1 SCC 716, which was on the issue of corporate tax pertaining to earnings from aeronautical services, and the judgment delivered by this Tribunal dated 21.07.2023 in case of DIAL Vs. AERA in AERA Appeal No.1 of 2021, be implemented.

**55.** But looking to the impugned tariff order passed by AERA, which is at Annexure A-1 to the memo of this appeal. **It appears that AERA has not followed the decisions rendered by this Tribunal dated 21.07.2023 in case of DIAL Vs. AERA in AERA Appeal No.1 of 2021**, stating that several appeals have been preferred by AERA before Hon'ble Supreme Court.

**56.** AERA has not appreciated the fact that no stay has been granted by the Hon'ble Supreme Court of India and, therefore, judgment delivered by this Tribunal ought to have been followed while deciding tariff for the next control period.

**57.** Previously, an error was committed by AERA, and therefore, the judgment was delivered by the Hon'ble Supreme Court of India in the DIAL Vs. AERA, reported in (2024)1 SCC 716 and the matter was remanded for the re-calculation as per the directions.

**58.** The decision of AERA was challenged again in AERA Appeal No.1 of 2021. This Tribunal has decided that the said appeal preferred by DIAL and delivered a judgment on 21.07.2023. However, the same has not been implemented for the Fourth Control Period by AERA. Primarily, on the excuse that appeal has been preferred by AERA before the Hon'ble Supreme Court of India, wherein, no stay has been granted by Hon'ble the Supreme Court of India against the judgment delivered by this Tribunal on 21.07.2023 in AERA Appeal No.1 of 2021, hence making the excuse is legally untenable.

**59.** The legal position has since been reiterated by this Tribunal in AERA Appeal No.1 of 2024 in **GMR Goa International Airport Limited Vs. AERA** in **paragraph numbers 186**

**to 193**, and in **paragraph numbers 268 to 270**, which reads as under: -

**"***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.*

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.***"**

**60.** It has, regrettably, become a recurring feature of proceedings before this Tribunal that a direction to AERA to comply with and give effect to this Tribunal's judgments must be repeated, appeal after appeal, before the same issues can be said to be settled in practice and not merely in law. The present case is no exception.

**61.** The invariable counter offered by AERA to such directions is that Civil Appeals against the judgments in question are pending before the Hon'ble Supreme Court under Section 31 of the AERA Act, and that AERA proposes to await the outcome of those appeals before giving effect to this

Tribunal's rulings. AERA has advanced precisely this position in the present case, both in its Counter Affidavit and in its submissions before us, in respect of the judgment in AERA Appeal No. 01 of 2021 dated 21.07.2023 of this Tribunal.

**62.** This stance, repeated as it has been across successive appeals, sits uneasily with the rule of law, and this Tribunal is constrained to deprecate it. It is not disputed that AERA is entitled to pursue its Civil Appeals; that entitlement was itself upheld by the Hon'ble Supreme Court in ***Airports Economic Regulatory Authority of India Vs. Delhi International Airports*** *Ltd.*, **2024 SCC OnLine SC 2923**, judgment dated **18.10.2024**, which held AERA's appeals under Section 31 of the AERA Act to be maintainable.

**63.** However, with caution one must note that maintainability of an appeal and suspension of the binding effect of the judgment appealed against are two distinct questions, governed by two distinct bodies of law, and the Hon'ble Supreme Court's ruling on the former, in our humble opinion, cannot be read, as AERA appears to read it, as having any bearing on the latter.

**64.** **We must further caution that AERA's position, if accepted even in principle, would allow a maintainable appeal, without anything more, to operate as a self-granted stay or De Facto stay, which is a proposition this Tribunal is unable to countenance in law and facts**.

**65.** While alluding to the statutory scheme, it can be seen that the said scheme itself points firmly against AERA's present position. From bare perusal of Section 31 of the AERA Act it can be seen that the same confines a further appeal to the Hon'ble Supreme Court to grounds specified in Section 100 of the Code of Civil Procedure, 1908 that is to say, to a substantial question of law.

**66.** **The implication of the above is that the Parliament has, in other words, constituted this Tribunal as the primary and comprehensive forum for adjudication on the merits of tariff determinations, including questions of fact, technical methodology, accounting treatment and contractual application, and has deliberately confined the Hon'ble Supreme Court's appellate role to the correction of substantial legal error**.

**67.** Thus, to permit AERA to treat the mere existence of that narrow appellate window as a licence to disregard this Tribunal's determinations in the interim would be to invert the statutory hierarchy as the Parliament has constructed.

**68.** In the absence of any order of stay passed by the Hon'ble Supreme Court against the judgment of this tribunal dated 21.07.2023; as none has been placed on record and only on the issuance of notice, the conduct of AERA; in declining to give effect to that judgment cannot be countenanced. This Tribunal deprecates the conduct of AERA in this regard.

**69.** It bears emphasis that Section 32 of the AERA Act,2008 provides that an order passed by this Tribunal is executable as a decree of a civil court, for which purpose this Tribunal has all the powers of a civil court, and may transmit its order to a civil court of local jurisdiction for execution as if it were that court's own decree.

**70.** The existence of **Section 32 is not without consequence, as it demonstrates that the orders and judgments of this Tribunal are not advisory or precatory in character but are intended by Parliament to carry the same finality and enforceability as a civil decree.**

**71.** It is incumbent upon AERA to implement and give effect to the judgments and orders of this Tribunal on the specific issues already decided, including while undertaking the true-up exercise for subsequent Control Periods.

**72.** **Further, on a conjoint reading of Section 32 together with the limited appellate window under Section 31, and in the continued absence of any order of stay from the Hon'ble Supreme Court, this Tribunal finds no justification whatsoever for AERA's failure to implement the judgments of this Tribunal, in the present case or otherwise.**

**73.** We do not consider it necessary, at this stage, to invoke the coercive machinery contemplated under Section 32. Nevertheless, the existence of such machinery reinforces the conclusion that AERA is legally bound to implement the operative directions of this Tribunal unless their operation has been stayed or they have been varied by the Hon'ble Supreme Court.

**74.** It must also be borne in mind that tariff determination contains an in-built mechanism of true-up. If the Hon'ble Supreme Court subsequently modifies or reverses the legal position declared by this Tribunal, the resulting financial

consequences can be appropriately and symmetrically adjusted in the succeeding Control Period. The existence of such a mechanism substantially answers AERA's apprehension regarding possible over-recovery or under-recovery.

**75.** In the absence of any order of stay passed by the Hon'ble Supreme Court, and having regard to the statutory scheme embodied in Sections 18, 31 and 32 of the AERA Act, there was no justification for AERA to refuse implementation of the judgments of this Tribunal on issues already decided.

**76.** We, therefore, reject the contention that the pendency of an appeal under Section 31 entitled AERA to await the final outcome of the proceedings before the Hon'ble Supreme Court. AERA is directed to give effect to the judgments and orders of this Tribunal on the issues specifically concluded therein while undertaking the true-up exercise and while determining tariff for subsequent Control Periods, subject always to any express order passed by the Hon'ble Supreme Court.

**77.** It has been held by the Hon'ble Supreme Court of India, in a consistent line of authority, that the mere filing of an appeal, without an order of stay actually operating, does not suspend

the operation or binding force of the judgment appealed against as has been held in ***Collector of Customs Vs. Krishna Sales (P) Ltd.*, 1994 Supp (3) SCC 73**, at **paragraph 6**, which reads as under:

> ***"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****."***

**78.** Furthermore, the Hon'ble Supreme Court in the case of ***Kunhayammed Vs. State of Kerala*, (2000) 6 SCC 359**, under **paragraph 12** has observed as follows:

> **"***12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time.* ***When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy****. Once the superior court has disposed of the lis before it either way — whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view****."***

**79.** The Hon'ble Supreme Court in the case of ***Madan Kumar Singh Vs. District Magistrate, Sultanpur*****, (2009) 9 SCC 79**, held that the mere filing of a petition, appeal or suit does not operate as a stay unless a specific prayer is made and an order granting such relief is passed under **Paragraph 14**, which reads 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****…"*

**80.** AERA has relied upon *Union of India Vs. West Coast Paper Mills Ltd.*, (2004) 2 SCC 747, particularly the observation that

once an appeal has been entertained, the judgment under appeal is placed in jeopardy and the lis cannot be regarded as having attained ultimate finality until its determination by the last court.

**81.** We note that the observation in *West Coast Paper Mills* Supra, must be understood in the context of the doctrine of merger, continuation of proceedings in appeal and the computation of limitation for a subsequent claim. It does not declare that a judgment under appeal ceases to operate or becomes incapable of implementation in the absence of stay.

**82.** A judgment may be in jeopardy in the sense that its continued existence is subject to the result of the appeal. That is materially different from saying that the judgment stands suspended while the appeal remains pending.

**83.** If the expression "in jeopardy" were construed as creating an automatic suspension, the provisions governing grant of stay, including **Order XLI Rule 5**, would become redundant. There would be no occasion for an appellate court to examine ***prima facie case, balance of convenience or irreparable injury*** because every appeal would itself operate as a stay.

**84.** We observe with due circumspection that AERA's submissions also fail to distinguish between res judicata and precedent. The Appellant's case does not depend exclusively upon the application of res judicata across successive Control Periods.

**85.** It must be noted that each tariff determination may involve fresh figures, projections and circumstances. **Nevertheless, the legal principles settled by this Tribunal concerning the interpretation of the AERA Act, OMDA, SSA and the tariff methodology remain binding unless the facts or contractual provisions are materially distinguishable**.

**86.** AERA has further contended that DIAL did not initiate proceedings under Section 32 of the AERA Act for execution of the judgment dated 21.07.2023 and that such omission demonstrates that DIAL itself regarded the judgment as unenforceable. It is made clear that Section 32 provides a machinery for execution of the orders of this Tribunal. It is an enabling remedy available to the successful party. It does not make institution of execution proceedings a condition precedent to the legal obligation of AERA to follow the applicable judgment in a subsequent tariff determination.

**87.** A statutory authority cannot decline to apply a binding judgment and thereafter rely upon the affected party's failure to commence coercive execution proceedings as justification for its own non-compliance. The obligation to act according to law rests independently upon AERA. It does not arise only after the successful party invokes the execution machinery.

**88.** AERA was bound to give effect to the legal findings and operative directions contained in that judgment while undertaking true-up of the earlier Control Periods and determining tariff for the Fourth Control Period. Where AERA considered any particular finding inapplicable because of a material difference in facts, contractual provisions or statutory framework, it was required to identify that distinction and furnish reasons. A general reference to the pendency of an appeal is legally insufficient.

**89.** AERA submits that the airport operators themselves delayed the adjudication of its appeals by raising objections to maintainability, and ought not now be heard to insist on implementation. The submission is misconceived. A party is entitled to raise legal objections available to it. More fundamentally, whatever the cause of pendency, the legal consequence of pendency-without-stay remains the same. It may also be noticed that after 18.10.2024, when the preliminary objection was decided, it was open to AERA

to press its stay applications with urgency; nothing on record indicates that it did so in the more than five months before it passed the impugned order on 28.03.2025.

**90.** In view of the aforesaid decisions rendered by Hon'ble the Supreme Court of India and also looking to the decisions rendered by this Tribunal in *Mangaluru International Airport Ltd. Vs. AERA*, AERA Appeal No. 1 of 2023, to be read with the decision rendered by this Tribunal in case of GMR Goa International Airport Limited Vs. AERA in AERA Appeal No.1 of 2024, AERA ought to have been given effect to the legal issues which are already decided by this Tribunal.

**91.** Every time the same issues have to be decided by this Tribunal again and again because AERA is not implementing the judgments of this Tribunal and every time the Airport Operator has to raise the same issues in MYTP before AERA. This could have been avoided by AERA in view of the decisions rendered by this Tribunal, when no stay has been granted by Hon'ble the Supreme Court of India.

**92.** **We, therefore, direct AERA to implement the decisions of this Tribunal for the issues already decided to avoid multifariousness of AERA Appeals before this Tribunal**. **Hence, Issue No. I is accordingly answered in favour of the Appellant.**

**Issue No. II. Non-consideration of Actual Cost of Debt incurred by the appellant in the true-up for the Third Control Period.**

**93.** The actual Cost of Debt incurred by the Appellant ought to have been considered by AERA while undertaking the true-up for the Third Control Period, keeping in view the provisions of **Section 13 (1) (a) (i)** of the Airports Economic Regulatory Authority of India Act, 2008. The issue concerning imposition of a normative ceiling upon the Cost of Debt, despite the availability of the actual borrowing cost, has already been considered by this Tribunal in the following judgments:

(i) Judgment dated 06.10.2023 in *Mumbai International Airport Limited Vs. Airports Economic Regulatory Authority of India*, AERA Appeal No. 2 of 2021 along with AERA Appeal No. 9 of 2016.

(ii) Judgment dated 14.02.2024 in *GMR Hyderabad International Airport Limited Vs. Airports Economic Regulatory Authority of India*, AERA Appeal No. 4 of 2021.

(iii) Judgment dated 11.09.2025 in *Mangaluru International Airport Limited Vs. Airports Economic Regulatory Authority of India*, AERA Appeal No. 1 of 2023.

(iv) Judgment dated 11.09.2025 in *GMR Goa International Airport Limited Vs. Airports Economic Regulatory Authority of India*, AERA Appeal No. 1 of 2024.

**94.** For the true-up of the tariff determined for the Third Control Period, DIAL requested AERA to consider the actual Cost of Debt at 10.55% incurred during the Third Control Period, as recorded in paragraph 4.5.3 of the impugned tariff order, which is at Annexure A-1. For the ready reference, paragraph 4.5.3 of the impugned tariff order reads as under:

*"4.5.3. DIAL has considered effective cost of debt i.e. 10.55% for the Third Control Period computed based on the debt outstanding in each of the years of the Control Period. The basis for the cost of debt towards True Up for the Third Control Period is as shown in the table below:*

**Table 81: Cost of Debt Calculation submitted by DIAL towards True Up for the Third Control Period**

| **FY ending March 31, (Rs. Cr)** | **2020** | **2021** | **2022** | **2023** | **2024** |
|---|---|---|---|---|---|
| Average Principal | 8,773.92 | 12,031.02 | 12,031.02 | 11,252.25 | 13,252.25 |
| Cost of Debt | 10.06% | 10.24% | 10.83% | 10.84% | 10.68% |
| Effective Cost of Debt | | | | | 10.55% |

*4.5.5 DIAL considered the same methodology for calculation of WACC as adopted by the Authority in the Tariff Order for the Third Control Period and the WACC as calculated by DIAL stands at 13.08% with notional debt and equity at 48% and 52% respectively. The calculation of WACC is shown in the table below:*

***Table 82: WACC submitted by DIAL for the Third Control Period as per MYTP for the Fourth Control Period***

| Particulars | Cost of Funds | Gearing | Effective Rate |
|---|---|---|---|
| Equity | 15.41 % | 52.00% | 8.02% |
| Debt | 10.55% | 48.00% | 5.06% |
| WACC | | | 13.08% |

**95.** In view of the aforesaid facts, the actual cost of debt comes to 10.55%. AERA, while passing the Third Control Period tariff order had proposed to consider the cost of debt at 9.87%, based on assessments of effective rupee term loan and bonds, subject to a ceiling of additional 50 bps. Accordingly, AERA has decided to consider effective cost of debt at 10.37% (9.87% plus 0.5%). This issue has also been decided by this Tribunal, as stated herein above.

**96.** DIAL has contended that AERA ought to have been considered actual cost of debt incurred by the appellant during third control period and true-up has to be given for the third control period on actual cost of debt at 10.55%.

**97.** We are in agreement with the aforesaid contention as **there cannot be an artificial ceiling set by AERA upon cost of debt, as per Section 13(1)(a)(i) of the AERA Act, 2008**. The actual cost of debt incurred by the Airport Operator has to be considered by AERA as Section 13(1)(a)(i) of the AERA Act does not authorise AERA to disregard an actual and verified financing cost by mechanically applying a predetermined ceiling.

**98.** It ought to be kept in mind by AERA that the final weighted-average Cost of Debt for the entire Third Control Period could be conclusively ascertained only after completion of the Third Control Period on 31.03.2024, when the complete borrowing profile and corresponding financing costs for the five-year period had become available.

**99.** Upon completion of the Third Control Period, DIAL raised the claim for consideration of its actual weighted-average Cost of Debt of 10.55% in the MYTP submitted on 29.05.2024 for the Fourth Control Period. The claim was therefore raised at the first regulatory opportunity at which the complete actual borrowing profile could be examined.

**100.** During third control period, there was COVID-19 and thereafter DIAL's operation was materially and severely affected, and both

international and domestic credit rating agencies downgraded the credit rating of DIAL, citing project execution risk, liquidity risk, and refinancing risk.

**101.** The material relied upon by DIAL shows that certain domestic credit rating agencies had also downgraded **DIAL's credit rating from AA- (stable) to AA- (negative) in March, 2020 which was further deteriorated to A + (negative).**

**102.** Each credit rating has a sufficient effect on the cost of debt. All these facts have not been properly appreciated by AERA and, therefore, contention of AERA that cost of debt incurred by DIAL is inefficient, is not accepted by this Tribunal.

**103.** There were further reasons with this appellant to raise the debt because the DIAL bonds were due for payment in February, 2022. For Phase 3A project, the debt was to be incurred so as to complete Phase 3A expansion project. There were varieties of reasons for which the cost of debt was incurred and, therefore, it cannot be said that the actual cost of debt incurred by DIAL was inefficient.

**104.** In fact, the contention of Respondent No.1 of assessing efficiency as required under SSA (Annexure A-3) and permitting only efficient cost of debt to be recovered through pricing is raised by

AERA in its counter affidavit, but, the same is afterthought to improve upon the reasoning in the impugned tariff order, which is not permissible as per the decision rendered by the Hon'ble Supreme Court of India in **Mohinder Singh Gill Vs. Chief Election Commissioner, reported in (1978) 1 SCC 405. Paragraph 8** of the said decision reads as under:

> **"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise**. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji* [*Commr. of Police, Bombay* v. *Gordhandas Bhanji*, 1951 SCC 1088 : AIR 1952 SC 16] :
>
> > "**Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do**. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."
>
> ***Orders are not like old wine becoming better as they grow older*."**

**105.** In ***Mumbai International Airport Limited Vs. AERA*, AERA APPEAL No. 2 of 2021 decided on 06.10.2023**, this Tribunal held that there cannot be a fixed Cost of Debt for an entire Control Period of five years because the Cost of Debt varies with market conditions, MCLR, inflation, repayment tenure and the credit profile of the borrowing entity. It was held in paragraph 313 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 Third 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 factors 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."***

**106.** It must be noted that the **Cost of Debt is required to be considered in light of Section 13(1)(a)(i) of the AERA Act** and that imposition of an artificial cap is uncalled for where the debt had been contracted from reputed lenders.

**107.** This principle was reiterated by this Tribunal in *GMR Hyderabad International Airport Limited Vs. AERA*, AERA APPEAL No. 04 of 2021, decided on 14.02.2024. Wherein, AERA was directed to consider the Cost of Debt actually incurred by the airport operator instead of the lower normative rate adopted in the tariff order.

**108.** The subsequent judgments dated 11.09.2025 concerning *Mangaluru International Airport Vs. AERA, AERA APPEAL No. 01 OF 2023*, and *GMR Goa International Airport Vs. AERA, being AERA APPEAL No. 01 of 2024*, reinforced the same principle.

**109.** However, in the GMR Goa Judgment, this Tribunal clarified that AERA may require an airport operator to pursue efficient financing and may disallow a cost demonstrated to be imprudent. **What is impermissible is a predetermined ceiling detached from the airport operator's own credit profile, security package, traffic risk, maturity profile and actual market conditions.**

**110.** It is clarified that the judgments in the cases of Mangaluru International Airport and GMR Goa International Airport were delivered subsequent to the Impugned Order dated 28.03.2025. AERA cannot, therefore, be faulted for not having applied those judgments while passing the Impugned Order. Nevertheless, the said judgments are relevant for the present adjudication since

they reiterate and explain the principle already declared in the earlier judgments dated 06.10.2023 and 14.02.2024, both of which preceded the Impugned Order.

**111.** From the perusal of the above pronouncement the true legal position at emerges, therefore, is not that every financing cost entered in the books of an airport operator must mechanically be passed through to airport users.

**112.** It is without doubt that AERA retains the jurisdiction and duty to subject the actual borrowing cost to a prudence review. It may disallow a cost shown to be unnecessary, collusive, related-party driven, commercially unreasonable or avoidable through a demonstrably available alternative.

**113.** **However, a prudence review must be founded upon evidence and recorded reasons. The actual Cost of Debt is the starting point of the inquiry. AERA cannot replace it with a normative ceiling merely because the ceiling had been forecast in an earlier tariff order**.

**114.** AERA must identify the particular borrowing said to be imprudent, the contemporaneously available lower-cost alternative, the terms upon which such alternative finance was

available, and the financial consequence of the alleged imprudence.

**115.** **In the present case, AERA made no transaction-specific finding that the borrowing was unnecessary, that the proceeds were diverted, that the transaction was not at arm's length, that the lender was a related party, or that the contractual rate was inconsistent with DIAL's then prevailing credit profile and market conditions.**

**116.** Further, AERA did not identify any domestic or other financing facility which was actually available to DIAL on or about 30.03.2021 at a materially lower all-in cost and on terms capable of addressing the imminent refinancing obligation and the funding requirements of Phase 3A.

**117.** We say this with great care, **that a general observation that subsequent borrowings were raised below 10% does not establish that an equivalent borrowing was available on the same terms during the peak of the COVID-19 crisis.** The Third Control Period commenced on 01.04.2019 and ended on 31.03.2024, therefore, the actual weighted-average Cost of Debt for the entire Control Period could be finally ascertained only after the complete borrowing profile for the five-year period became available.

**118.** The Third Control Period Tariff Order was passed on 30.12.2020 on the basis of estimated and projected financing parameters. The true-up undertaken in the Impugned Order was a subsequent and distinct regulatory exercise intended to replace projections with verified actuals. A true-up cannot remain a true-up merely in name while retaining a normative ceiling in substance, irrespective of the actual cost subsequently established.

**119.** During the Third Control Period, the aviation sector was severely affected by the COVID-19 pandemic. DIAL's traffic and operating revenues were materially impaired. Its internal accruals, which had earlier been proposed as a significant source of financing for Phase 3A, became necessary for maintaining airport operations, upkeep of airport equipment and payment of employee salaries.

**120.** The material placed on record further shows that domestic credit-rating agencies downgraded DIAL from AA–(Stable) to AA–(Negative) in March 2020, followed by a further downgrade to A+(Negative). The rating was restored to AA–(Stable) only in March 2024.

**121.** Each change in rating or outlook may have a corresponding effect upon the availability, tenor, security requirements and pricing of

debt. AERA was therefore required to examine the financial effect of the downgrade and the then prevailing condition of the aviation credit market. It could not reject the relevance of the downgrade merely because the rating remained above a chosen alphabetical threshold.

**122.** The weighted-average rate of 10.55% itself incorporates the impact of the subsequent lower-cost borrowings. AERA could not again rely upon the existence of those lower-rate instruments to impose an additional normative reduction without identifying the date from which further refinancing was commercially feasible, the amount capable of being refinanced, the prepayment or transaction costs involved, and the net saving that could reasonably have been achieved.

**123.** AERA's reliance upon *Airports Economic Regulatory Authority of India Vs. Delhi International Airport Limited*, 2024 SCC OnLine SC 2923, is also misplaced for the present purpose. In the aforesaid case the Hon'ble Supreme Court was considering whether AERA was entitled to maintain an appeal under Section 31 of the AERA Act and, in that context, explained the regulatory character of AERA's functions.

**124.** With great deference to the Hon'ble Supreme Court of India, we observe, that the said judgment does not hold that AERA may disregard any of the statutory factors contained in Section 13(1)(a), ignore binding judgments of this Tribunal or impose a predetermined ceiling without examining the actual financial record. Regulatory discretion is not equivalent to unstructured discretion; it must be exercised upon relevant material and for reasons capable of withstanding judicial scrutiny.

**125.** In view of the materials on record and especially in view of the decisions of this Tribunal referred to above, AERA cannot brush aside the actual Cost of Debt incurred by the Appellant during the Third Control Period as the burden of substantiating the actual cost initially lies upon the Airport Operator; once it is duly audited and verified, any regulatory disallowance must rest upon specific reasons and supporting material.

**126.** **We, therefore, quash and set aside the decision of AERA to consider the Cost of Debt at 10.37%. We hereby direct AERA to consider the actual Cost of Debt incurred by the Appellant at 10.55% and to give true-up of the Third Control Period on that basis. Issue No. II is accordingly answered in favour of the Appellant.**

**Issue No. III: Non-consideration of Actual Cost of Debt to be incurred by DIAL in fourth control period, if the same exceeds SBI's MCLR +150 bps**

**127.** It appears that AERA has put a cap upon the cost of debt, which is not permissible. **AERA cannot presume the cost of debt**. AERA ought to have appreciated actual cost of debt incurred by DIAL based upon projected outflows of existing loans, projected cost of debt at 10.24% for the fourth control period, (01.04.2024 to 31.03.2029).

**128.** For ready reference, the cost of debt narrated in the impugned tariff order as demanded by this appellant in paragraph 7.1.3 to 7.1.5 in the impugned tariff order at Annexure A-1 which reads as under:

*7.1.3 DIAL has projected the cost of debt based on the outflows of the existing loans as on March 31, 2024 at the original drawdown foreign currency rate.*

*7.1.4 In addition to the existing loans, DIAL proposes to avail fresh loan to meet capital projects i.e. Construction of Pier E and Construction of Code E and C stands proposed to be carried out in the Fourth Control Period. The projects are proposed to be funded by way of debt and equity in the ratio 70:30. Cost of Debt has been considered as 10%.*

*7.1.5 The details of the debt outstanding along with the cost of debt as submitted by DIAL is as shown in the table below:*

***Table 257: Details of Debt Outstanding along with Cost of Debt submitted by* DIAL for the Fourth Control Period as per MYTP**

| **FY ending March 31 (Rs. Cr)** | **2025** | **2026** | **2027** | **2028** | **2029** |
|---|---|---|---|---|---|
| Long Term Debt O/s at the end of the FY | 13,252.20 | 13,601.32 | 11,308.57 | 8,345.19 | 7,724.02 |
| Interest cost including hedge premium/discount | 1,397.33 | 1,286.22 | 987.66 | 750.96 | 766.12 |
| Weighted Average Cost of Debt | 10.54% | 10.42% | 10.10% | 9.92% | 9.92% |
| **Effective Cost of Debt for 4th CP** | | | | | **10.24%** |

**129.** In view of the aforesaid calculation of cost of debt, DIAL requested AERA to consider Weighted Average Cost of Capital as 12.93% for the fourth control period. For ready reference Table 258 of the impugned tariff order reads as under.

**Table 258: WACC submitted by DIAL for the Fourth Control Period as per MYTP**

| FY ending March 31 | 2025 | 2026 | 2027 | 2028 | 2029 |
|---|---|---|---|---|---|
| **Cost of funds** | | | | | |
| Cost of Equity | 15.41% | 15.41% | 15.41% | 15.41% | 15.41% |
| Weighted Average Cost of Debt for the Year | 10.54% | 10.42% | 10.10% | 9.92% | 9.92% |
| Weighted Average Cost of Debt for the Control Period | 10.24% | 10.24% | 10.24% | 10.24% | 10.24% |
| **Gearing** | | | | | |
| Equity | 52.00% | 52.00% | 52.00% | 52.00% | 52.00% |
| Debt | 48.00% | 48.00% | 48.00% | 48.00% | 48.00% |
| **WACC for the Year** | **12.93%** | **12.93%** | **12.93%** | **12.93%** | **12.93%** |

**130.** AERA has decided to consider cost of debt at 10.15% for computation of WACC and true-up, the cost of debt for the Fourth Control Period based upon actual or SBI average one-year Marginal Cost of Funds based Lending Rate (MCLR) +150 bps, whichever is lower at the time of tariff determination for the Fifth Control Period.

**131.** From careful analysis of record, **we are of the opinion that decision of AERA is based upon presumptions. There cannot be any presumption of cost of debt in tariff determination process**. Looking to the provisions of Section 13(1)(a) of the

AERA Act, 2008, the actual cost of debt incurred by the Airport Operator should be considered by AERA. This actual cost of debt can neither be increased nor reduced by AERA without transaction specific finding which are supported by materials to that effect.

**132.** We reiterate that AERA is entitled to undertake a reasonable forecasting exercise and a forecast or benchmark may also serve as an initial prudence indicator. **It cannot, however, be converted into an irrebuttable ceiling that excludes a higher actual cost subsequently shown to have been prudently and efficiently incurred.**

**133.** It is to be noted that imposition of arbitrary ceiling on cost of debt is illegal. It has been held by the Tribunal in **MIAL Vs. AERA in AERA Appeal No.2 of 2021, in judgment dated 06.10.2023** under paragraph number 313, 320 to 321, which reads 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 Third 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 factors 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****.*

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.***"**

**134.** Similarly, it has been decided by this Tribunal in a judgment dated **11.09.2025** in case of **Mangaluru International Airport Limited Vs. AERA in AERA Appeal No.1 of 2023**, in paragraph number 130, which reads as under:

> *"130. In view of the aforesaid facts, reasons and judicial pronouncements, we hereby quash and set aside the decision of AERA whereby AERA has considered CoD at 9% p.a. for computation of Fair Rate of Return (FroR). We hereby hold that, looking to the facts of the present case, simply because the appellant has availed debt from its one of the shareholders, the same cannot by itself disallow the appellant to claim actual Cost of Debt. This is more so when the entity from which the appellant has availed debt has in turn, availed debt from reputed lenders.* ***Thus, AERA ought to have allowed actual Cost of Debt incurred by the appellant. Putting a cap upon Cost of Debt is uncalled for and unwarranted.*** *We therefore direct AERA to allow actual Cost of Debt incurred by the appellant and necessary True Up shall be given for previous Control Periods accordingly.***"**

**135.** It has been decided by this Tribunal in judgment dated **11.09.2025**, in case of **GMR Goa International Airport Limited Vs. AERA, AERA Appeal No.1 of 2024**, paragraph number 133 and paragraph 134 and 135, which reads as under:

> **"***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.** In view of the aforesaid decision, AERA cannot impose arbitrary ceiling on cost of debt. **The capping of the Cost of Debt by AERA amounts to a violation of Section 13(1)(a)(i) of the AERA Act, 2008. The Cost of Debt of 10.24% for the Fourth Control Period is based upon DIAL's existing and proposed loan portfolio, as recorded in paragraph 7.1.3 and 7.1.5**, as stated hereinabove and such data cannot be ignored and hypothetical figure of cost of debt cannot be imposed as a ceiling by AERA.

**137.** The observations in the impugned tariff order, Annexure A-1, in paragraph 7.2.11, for the cost of debt, fixed by AERA which reads as under:

***"7.2.11*** *DIAL should over the next few years be able to optimize the cost of debt given the expected decline in benchmark rates of borrowing and shall take effective steps to raise debt at efficient costs to retire the high cost debt already raised in the past control period so that the interest costs of DIAL gets optimized and the benefits are shared with the airport users.***"**

**138.** Aforesaid reasoning given by AERA to put a hypothetical fixing upon cost of debt is based upon the reasons given in paragraph 7.2.11 of the impugned order. **These reasons are absolutely arbitrary in nature**. There may be a gap between expectation of AERA about the cost of debt and actual cost of debt incurred by DIAL. AERA should have appreciated that actual cost of debt depends upon varieties of reasons of several factors prevailing in the fiscal market.

**139.** As, for example, ongoing war situation and due to it, there may be no recovery of expected ARR due to cancellation of flights, both domestic as well as international. There may be substantial reduction of footfall at the airport and there will be substantial reduction in the number of passengers at the airport. There may be such other type of circumstances which may result into a gap between expectation of AERA about the cost of debt and actual cost of debt incurred by the appellant, and therefore, as per Section 13(1)(a)(i) of AERA Act 2008, actual cost of debt incurred by the appellant should be considered at the time of true-up process in the fifth control period.

**140.** The binding decisions of this Tribunal on the cost of debt especially the ratio decidendi in ***MIAL Vs. AERA, GHIAL Vs.***

***AERA, Mangaluru International Airport Ltd. Vs. AERA*** **and** ***GMR Goa International Airport Ltd. Vs. AERA*** **are founded on the plain language of Section 13 (1)(a)(i) of the AERA Act, which mandates AERA to consider the "capital expenditure incurred".**

**141.** **The statutory mandate is to take into account the cost actually incurred, not a notional or deemed cost that the regulator considers efficient**. Whether the debt is raised through term loans from PSU banks, NCDs, or external commercial borrowings is immaterial to the statutory principle; the common thread is that the actual financing cost, contracted at arm's length and certified by statutory auditors, must naturally form the basis of tariff determination, unless displaced by cogent material demonstrating imprudence.

**142.** A distinction must be drawn between the provisional estimation of Cost of Debt for a future Control Period and the treatment of the cost actually incurred when the Control Period is subsequently trued up. At the commencement of the Fourth Control Period, the complete actual Cost of Debt for the ensuing five years is necessarily unknown. AERA was, therefore, entitled to undertake a reasonable forecasting exercise.

**143.** However, such forecasting discretion, **does not authorise AERA to disregard the airport operator's existing contractual debt obligations, maturity profile, hedge costs, proposed capital expenditure and project-specific borrowing requirements**. Nor does it permit AERA to prescribe in advance that, even if a higher Cost of Debt is subsequently incurred prudently and at arm's length, the amount recoverable through tariff shall remain confined to a predetermined ceiling.

**144.** The decision of AERA is founded upon the SBI one-year MCLR of 8.65% prevailing at the commencement of the Control Period, to which AERA added a spread of 150 basis points. This resulted in a Cost of Debt of 10.15%.

**145.** The mere fact that SBI is a large and systemically important bank does not establish that SBI, or any other lender, would necessarily sanction funds to DIAL at that spread. Each lender remains entitled to undertake its own assessment of the borrower, the project, the security package and the prevailing market conditions.

**146.** AERA was entitled to examine whether any portion of such debt could be prudently refinanced and whether the financial benefit of refinancing ought to be passed on to airport users. However,

such an inquiry required relevant consideration of the maturity dates, prepayment restrictions, break costs, refinancing fees, hedge-unwinding costs, lender approvals and the net economic benefit likely to arise from refinancing.

**147.** From bare perusal of Paragraph 7.2.11 of the Impugned Order, it is evident that AERA merely expresses an expectation that rates would decline and that DIAL should be able to retire higher-cost debt. AERA does not analyse whether, when and to what extent such refinancing was legally and commercially feasible.

**148.** A forecast of declining rates remains subject to monetary-policy movements, inflation expectations, liquidity conditions, sovereign yields, credit-rating changes, currency movements and other macroeconomic or geopolitical disruptions.

**149.** Where AERA establishes, on the basis of cogent material, that a portion of the borrowing cost was imprudent or that a reasonably available refinancing opportunity was unjustifiably ignored, it may make a corresponding adjustment and such disallowance must, however, be transaction-specific and supported by recorded reasons.

**150.** For purposes of the prospective tariff determination, DIAL's projected Cost of Debt of 10.24% was based upon the airport-specific existing and proposed loan portfolio and the corresponding

year-wise interest outflows. AERA's rate of 10.15%, by contrast, was derived from a general banking benchmark and a uniform spread, without demonstrating that the resulting rate better represented DIAL's all-in financing obligations for the Fourth Control Period.

**151.** We, therefore, hold that AERA could not impose SBI average one-year MCLR plus 150 basis points as an absolute ceiling upon the Cost of Debt to be recognised at the stage of true-up for the Fourth Control Period. There cannot be an artificial ceiling or capping upon the cost of debt by the AERA.

**152.** **We accordingly quash and set aside the decision contained in paragraphs 7.2.12 and 7.6.2 of the Impugned Order to the extent that it directs DIAL to true up the Cost of Debt on the basis of actuals or SBI average one-year MCLR plus 150 basis points, whichever is lower.**

**153.** **We, therefore, direct AERA to consider cost of debt at 10.24%, which will be subject to true-up on actual cost of debt incurred by this appellant during this fourth control period. Thus, actual cost of debt incurred by the appellant during fourth control period shall be true-up at the time of fifth control period for the tariff determination process. Issue No. III is accordingly answered in favour of the Appellant.**

**ISSUE IV: Setting off interest during construction cost, interest income accrued to DIAL.**

**154.** During the Third Control Period commencing on 01.04.2019 and ending on 31.03.2024, DIAL incurred IDC of ₹2,121.54 crore in relation to the Phase 3A expansion works. AERA deducted interest income of ₹399.11 crore earned upon temporarily unutilised funds from the said IDC, thereby reducing it to ₹1,722.43 crore. AERA thereafter made a proportionate adjustment by applying the Cost of Debt of 10.37% instead of 10.55%, and ultimately considered IDC of ₹1,692.30 crore.

**155.** The AERA's relevant determination in paragraph 4.4.170 of the Impugned Tariff Order reads as under:

> **"** **...**
>
> **...**
>
> *The IDC incurred by DIAL for Phase 3A Expansion capex (net of interest income earned on surplus funds) was ₹1,722.43 Cr (i.e. ₹2,121.54 Cr less ₹399.11 Cr of interest income).*
>
> *However, the Authority also notes that the actual Cost of Debt of DIAL for the Third Control Period worked out to 10.55% as against the Efficient Cost of Debt of 10.37% decided to be considered by the Authority for the Third Control Period. Accordingly, the Authority decides to carry out proportionate adjustment in the IDC incurred by DIAL (net of interest income earned on surplus funds) based on the Efficient Cost of Debt.*
>
> *Accordingly, the IDC decided to be considered by the Authority for Phase 3A Expansion works out to ₹1,692.30 Cr [i.e. ₹1,722.43 Cr × (10.37%/ 10.55%)] as against the notional IDC of ₹1,396.77 Cr considered by the Authority at the Consultation Stage.***"**

**156.** DIAL has reiterated the arguments canvassed on behalf of HIAL in ***GMR Hyderabad International Airport Limited Vs. Airports Economic Regulatory Authority of India*, AERA Appeal No. 4 of 2021, decided on 14.02.2024**, as recorded in paragraphs 106 and 107 of the said judgment. It was contended therein that project funding cannot ordinarily be procured in a piecemeal manner and must be secured sufficiently in advance of the planned expenditure, and that interest income accruing upon temporarily unutilised debt could not be deducted from IDC.

**157.** The aforesaid submissions were considered by this Tribunal in paragraphs 493 to 500 of the said judgment. In paragraphs 498 & 499, the Tribunal held that project finance cannot ordinarily be secured intermittently or in a piecemeal manner and that IDC must be calculated by taking into consideration the cost of the entire debt facility & deduction of interest calculated at 6.5% per annum upon unutilised debt from IDC was impermissible, inter alia, because such interest did not arise from Aeronautical Services, the formula contained in paragraph 5.2.7 (a) of the Tariff Guidelines did not contemplate netting of interest income.

For ready reference, paragraph 498 and 499 of the aforesaid decision reads as under:

> **"***498. In view of the aforesaid formula, lower FRoR is highly appreciable because it is to be multiplied by RAB for the calculation of ARR and, therefore, IDC should be calculated on the total project funding.* ***AERA has to calculate IDC taking into consideration the costs of the entire debt facility. This aspect of the matter has not been properly appreciated by AERA while passing the impugned order dated 31.08.2021 mainly for the reason that project funding cannot be procured intermittently or in a piecemeal manner. On the contrary, it should be procured well in advance for the planned expenditure****.*
>
> *499. AERA has deducted interest at the rate of 6.5% per annum for the unutilised debt and has reduced IDC to that extent. This is not permissible in the eyes of law and this deduction is beyond the regulatory ambit of AERA because interest does not accrue from any services rendered by the Airport Operator. Much has been argued out by the counsel for AERA that interest earned upon the unutilised debt has to be deducted from the calculation of IDC. This contention of the counsel for Respondent No.1 - AERA is not accepted by this Tribunal mainly for the reason that-*
>
> *a. The earning of interest is not arising out of aeronautical services;*
>
> *b. Consideration of interest income is beyond the regulatory ambit of AERA because it does not accrue from any services rendered by the Airport Operator;*
>
> *c. The formula for calculation of Financing Allowance which is set out in paragraph number 5.2.7(a) of the Tariff Guidelines, 2011 is unequivocal and unambiguous. Thus, it is explicitly clear that calculation of financing allowance given in para 5.2.7(a) does not require netting-off interest;*
>
> *d. The rate of interest fixed by AERA at 6.5% is without any basis and no reasons have been given by AERA for the same and, therefore, it is arbitrary in nature and excessive***."**

**158.** It has also been held by this Tribunal in **AERA Appeal No.1 of 2021 in case of DIAL Vs. AERA, judgment dated 21.07.2023** that interest income constitutes other income and is outside the AERA's regulatory jurisdiction because interest income is not arising out of aeronautical services nor from non-aeronautical services. For ready reference, paragraph 89 reads as under:

> **"89.** *Moreover, it has also been contended by counsels for respondents 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)."*

**159.** It has been contended by the counsel for AERA that AERA has kept in mind the economic efficiency, which must have been followed by the Airport Operator, and therefore, keeping in mind the economic efficiency, the interest income has been deducted, the actual amount of IDC incurred by the appellant.

**160.** This argument is not accepted by this Tribunal as the same has been pointed out for the first time in the counter affidavit.

Affidavit cannot be used to supplement the reasoning of the impugned tariff order, as has been held by the Hon'ble the Supreme Court of India in Mohinder Singh Gill Vs. Chief Election Commissioner, Supra, reference ought to made to paragraph 8 of the aforesaid judgement.

**161.** The principal question arising for consideration is whether AERA was entitled to reduce the actual IDC incurred upon the debt facility by setting off the interest income earned during the temporary non-deployment of a part of the borrowed funds. This issue has already been considered by this Tribunal in *GMR Hyderabad International Airport Limited Vs. Airports Economic Regulatory Authority of India*, AERA Appeal No. 4 of 2021, decided on 14.02.2024. The operative findings of this Tribunal are contained in paragraphs 498 to 500 of the said judgment as discussed above.

**162.** It must be noted that Schedule 1 of the SSA undoubtedly requires AERA to consider efficient capital expenditure, encourage economic efficiency and permit recovery only of efficient costs. These principles empower AERA to examine whether project debt was raised prudently, whether the amount and timing of the

borrowing were commercially reasonable, and whether delays or excess drawdowns were attributable to the airport operator.

**163.** **The power to conduct a prudence review, however, cannot be equated with a power to alter the constituent elements of the tariff formula by an ad hoc netting exercise.** Efficiency must be assessed by examining the necessity and prudence of the financing decision. More importantly, AERA's own findings in paragraph 4.4.170 negate any inference of imprudence on the part of DIAL. Wherein AERA has expressly recorded that:

I. The Refundable Security Deposits expected from Bharti Realty were delayed, resulting in a funding deficit;
II. Phase 3A works were severely affected by the COVID-19 pandemic;
III. Unlike Rupee Term Loans, bonds and debentures could not be drawn in instalments according to the periodic progress of the project;
IV. The entire debt of ₹7,850 crore was raised through bonds and debentures;
V. Such funds could not have been availed in multiple tranches merely to save interest cost; and
VI. Excess drawdown and lower expenditure were attributable to the nature of the financing instruments and the COVID-19 force majeure event and could not be attributed to DIAL.

**164.** Having recorded the aforesaid findings, AERA could not simultaneously proceed upon an implicit assumption that DIAL inefficiently or deliberately retained borrowed funds for the purpose of earning interest.

**165.** The allegation advanced in the counter affidavit by AERA that acceptance of DIAL's contention would create a "perverse incentive" to divert borrowed funds is not supported by any finding in the Impugned Order. On the contrary, the Impugned Order accepts that the temporary non-deployment resulted from circumstances beyond DIAL's control.

**166.** There is no finding that DIAL borrowed an excessive amount for the purpose of treasury investment; deliberately postponed execution of the project; diverted the funds for an unrelated purpose; or structured the transaction to earn an impermissible regulatory return.

**167.** We state that as the contractual tariff framework does not treat interest income as aeronautical or non-aeronautical revenue for tariff purposes, the same income cannot indirectly be brought within the regulatory computation by describing it as negative IDC.

**168.** **AERA ought to be reminded that what cannot be included directly as regulated service revenue cannot ordinarily be introduced indirectly as a deduction from a recognised financing cost**, unless the applicable agreement or tariff methodology expressly so provides.

**169.** AERA's refusal to apply the judgment dated 14.02.2024 merely because a civil appeal is pending before the Hon'ble Supreme Court is also unsustainable for the reasons already recorded by us while deciding Issue No. I. In the absence of any order of stay, the judgment remained binding upon AERA.

**170.** In view of the aforesaid decision, **we hereby quash and set aside the decision of AERA of setting off interest during construction against the interest income accrued to DIAL. We, therefore, quash and set aside reasons recorded in paragraph 4.4.170 of the Impugned Tariff Order (Annexure A-1) are also set aside to that extent.** Consequently, we hereby, direct AERA to consider IDC actually incurred by DIAL during Third Control Period without any set-off against interest income accrued to DIAL. **Issue No. IV is accordingly answered in favour of the Appellant.**

**ISSUE V: Non-Consideration of Interest During Construction on Equipment Procured Through Lease Finance by AERA.**

**171.** Looking to the facts of the present case, it appears that the present appellant has procured certain technical equipment through lease agreement, whereby the equipment was leased from lease equipment financer with an option to purchase at the end of lease term. For the ready reference, Clause 4.4 of the lease agreement executed between lease equipment financer and DIAL reads as under:

> ***"4.4 Payment of Interest by DIAL during Construction Phase***
>
> *DIAL shall during the Construction Phase pay an interest of 10.20% p.a. to the Financier on the amount of the Equipment Supplied from time to time, commencing from 61st day from the date on which the invoice is raised by the EPC Contractor to the Financier for the Equipment supplied by him or from date of payment made by Financier to EPC Contractor, whichever is earlier and the interest to be paid by DIAL during the Construction Phase shall be payable monthly to the Financier in such manner as specified by the Financier from time to time."*

**172.** We have carefully considered AERA's submissions in defence of the impugned disallowance. AERA's principal contention is that the IDC on leased equipment is "notional" and

"hypothetical", that it does not represent actual cash outlays or real financial obligations, and that DIAL has failed to substantiate the claim with credible evidence. AERA further contends that there is no provision in Schedule 1 of the SSA or the AERA Act that entitles DIAL to recover IDC on leased equipment. We find these contentions to be wholly untenable.

**173.** The primary fallacy in AERA's approach is that it characterises a contractual payment obligation as "notional". **Clause 4.4 of the lease agreement, extracted herein above, imposes an express and unequivocal obligation upon DIAL to pay interest at 10.20% per annum to the financier during the construction phase, on the amount of equipment supplied from time to time.** The interest is payable monthly and the obligation commences from the 61st day from the date of invoice or the date of payment by the financier to the EPC contractor, whichever is earlier.

**174.** This is a contractual liability that DIAL is bound to discharge. It is a real financial obligation, not a hypothetical or deemed cost. AERA's characterisation of such a payment obligation as "notional" is, with respect, a fundamental misapprehension of the nature of the transaction.

**175.** In view of the aforesaid lease agreement, the present appellant was obliged to pay interest on equipment supplied during construction phase. This agreement has to be given due regard and consideration by AERA while determining the tariff.

**176.** On the face of the lease agreement, therefore, the obligation to pay interest during construction was contractual and not merely a book entry. The Tribunal cannot accept the proposition that AERA was entitled to disregard that arrangement by characterising the IDC as notional, especially when the lease structure itself was placed before AERA during the tariff process.

**177.** **AERA cannot rewrite the terms of agreement. AERA cannot shift or omit any obligation under the contract.** It is not the contention of AERA that finance lease agreement was entered into under coercion, fraud, or any mistake caused by undue influence, nor is there any allegations about illegality in the process of entering into this agreement and, therefore, also AERA cannot ignore the payment of interest on equipment supplied during the construction phase.

**178.** It has been contended by learned counsel appearing for AERA that interest during construction on leased equipment is notional and there is no IDC required to be incurred by DIAL in lease financing. This contention of AERA is not accepted by this

Tribunal mainly for the reason that IDC on financed leased equipment is **not** **"notional".**

**179.** On the contrary, it represents **"genuine financing cost"** *within* the leased payments. Moreover, a perusal of Annexure RA-3 annexed to the Rejoinder Affidavit, being DIAL's audited financial statements for the financial year 2023-24, reveals that IDC has actually been incurred by DIAL on leased equipment.

**180.** It ought to be kept in mind by AERA that finance lease agreement is a more capital efficient method which ultimately lowers the tariff burden on passengers because by leasing the equipment the cost of whole asset does not form part of RAB, meaning thereby to, that the cost of equipment is not to be recovered from the users at the rate of WACC, of this asset over its entire life.

**181.** The transaction structure under the finance lease is straightforward as the EPC contractor supplies the equipment; the financier funds the equipment by making payment to the EPC contractor; and DIAL bears the financing cost during the construction phase in the form of interest at 10.20% per annum. The equipment itself is not capitalised in DIAL's Regulatory Asset Base, and consequently, the cost of the asset is not recovered from users at the WACC rate over its economic life.

**182.** The cost that DIAL seeks to recover is the actual financing cost incurred during the construction phase, which is a far smaller burden on users than the alternative of capitalising the asset and recovering a return on it over its entire life. AERA has failed to appreciate this fundamental distinction.

**183.** AERA's reliance on the absence of an express provision in the SSA or the AERA Act for IDC on leased equipment is also misplaced. The statutory mandate under Section 13(1)(a)(i) of the AERA Act is to consider the "capital expenditure incurred". The financing cost of equipment procured for the airport project, whether through direct debt or through a finance lease, is a component of the capital expenditure incurred.

**184.** At this point, it is important to note that merely the form of financing cannot determine the allowability of the cost. **If AERA routinely allows IDC on debt-funded procurement, there is no principled basis to deny IDC on lease-funded procurement**, particularly when the lease agreement itself imposes an express obligation to pay interest during the construction phase. Such an artificial distinction would penalise the airport operator for adopting a more capital-efficient

financing structure, which is contrary to the objective of economic regulation.

**185.** This aspect of the matter has not been properly appreciated by AERA at all. In fact, it appears that AERA has not properly understood the whole mechanism of finance lease agreement (Annexure RA-3) annexed with the rejoinder affidavit. AERA cannot replace the terms of the lease agreement. Further, AERA cannot alter any of the terms of lease agreement for any reason whatsoever.

**186.** As narrated hereinabove, by virtue of the finance lease arrangement, the cost of the equipment will not be added to the RAB, which is an advantageous position for the passengers. This complexity has not been appreciated at all by AERA. **We, therefore, quash and set aside the decision of AERA not to consider the Interest During Construction on equipment procured through lease finance.**

**187.** **We, hereby direct AERA to consider the interest actually paid by the Appellant- DIAL during construction on equipment procured through lease finance**. **Issue No. V is accordingly answered in favour of the Appellant.**

**ISSUE VI: Determination of minimum revenue from revenue share assets for the fourth control period.**

**188.** Looking **to Annexure A-6** to the memo of this appeal which is **Multi-Year Tariff Proposal (MYTP)** filed by the present appellant before AERA for Fourth Control Period. DIAL projected revenue from revenue share assets at Rs. 8076 Crores and based upon this estimate, DIAL further computed the amount of cross subsidy for determination of Aeronautical Tariff as 2422.85 Crores.

**189.** According to the impugned tariff order which is at Annexure A-1, AERA determined minimum revenue from revenue share assets as Rs.21,899.23 Crores and it has been observed in **paragraph 10.6.2** of the impugned tariff order, which reads as under:

> **"**10.6.2 To true up Revenue from Revenue Share Assets at the time of the tariff determination for the next Control Period ***if*** the Revenue from Revenue Share Assets for the Fourth Control Period are higher than that decided to be considered by the Authority in Table 341.**"**
>
> (emphasis supplied)

**190.** This issue has already been decided by this Tribunal by its judgment dated **11.09.2025** in case of **Mangaluru International Airport Limited Vs. AERA in AERA Appeal No.1 of 2023** and it has been held that *AERA has no power, jurisdiction and authority to determine minimum amount of non-aeronautical revenue*. It has also been held that in that judgment AERA has to determine actual amount of non-aeronautical revenue received for the tariff determination as per **Section 13(1)(a)(v)** of AERA Act, 2008.

**191.** For the ready reference **paragraph 186** of the judgment dated **11.09.2025** in **AERA Appeal No.1 of 2023** in case of **Mangaluru International Airport Limited Vs. AERA** which reads as under:

> **"186. AERA cannot presume that the Airport Operator must earn a particular amount of non-aeronautical revenue.** On the contrary, once the bidding process is just, proper and equitable and there are no allegation of arbitrariness, illegality and unfairness, non-aeronautical revenue received by airport operator neither can be increased nor can be decreased by AERA. In the present case, **AERA has presumed nonaeronautical revenue at Rs.17.36 Crores for FY 2022-23. AERA has further presumed that there must be a 5% increase in non-aeronautical revenue every year. Instead of these presumptions, AERA should have looked at the actual non-aeronautical revenue received by the Airport Operator through a Master Service Provider**."

**192.** From statutory scheme it appears that, AERA, has not been assigned the power to fix the minimum amount of revenue from Revenue Share Assets as per the provisions of AERA Act, 2008 especially **Section 13(1)(a)(v**) thereof. AERA has to consider the actual revenue received from Revenue Share Assets and set off has to be given on the basis of the revenue received from Revenue Share Assets. In fact, nobody can presume anybody's income, much less minimum income. Always, such type of revenues are in fact actual revenue received and not the revenue presumed by the Authority. There cannot be any presumption for the revenue to be received from the Revenue Share Assets.

**193.** Looking to paragraph 10.6.2 of the impugned order, it appears that AERA has exceeded its jurisdiction conferred under Section 13 of AERA Act, 2008. **For determination of the tariff, too much over-enthusiastic approach is not required unless the law permits. Court of law is the court of evidence.** Income or revenue cannot be presumed for the tariff determination. There is nothing like minimum revenue to be recovered by the Airport Operator. This type of concept is a novice concept developed by AERA, which runs counter to the Provisions of AERA Act, 2008. It also runs counter to the

provisions of OMDA and SSA. This concept of minimum revenue to be received from Revenue Share Assets is unknown to AERA Act, 2008, SSA (Annexure A-3) and OMDA (Annexure A-2).

**194.** Looking to the Provisions of AERA Act, 2008, AERA must consider the Gross Revenue generated by Joint Venture Company (JVC). AERA cannot consider the revenue received by other entities in the tariff determination process.

**195.** AERA has failed to appreciate that looking to the Provisions of **OMDA, Annexure A-2 to the memo of this appeal, especially looking to the Clause 8.5.7, the present appellant is entitled to sub-contract any activity**. It appears from the facts of the present case that DIAL has entered into sub-contracts in respect of some of the non-aeronautical services through bonafide contractual agreements. This is explicitly permitted under the Provisions of OMDA (Annexure A-2).

**196.** It has been held by this Tribunal by judgment dated **11.09.2025** in **GMR Goa International Airport Limited Vs. AERA** in **AERA Appeal No.1 of 2024** in **paragraph 210, 212 to 216**, which reads as under:

> **"***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 Tarif 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.*

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."*

**197.** We have carefully examined AERA's submissions in defence of the impugned determination of a minimum threshold of revenue

from Revenue Share Assets. AERA's principal contentions are that under the SSA, 30% of the gross revenue generated by the JVC from Revenue Share Assets is to be taken for the 'S' factor, and the gross revenue generated from users is the relevant figure, not the amount received by DIAL from its contractors after deduction of costs and margins; that DIAL has outsourced non-aeronautical services through contractors and has projected only the net amount received under those contractual arrangements, thereby artificially depressing the non-aeronautical revenue base and defeating the hybrid till mechanism; that AERA has not imposed a notional floor but has only adopted a true-up provision to account for higher gross revenues should they materialise; and that DIAL has not specifically challenged the inclusion of revenue from existing assets/demised premises (Rs. 2,971.85 Crores) and Annual Fee (Rs. 6,876.93 Crores) for the Fourth Control Period, and therefore cannot seek to indirectly alter the computation of Revenue Share Assets. We find these contentions to be without force especially considering the central question.

**198.** The central question in this issue is <u>whether AERA has the power to prescribe a minimum threshold of non-aeronautical revenue and to confine the true-up exercise only to instances where the</u>

actual revenue exceeds that threshold. This question has been conclusively answered by this Tribunal in Judgements dated 11.09.2025 in *Mangaluru International Airport Limited Vs. AERA* and *GMR Goa International Airport Limited Vs. AERA*.

**199.** In both judgments, this Tribunal held in unambiguous terms that AERA has no power, jurisdiction or authority to determine a minimum amount of non-aeronautical revenue and that AERA must consider the ***actual revenue "received"*** for the purpose of tariff determination under ***Section 13(1)(a)(v)*** of the AERA Act. The ratio decidendi of these judgments is that the statutory mandate is to take into account the revenue actually received and not a threshold fixed by the regulator.

**200.** The true-up mechanism, which is an integral part of the regulatory design, exists to reconcile projections with actuals. An asymmetric true-up that operates only when actuals exceed the projection, but ignores a shortfall, is fundamentally inconsistent with the purpose of a true-up mechanism.

**201.** The effect of paragraph 10.6.2 of the impugned order is to prescribe a minimum threshold of Rs. 21,899.23 Crores. AERA's submission that it has not imposed a notional floor is contradicted by the plain language of the impugned order itself. Once AERA

decides that true-up will be undertaken only **if** the actual revenue from Revenue Share Assets exceeds Rs. 21,899.23 Crores, it necessarily treats that figure as a minimum. If the actual revenue is lower, DIAL is denied a true-up and the shortfall is, in effect, borne by DIAL. This is precisely the kind of minimum threshold that this Tribunal has held to be beyond AERA's jurisdiction.

**202.** AERA's argument based on the alleged outsourcing of non-aeronautical services through contractors and the consequent depression of the non-aeronautical revenue base is, in our considered view, an afterthought. The impugned order does not contain any finding that DIAL has misused the sub-contracting provisions of the OMDA, or that the revenue projected by DIAL is artificially depressed on account of contractual arrangements with third parties. The reasoning in the impugned order for determining the minimum revenue from Revenue Share Assets at Rs. 21,899.23 Crores is based on AERA's own assessment and projections, not on any finding of impropriety on the part of DIAL. AERA cannot, through its counter affidavit or written submissions, introduce an entirely new factual and legal basis to justify the impugned determination.

**203.** Even if we were to consider AERA's argument on merits, the definition of 'S' in the SSA refers to "30% of the gross revenue

generated by the JVC from the Revenue Share Assets." The expression "gross revenue generated by the JVC" is significant. It refers to the revenue that the JVC itself generates from the Revenue Share Assets. Where the JVC, in exercise of its contractual right under Clause 8.5.7 of the OMDA, sub-contracts certain non-aeronautical services to third parties on arm's length terms, the revenue generated by the JVC from such arrangements is the consideration it receives under the sub-contract.

**204.** It must be noted that the revenue generated by the sub-contractor from the end-users is the revenue of the sub-contractor, not of the JVC. The SSA does not require AERA to pierce the corporate veil or to disregard the contractual structure adopted by the JVC within the framework of the OMDA. AERA cannot, under the guise of determining the 'S' factor, recharacterize the revenue of a sub-contractor as the revenue of the JVC.

**205.** If AERA is of the view that the sub-contracting arrangement is a device to defeat the hybrid till mechanism, it must record a specific finding to that effect, after affording DIAL an opportunity of being heard and in the present case no such finding has been recorded in the impugned order.

**206.** We observe that AERA's desire to protect airport users and maximise the cross-subsidy available under the shared or hybrid till

framework is legitimate as the shared till mechanism requires a prescribed percentage of Revenue from Revenue Share Assets to be employed in reducing the aeronautical revenue requirement.

**207.** However, this legitimate objective does not authorise AERA to impute revenue which was never actually earned or legally attributable to the airport operator as the protection of airport users is achieved by ensuring that the full amount of actual gross revenue legally attributable to the JVC is disclosed, audited and brought into the computation of the S-factor.

**208.** Further, the *economic and viable operation of a major airport*, which is itself a statutory factor under Section **13(1)(a)(iv)**, would be impaired if the airport operator is permanently denied recognition of a genuine revenue shortfall arising from market conditions, traffic variation, security restrictions, competing airports or changes in passenger behaviour.

**209.** AERA has contended that Revenue from Revenue Share Assets is less capital-intensive and more profitable and that maximisation of such revenue is necessary for effective operation of the shared till and these considerations may justify close scrutiny of DIAL's projections and actual performance. However, they do not justify practice of adopting an asymmetric true-up model.

**210.** If AERA seeks to introduce an incentive-based regime under which an airport operator is rewarded for exceeding a revenue target but bears the risk of falling below it, such a regime must possess an identifiable statutory or contractual foundation and must be formulated through a transparent and reasoned methodology.

**211.** However, no provision in the AERA Act, the SSA or the OMDA has been shown to us which converts the Revenue from Revenue Share Assets forecast into a guaranteed minimum performance obligation of DIAL.

**212.** **In view of the aforesaid facts, reasons and judicial pronouncements to the provision of AERA Act, 2008 especially, w.r.t., Section 13(1)(a), we hereby quash and set aside paragraph 10.6.2 of the impugned tariff order (Annexure A-1) dated 28.03.2025.**

**213.** **We hereby direct AERA that true-up exercise for the fourth control period during the determination in the next control period (fifth control period), shall be based upon actual revenue from Revenue Share assets earned by DIAL; irrespective of fact that whether it exceeds or not the minimum threshold of Rs. 21,899.23 Crores has fixed by AERA. Therefore, Issue No. VI is accordingly answered in favor of the Appellant.**

## ISSUE VII. Non-consideration of Corporate Social Responsibility expenditure incurred by the appellant as Operation and Maintenance Cost.

**214.** As per Provisions of Section 135 of the Companies Act, 2013, CSR expenses have to be borne by DIAL. DIAL proposed in MYTP (Annexure A-6) to consider CSR expenses incurred by DIAL as an Operation and Maintenance cost. For the ready reference, **paragraph 3.3.1 and 3.3.2** of the impugned tariff order reads as under:

> *"3.3.1 DIAL in the MYTP submitted for the Fourth Control Period considered expenses pertaining to CSR as part of Operation & Maintenance Costs. The submission from DIAL is based on Hon'ble TDSAT order dated 21st July 2023 in the case of DIAL for the Second and Third Control Period.*
>
> *3.3.2 The Aeronautical Operation and Maintenance expenses submitted by DIAL for the Second Control Period considering the above mentioned submission is shown in the table below:*

***Table 17: Aeronautical Operation and Maintenance Expenses submitted by DIAL for True-up for the Second Control Period as per MYTP for the Fourth Control Period***

| FY ending March 31 (Rs. Cr) | 2015 | 2016 | 2017 | 2018 | 2019 | Total |
|---|---|---|---|---|---|---|
| Manpower cost | 117.48 | 111.45 | 116.11 | 146.26 | 166.53 | **657.83** |

| | | | | | | |
|---|---|---|---|---|---|---|
| Admin & General expenses | 253.27 | 143.21 | 234.30 | 203.63 | 210.77 | **1,045.18** |
| Operating expenses | 248.15 | 250.77 | 261.42 | 313.76 | 332.68 | **1,406.79** |
| Utility costs | 112.32 | 121.66 | 106.54 | 113.20 | 103.35 | **557.07** |
| Payment to AAI for VRS | 16.65 | 16.24 | 15.66 | 15.18 | 14.70 | **78.43** |
| Forex Losses | 242.51 | 6.38 | 37.56 | (0.21) | 10.12 | **296.36** |
| Airport Operator Fee | 84.19 | 88.53 | 102.23 | 117.95 | 51.16 | **444.06** |
| Property tax | 20.09 | 5.18 | 28.36 | 6.35 | 6.93 | **66.91** |
| CSR Expenditure | - | 4.21 | 7.51 | 11.14 | 9.92 | **32.78** |
| **Total** | **1,094.66** | **747.64** | **909.69** | **927.25** | **906.16** | **4,585.40** |

**215.** In view of the aforesaid table 17 of the impugned tariff order, in paragraph 3.3.2, it appears that CSR expenditure during second control period was at Rs.32.78 Crores. DIAL demanded this amount to be calculated as an Operation and Maintenance expenses and True up was demanded for the fourth control period. Looking to the impugned order, it appears that AERA has committed similar error in third control period, and it had already been decided by this Tribunal in judgment dated **16.12.2020 in case of Bangalore International Airport Limited Vs. AERA Appeal No. 8 of 2018, in paragraph number 81**, which reads as under:

> *"81. Learned counsel for AERA has, on the other hand placed reliance upon Section 37(1) of the Income Tax Act which has already been noted by the Authority because this*

*provision clarifies that expenditure on CSR will not be accepted as an expenditure for business.* ***However, the other argument that in a regulated environment the fair return of equity determined and allowed must be real as determined by the Regulator, has not been answered effectively. There is no difference between expenditure towards CSR once it is mandated by law vis-àvis an expenditure in the nature of income tax which is allowed as a cost passthrough.*** *Not allowing such cost amounts to indirectly lowering the percentage fixed as a fair return on equity, because if the impugned decision of the Authority is accepted, the expenditure towards CSR has to come out from such return allowed for the equity holders. In view of the above discussions, the grievance of BIAL in respect of expenditure on CSR is found to have merits. The impugned decision on this issue is, therefore, set aside. The Authority shall pass consequential orders so that no loss due to reduction in determined fair return is caused to the equity holders on account of expenditure on CSR. Necessary truingup exercise shall be done by the Authority accordingly."*

*(emphasis supplied)*

**216.** In view of the aforesaid decisions, it has been held by this Tribunal that CSR expense is a statutory expense arising out of performance of aeronautical services at the Indira Gandhi International Airport. CSR expenses are akin to a tax on aeronautical service, which is considered as an expense as per TR formula in Schedule-1 of SSA.

**217.** AERA has declined to include the aforesaid amounts in Aeronautical O&M Costs. In paragraphs 4.6.97 to 4.6.100 of the Impugned Order, AERA reasoned that CSR expenditure is required to be incurred by a company out of its profits, that it is not allowable as business expenditure under Section 37(1) of the Income Tax Act,

1961, and that permitting tariff recovery would defeat the purpose of the social responsibility imposed upon the company.

**218.** In relation to the Second Control Period, paragraph 3.3.9 of the Impugned Tariff Order further records that AERA would not implement the judgment of this Tribunal because the CSR issue was pending in a civil appeal before the Hon'ble Supreme Court.

**219.** Moreover, in relation to the Third Control Period, AERA adopted the same approach in paragraph **4.6.193**. Significantly, AERA expressly acknowledged that:

I. CSR expenditure had previously been considered as part of Aeronautical O&M expenditure in the cases of BIAL and GHIAL; and
II. this Tribunal had already rendered a judgment directing inclusion of CSR expenditure in DIAL's case.

**220.** Notwithstanding this acknowledgement, AERA declined to apply the binding judgment on the ground that the issue was sub judice before the Hon'ble Supreme Court. The legality of treating statutory CSR expenditure as a regulatory cost is no longer res integra. The issue was considered by this Tribunal in *Bangalore International Airport Limited Vs. Airports Economic Regulatory Authority of India*, AERA Appeal No. 8 of 2018, decided on 16.12.2020.

**221.** The BIAL judgment thus considered and rejected the very reliance upon Section 37(1) of the Income Tax Act which has again been adopted by AERA in the present Impugned Order. The issue was thereafter directly considered in DIAL's own case in *Delhi International Airport Limited Vs. Airports Economic Regulatory Authority of India*, AERA Appeal No. 1 of 2021, decided on 21.07.2023 as contained under Paragraphs 167-168 of the aforesaid judgement.

**222.** The aforesaid judgment was rendered between the same parties and in relation to DIAL's tariff determination. The determination that actual CSR expenditure incurred by DIAL must be included in operating expenses was, therefore, directly binding upon AERA.

**223.** The filing or pendency of a civil appeal before the Hon'ble Supreme Court did not suspend the operation of the judgment. In the absence of an express order of stay, AERA was required to comply with paragraphs 167 and 168 of the judgment dated 21.07.2023.

**224.** For the reasons already recorded by us under Issue No. I, a statutory authority cannot treat the mere filing of an appeal as a self-operative stay. Nor can it reserve to itself the power to decide whether and when a binding judgment of the Appellate Tribunal will be implemented.

**225.** AERA's reliance upon Section 37(1) of the Income Tax Act is, even otherwise, misconceived. The determination whether expenditure is

deductible while computing taxable business income is conceptually distinct from the determination whether a statutory expenditure is to be recognised in the regulated tariff framework.

**226.** Tax deductibility and regulatory pass-through operate in different fields. An expenditure may be non-deductible for computation of taxable income and yet constitute a relevant cost in the determination of regulated tariff. Conversely, tax deductibility does not by itself confer an automatic tariff entitlement.

**227.** The applicable tariff treatment must be determined under the AERA Act, the SSA, the OMDA and the binding judgments of this Tribunal, and not solely by reference to the manner in which the expenditure is treated under the Income Tax Act.

**228.** The inconsistent regulatory treatment adopted by AERA also remains unexplained. AERA itself acknowledges that CSR expenditure had been allowed as Aeronautical O&M expenditure in the cases of BIAL and GHIAL. In the facts of the present case, no material distinction arising from the AERA Act, DIAL's concession documents or the character of the expenditure has been identified which would justify denial of the same treatment to DIAL, particularly after the specific judgment dated 21.07.2023 in DIAL's own case.

**229.** The contention that there is no clarity whether the CSR expenditure sought to be included is limited to 2% of the net profit derived from

aeronautical services is an afterthought. The impugned order, at paragraphs 3.3.9 and 4.6.97 to 4.6.100, does not reject DIAL's claim on this ground. AERA simply decided not to treat CSR expenses as allowable Operation and Maintenance Cost, citing the pendency of its appeal before the Hon'ble Supreme Court.

**230.** The argument regarding apportionment between aeronautical and non-aeronautical profits is raised for the first time in the counter affidavit and cannot be relied upon to supplement the reasoning in the impugned order, as held by the Hon'ble Supreme Court in *Mohinder Singh Gill Vs. Chief Election Commissioner*, (1978) 1 SCC 405. Thus in conspectus of the above, AERA's decision not to consider CSR expenditure as Operation and Maintenance Cost is, therefore, contrary to the binding decisions of this Tribunal and to the statutory framework governing tariff determination.

**231.** **We, accordingly, quash and set aside the decision of AERA in paragraphs 3.3.9 and 4.6.97 to 4.6.100 of the impugned tariff order. We direct AERA to treat the CSR expenditure actually incurred by DIAL as an allowable Operation and Maintenance Cost and to carry out all consequential true-up adjustments in accordance with the regulatory framework. Issue No. VII is accordingly answered in favour of the Appellant.**

**ISSUE VIII. Re-classification of dividend income from DIAL'S Fuel Farm Subsidiary as revenue from Aeronautical Services.**

**232.** AERA has considered Rs.12.77 Crores of dividend income from the DIAL's investment in Delhi Aviation Fuel Facility Private Limited, DAFFPL, as Aeronautical Revenue.

**233.** It ought to be kept in mind by AERA that dividend income is not arising out of aeronautical services or non-aeronautical services. Therefore, Interest or Dividend Income has been treated as **"other income".** Under the Provisions of Section 13 of AERA Act, 2008, AERA has no power, jurisdiction, and authority to consider dividend income received by the appellant from fuel farm subsidiary as revenue from aeronautical services. Dividend income, in fact, is a return on capital and not on from Aeronautical Services provided by DIAL.

**234.** It has been held by this Tribunal vide **judgment dated 21.07.2021 in DIAL Vs. AERA in AERA Appeal No.1 of 2023, in paragraph number 85 and 88,** which reads as under:

> *"85. Thus, upon conjoint reading of aforesaid definition of "S", definition of "Revenue Share Assets", definition of "Non-*

*aeronautical assets" and definition of "Non-Aeronautical Services" as defined in Schedule-6 of OMDA and both part -I and part – II thereof, "Other income" is not an income or revenue obtained by this appellant by performing any non-aeronautical services, therefore, "other income" cannot be treated as part of Revenue from Revenue Share Assets. Moreover, DIAL generates revenue by performing Non-Aeronautical Services. Once the revenue is generated, it is upon DIAL to collect and manage the same and in the process, DIAL may earn some income in the nature of interest and dividend. Hence, once the revenue generated by performing Non-Aeronautical Services is taken as a part of "S" for the cross subsidy as per SSA, further income if any, arising out of management of the said revenue cannot be taken into consideration as part of "S".*

*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 nonaeronautical 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).***"**

**235.** This principle has also been reiterated in another judgment delivered on **06.10.2023 in MIAL Vs. AERA in AERA**

**Appeal No.2 of 2021, especially in paragraph numbers 209, 224, and 225**, which reads 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 nonaeronautical 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).***
>
> *224. In light of the aforementioned decision of Hon'ble the Supreme Court of India,* ***once the definition of "Revenue Share Assets" states "shall mean" meaning thereby to that, it is an exhaustive definition. This definition is not extensive. It would cover only those assets which are defined as Revenue Share Assets. Thus, addition is not permissible. This aspect has not been properly appreciated by AERA while treating "other income" as part of revenue generated from Revenue Share Assets.*** *We, therefore, quash and set aside the impugned orders in both the aforesaid AERA Appeals which are for 2nd and 3rd Control Periods so far as they are affecting "other income" as a part of revenue, from revenue share assets and consequently, true-up has to be given for the earlier Control Periods also. We, therefore, direct AERA to give true-up for 2nd and 3rd Control Periods for "Other Income" as stated hereinabove.*

*225. Learned senior counsel for the respondent has further argued that "other income" is a function of cash management earned through airport operations and, therefore, other income must be included in the revenue as it is generated from revenue share assets and has placed reliance upon paragraph number 57 of this Tribunal's judgment dated 23rd April, 2018 in AERA Appeal No. 06 of 2012 and contended that dividend income needs to be included as part of "S" factor even if services are provided through its servants and agents. This contention is not accepted by this Tribunal mainly for the reason that because in the case of Bangalore International Airport Ltd. (BIAL), the concession does not provide for a specific tariff calculation methodology which is mentioned in case of MIAL-the present Appellant in Schedule 1 of SSA where "S" factor is limited to the revenue from Revenue Share Assets. Moreover, looking to the definition of Revenue Share Assets, given in Schedule-1 of SSA (ANNEXURE A-3(Colly)), the said term is a predefined terminology and it does not encompass within its sphere, the interest income and dividend income."*

**236.** Similarly, it has been held by this Tribunal in a judgment dated **14.02.2024 in GMR Hyderabad International Airport Limited versus AERA, in AERA Appeal Number 4 of 2021, in paragraph number 346 and 347**, which reads 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 HMACPL (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."***

**237.** AERA has placed principal reliance upon paragraph 7.6.12 of its Tariff Order for the Third Control Period, wherein it had recorded a decision *"to include dividend income for cross-subsidy at the time of true up during the Fourth Control Period."* AERA contends that, in reclassifying the dividend income in the Impugned Order, it has done no more than give effect to a determination already made. This contention cannot be accepted.

**238.** The Tariff Order for the Third Control Period, insofar as it treated dividend income and "other income" as available for cross-subsidisation, was the very subject-matter of the appeal decided by this Tribunal on 21.07.2023, and was set aside on

precisely that point at paragraphs 85 and 88 extracted hereinabove.

**239.** **A regulator cannot base a fresh determination upon a paragraph of an earlier order whose foundation this Tribunal has already removed**. As held by us under Issue No. I, AERA remains bound by the judgment dated 21.07.2023 in the continued absence of any stay. Paragraph 7.6.12 does not survive that judgment and cannot be resurrected to sustain the Impugned Order.

**240.** In view of the above decision, the dividend income forms a part of **"other income"** of DIAL and the dividend income is not generated from employment of any revenue share assets or relatable to and generated from a provision of any services rendered by DIAL and thus, AERA cannot reclassify the dividend income from DAFFPL, which undertakes Fuel Farm Services at IGI Airport as revenue from Aeronautical Services.

**241.** AERA, in its tariff orders for the First Control Period and the Second Control Period, had itself taken the view that dividend income realised by DIAL from its investments in joint ventures should not be considered for cross-subsidisation, as the assets of such joint ventures were not reckoned for the determination

of DIAL's Regulatory Asset Base. AERA has now departed from that settled position without any cogent or material justification, resulting in an inconsistency in its approach across Control Periods. This conduct of AERA, is manifestly arbitrary and has resulted in uncertainty, which is antithetical to the fundamental tenets of the rule of law & regulatory consistency.

**242.** Moreover, looking to Schedule-5 of OMDA, Annexure A-2, *which exhaustively defines aeronautical services, but it does not refer to dividend income or investment activities*. Thus, treatment given to dividend income as Aeronautical Services revenue by AERA is running counter to Schedule 5 of OMDA and is also contrary to **Section 13(1)(a)(vi)** of the AERA Act, 2008.

**243.** Furthermore, DAFFPL is a legal entity separate and distinct from DIAL. The aeronautical service of operating the Fuel Farm facility is performed by DAFFPL. The consideration received for such service is earned by DAFFPL in its own legal capacity and DIAL does not receive the dividend as consideration for supplying fuel, operating the Fuel Farm, granting access to the facility or rendering any other service mentioned in Schedule 5 of the OMDA.

**244.** The dividend is received by DIAL in its capacity as a shareholder. It represents a return declared upon the equity investment held by DIAL in DAFFPL. Its legal character does not change merely because the profits out of which it is declared may have arisen from an aeronautical business carried on by DAFFPL.

**245.** DIAL has contended, further, that the reclassification produces double counting, DAFFPL being itself a regulated entity whose fuel farm revenue is separately accounted for at the DAFFPL level. AERA has denied this contention, submitting that the regulation of DAFFPL's tariff "has no bearing" on the categorisation of the dividend in DIAL's hands. We are unable to accept AERA's submission, for the reason that, where the fuel farm revenue is capable of being captured in the regulatory computation at the level of DAFFPL, to treat the dividend distributed out of that same revenue as DIAL's own aeronautical revenue is to bring the same underlying commercial activity within the regulatory net twice once as DAFFPL's revenue and again as DIAL's dividend receipt.

**246.** AERA has also relied upon the scope-of-grant and business-restriction provisions of the OMDA to contend that DIAL may undertake only airport-related activities and that, consequently, every receipt accruing to DIAL must necessarily be classified either as aeronautical or non-aeronautical revenue.

**247.** With all sincerity, we observe that the aforesaid contention proceeds upon a false equivalence between the activity which an entity is permitted to undertake and the juridical character of every receipt appearing in its accounts. The provisions defining the permissible business and functions of DIAL do not state that every receipt of DIAL shall be deemed to arise from the provision of an Aeronautical Service or a Non-Aeronautical Service.

**248.** It is pertinent to note that **Section 13(1)(a)(vi) of the AERA Act** requires AERA, while determining tariff, to take into consideration the concession offered by the Central Government through the governing agreements. The contractual delineation between Aeronautical Services, Non-Aeronautical Services, Revenue Share Assets and other receipts cannot therefore be disregarded.

**249.** **Regulatory classification must depend upon the nature of the receipt in the hands of the airport operator and whether that receipt corresponds to a service rendered by the airport operator, not merely upon the business undertaken by the entity declaring the dividend**.

**250.** AERA has not recorded any finding that DAFFPL is a sham or colourable entity; that its separate corporate personality is being misused; that DIAL itself rendered the Fuel Farm services; or that

the dividend was, in substance, disguised consideration for a service provided by DIAL. In the absence of such a finding, the distinct corporate identity of DAFFPL and the distinct juridical character of the dividend cannot be disregarded.

**251.** In view of the facts, reasons and judicial pronouncements, **we hereby quash and set aside the decisions of AERA to treat dividend income from the DIAL's Fuel Farm Subsidiary as revenue from Aeronautical Services. We, hereby hold that dividend income from the DIAL's Fuel Farm Subsidiary as "other income", and AERA cannot consider "other income" at the time of tariff determination process under Section 13 of the AERA Act, 2008**.

**252.** **For the foregoing reasons, paragraphs 4.8.4 and 4.8.5 of the Impugned Tariff Order, read with Table 181 and paragraph 4.8.8, are set aside to the extent that they add dividend income of ₹12.77 crore received by DIAL from DAFFPL to Aeronautical Revenue for the Third Control Period. The consequential determination under paragraph 4.11.6 shall stand modified accordingly. Issue No. VIII is answered accordingly in favour of the Appellant.**

**ISSUE IX. Non-consideration of cost relating to Civil, Electrical and associated work for Apron stands between taxiways L-1 and M-1, including AGL system upgrade.**

**253.** From the perusal of the tariff order at Annexure A-1 dated 28.03.2025 for fourth control period (01.04.2024 to 31.03.2029), AERA has reduced capital expenditure from Rs.96.80 Crores to Rs.84.34 Crores. AERA has reduced this capital expenditure on the basis of an independent consultant's report.

**254.** Looking to the counter affidavit filed by AERA, especially looking to paragraph 40 (ii) & (iii). It is submitted by AERA that cost relating to civil, electrical and associated works for apron stands between Taxiway L1 and M1 including Airfield Ground Lighting (AGL system) AERA has considered Rs.84.34 Crores as a capital expenditure based upon purchase order submitted by DIAL for the same.

**255.** It appears that the work orders amounting to the tune of Rs. 82,08,77,837/- Crores, as submitted by DIAL, is excluding GST. If the same is added, then the cost of

Rs.96.80 Crores is obtained for works related to civil, electrical, and associated works for apron stands between L1 and M1, including Airfield Ground Lighting (AGL system) upgradation. For ready reference, Annexure RA-4, which is annexed with the rejoinder affidavit, are the four different work orders and looking to these annexures, the total works at Rs.82,08,77,837/- excluding GST. To understand this point, summary table for all the work orders, Annexure RA-4, to the rejoinder affidavit in tabular format, is mentioned as under:

*"The Work Orders [@* ***pg. 1915-1942 of Rejoinder Affidavit****] would show, DIAL had issued the following 4 Work Orders to the contractor:*

| ***Work Order No.*** | ***Amount (Excluding GST)*** | ***Reference*** |
|---|---|---|
| *DIAL/P&C/2018-19/1164* | ***Rs.71,47,10,231/-*** | ***Pg 1916*** |
| *DIAL/P&C/2018-19/1217* | ***Rs. 2,79,09,309/-*** | ***Pg 1936*** |
| *DIAL/P&C/2018-19/1253* | ***Rs. 7,53,240/-*** | ***Pg 1940*** |
| *DIAL/P&C/2018-19/1323* | ***Rs. 7,75,05,057/-*** | ***Pg 1942*** |

*The Sum total of the Work Orders issued by DIAL is Rs. 82,08,77,837/- (Excluding GST) and the total amount paid by DIAL, after inclusion of GST towards the subject works was Rs. 96.80 crores. As such, DIAL is entitled to recover such amounts.* "

**256.** The quoted amount is excluding GST. This aspect of the matter has not been properly appreciated by AERA. The total amount has been paid by DIAL after inclusion of GST towards subject work at Rs.96.80 Crores and therefore, AERA cannot reduce cost relating to civil, electrical and associated works for apron stands between taxiways L1 and M1, including AGL system upgrading. **AERA has to appreciate actual expenditure incurred by the appellant. As per Section 13 (1) (a) (i) of AERA Act, 2008, this principle been affirmed & reiterated by this Tribunal in several decisions**, as set out below.

**257.** This tribunal in the case of ***Delhi International Airport Ltd. Vs. AERA*, AERA Appeal No. 1 of 2021**, judgment dated 21.07.2023 under Paras 159, Para 165(f), has held as follows:

> *"159. Moreover, as per the provisions of Section 13(1), the AERA has to keep in mind that capital expenditure incurred for determination of tariff for the aeronautical services. For the ready reference, Section 13(1) of AERA Act, 2008 reads as under:*
>
> *"Sec.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)*

165. *…. (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";***

**258.** Further, this tribunal in the case of *GMR Hyderabad International Airport Ltd. Vs. AERA, AERA Appeal No. 4 of 2021, judgment dated 14.02.2024 under Paras 372–373, which reads 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****. For ready reference Section 13 (1) (a) (i) reads as under:*

*"Chapter III*

*Powers & Functions of the Authority*

*13. (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;"*

*(Emphasis Supplied)*

*373. In view of the aforesaid provision 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 had arrived at its own efficient cost seeking consultant's report from RITES.***"***

**259.** Subsequently, this tribunal in the case of Mangaluru International Airport Ltd. Vs. AERA, AERA Appeal No. 1 of 2023, judgment dated 11.09.2025 under Para 260, which reads as under:

***"****260. Looking to the provision of Section 13(1)(a) of AERA Act, 2008,* ***while deciding tariff, AERA has to appreciate "expenditure incurred". Whenever actual expenditure incurred is available from audited books of accounts of airport, AERA cannot rely upon notional expenditure****. Hence, the impugned order at Annexure A-1 for repair and maintenance expenses whereby the cap of 6% of Opening RAB has been applied deserves to be quashed and set aside.***"***

**260.** Lastly, this Tribunal in the case of GMR Goa International Airport Ltd. Vs. AERA, AERA Appeal No. 1 of 2024, judgment dated 11.09.2025 under Paras 91 & 95, which reads as under:

***"****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;…"*

*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****."***

**261.** AERA, on the other hand, submits that the principal purchase order placed before its independent consultant reflected a value of Rs. 71.47 crore excluding GST and Rs. 84.34 crore including GST. According to AERA, the remaining variation orders were not furnished during tariff determination and were relied upon for the first time with DIAL's rejoinder before this Tribunal.

**262.** DIAL disputes this assertion and states that, by email dated 11.10.2024, it supplied several work orders relating to General Capital Expenditure, including the original work order and the three variation orders pertaining to the present works.

**263.** The rejoinder specifically states that the email dated 11.10.2024 contained the four relevant contractual documents and that AERA arrived at ₹84.34 crore by considering only one of them. The email dated 11.10.2024 was also annexed to the memorandum of appeal as Annexure A-10.

**264.** We must note that an independent consultant's recommendation may constitute relevant expert material. It cannot, however, substitute a reasoned regulatory

determination. AERA was required to identify the documents considered, disclose the reconciliation undertaken and state the precise reason for excluding the balance contractual value.

**265.** We now allude to Section 13(1)(a)(i) of the AERA Act which requires AERA, while determining tariff for Aeronautical Services, to take into consideration "*(i) the capital expenditure incurred and timely investment in improvement of airport facilities;*"

**266.** The expression "capital expenditure incurred" herein requires consideration of actual and established expenditure. It does not compel AERA to accept every amount entered in the books without scrutiny, but it does preclude substitution of verified actual expenditure by an unsupported notional figure.

**267.** We reiterate and make it clear that the judgments in Mangaluru and GMR Goa were delivered after the Impugned Order. AERA cannot therefore be criticised for not having applied those judgments in March 2025. They nevertheless reaffirm the principle already declared in the DIAL and GHIAL judgments and govern the present adjudication.

**268.** Moreover, the Hon'ble Supreme Court in **Delhi International Airport Limited Vs. Airports Economic Regulatory Authority of India,** reported in (2024) 1 SCC 716, also recognised the distinction between Section 13(1)(a)(i), dealing with capital expenditure incurred, and Section 13(1)(a)(iii), dealing with the cost of improving efficiency, for ready reference Para 148 to 151 reads as under:

> ***"148.*** *Different aspects towards determination of project cost have been examined by AERA, and AERA has carried out its responsibility while granting a little leeway for the pioneering effort in an untested field in the country. The auditors too had not been able to quantify or identify the losses due to increased project cost in monetary terms. How can one expect AERA to take on such a task in light of the functions ascribed to it under the said Act.*
>
> ***149.*** *There is also substance in the contention that the whole project was running against strict timelines on account of litigations relating to projects, a common phenomenon in our country. This was more so in the context of the Commonwealth Games being around the corner. 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-clause (iii) with sub-clause (i) while determining tariff.*
>
> *150. 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 AERA as well as Tdsat. We thus reject the contention.*

***151.*** *In the end,* ***we do believe that the matter having traversed from AERA to the appellate authority to this Court, the parties and the counsel may have become fully aware of the nitty-gritties of the various matters and thus sought to embark on canvassing the case almost as we are some kind of first authority on these aspects. We are unwilling to do so.*** *We have analysed all the contentions in a broad perspective, keeping in mind that the Authority has performed its task and so has the appellate authority. Despite the course of action followed by the counsel, we have still analysed the matter in such depth as was required to be done by this Court in rejecting all aspects in these appeals and cross-appeals except one aspect which arose from terminology and its definition***."**

**269.** It must be noted that in aforesaid paragraphs 148 and 149, the Hon'ble Supreme Court rejected an attempt to merge the two statutory considerations and observed that the provisions had been separately enacted. The "cost for improving efficiency" under clause (iii) cannot therefore be employed mechanically to erase the requirement under clause (i) to consider capital expenditure incurred.

**270.** Equally, AERA's submission that DIAL is completely precluded from questioning the adjustment because it did

not submit a specific response to paragraph 4.4.143 of the Consultation Paper cannot be accepted. The claim of ₹96.80 crore formed part of DIAL's MYTP. AERA itself recorded that claim in paragraph 4.4.143 (i) of the tariff Order. The dispute is therefore not a claim invented for the first time in appellate proceedings, for ready reference Para 4.4.143 (i) of the tariff order reads as under:

> *"4.4.143 The Authority after analysis of the major items of the general capex through the independent consultant proposed to make the following adjustment:*
>
> *i. The cost towards Civil, Electrical & associated work for Apron stands between L1 & M1 including AGL system upgrade as submitted by DIAL is Rs. 96.80 Cr. However, the Authority based on assessment through the independent consultant proposed to consider an amount of Rs. 84.34 Cr against the same based on the purchase order submitted by DIAL for the same."*

**271.** Even assuming that only the principal purchase order was available before AERA, that circumstance would not, by itself, justify restricting the claim to the value reflected therein. Pertinently, **Section 13 (1) (e**) of the AERA Act expressly empowers the Authority ***"to call for such information as may be necessary to determine the tariff under clause (a)"***.

**272.** Wherever the claim of ₹96.80 crore had been disclosed in DIAL's MYTP but the supporting material was considered incomplete, AERA was required either to seek the necessary documents or to identify the evidentiary deficiency and afford DIAL an opportunity to cure it.

**273.** AERA could not, without recording such deficiency or seeking clarification, confine the claim to the value of the single document available and thereafter defend the reduction solely on the ground that the remaining documents were not before it, despite the record showing the contrary, because such a course would be inconsistent with the transparent and reasoned decision-making contemplated by **Section 13 (4)** of the AERA Act, 2008.

**274.** We also find it significant that AERA has not disputed that the works in question were actually executed by DIAL. The nature of the works such as pavement upgrades, dismantling of old pavements, comprehensive civil and electrical works, and DGCA-mandated Airfield Ground Lighting upgrades is not contested.

**275.** The dispute is confined solely to the quantum of expenditure allowable. In such circumstances, where the fact of execution is admitted and the necessity of the works is unchallenged, AERA's role under Section 13(1)(a)(i) of the AERA Act is to ascertain the

actual capital expenditure incurred, not to substitute a notional figure based on an incomplete reading of the contractual record.

**276.** **We accordingly quash and set aside paragraph 4.4.143(i) of the impugned order to the extent that the expenditure relating to the apron stands between taxiways L1 and M1 and the AGL System upgrade has been conclusively restricted to Rs. 84.34 crore without examination of the complete contractual and accounting record**.

**277.** **We hereby direct, AERA, to consider the actual capital expenditure of Rs. 96.80 Crores incurred by the Appellant towards the said works being the amount supported by the four Work Orders at Annexure RA-4 to the Rejoinder Affidavit and to include the said expenditure in General Capex and in the Regulatory Asset Base for the Third Control Period.**

**278.** **The determination so made shall remain subject to true-up upon the actual expenditure as reflected in the Appellant's audited financial statements, in the ordinary course. Consequential adjustments shall be carried out in depreciation, return on the Regulatory Asset Base, Target Revenue and tariff through the applicable true-up mechanism**. **Issue No. IX is accordingly answered in favour of the Appellant.**

## ISSUE X. Deviation from Asset-Based allocation to Revenue Based apportionment of legal cost

**279.** Looking to the impugned tariff order passed by AERA, and Annexure A-1 for the Fourth control period, AERA excluded legal expenses from professional and consultancy expenses incurred by DIAL and decided to allocate legal expenses between aeronautical and non-aeronautical based upon proportion of aeronautical revenue to the total income of DIAL.

**280.** **Legal expenses are common expenses essential for entire operation of airport including regulatory compliances, protection of concession rights and statutory requirements under OMDA and SSA, all of which are essential for airport operation integrity**. In several matters, DIAL is a party to the litigation for the activities arising on the airport premises.

**281.** The decision of AERA to consider legal expenses to the extent of proportion of aeronautical revenue to the total revenue of DIAL is fundamentally flawed. Legal expenses are not incurred based on their connection to revenue generation. Legal expenses incurred are based upon the nature, volume, and complexity of the litigation and compliance need. This aspect of the matter is not properly appreciated at all by AERA.

**282.** AERA has given different treatments to legal expenses across different control periods, which has resulted in the regulatory uncertainty, which is fundamental to a stable investment environment and contrary to a principle of consistency enshrined in Schedule-1 of SSA (Annexure A-3) which requires AERA to have *"……a consistent approach in terms of underlying principles".*

**283.** AERA has identified no material change of circumstance, and has recorded no reasons in the impugned order, explaining the departure. Furthermore, AERA continues to allocate other professional and consultancy expenses on the basis of objective parameters such as the Gross Fixed Assets Ratio or the Terminal Building Ratio, which reflect the physical usage of resources. The selection of a different, revenue-based metric for legal expenses alone, without any discernible rationale, is the very antithesis of a consistent regulatory approach.

**284.** Much has been argued out by learned counsel for AERA that legal expenses do not have any value addition to the services offered to the users. The base which is taken by AERA in this argument is arbitrary in nature and it is irrelevant also because legal expenses and charges are essential for the operation of the

airports. There are tangible and intangible benefits to the users for the legal expenses incurred by Airport Operator.

**285.** An example was given by this appellant that in arbitration against Delhi Cantonment Board towards property tax demand, after arguments by the advocates, the demand of property tax was reduced from Rs.800 Crores p.a. to Rs.9 to 10 Crores p.a. The benefit of reduced amount of property tax has been passed on by DIAL to the users and thereby enhancing efficient operation at the airport. Thus, legal expenses actually incurred ought to have been true-up without any bifurcation between aeronautical and non-aeronautical basis.

**286.** The assets can be bifurcated on the basis of aeronautical and non-aeronautical ratio, **but,** legal expenses cannot be bifurcated on the basis of aeronautical and non-aeronautical asset ratio. Thus, this aspect of the matter has not been properly appreciated by AERA.

**287.** We have further considered AERA's submissions in opposition. AERA contended before us, that in the impugned order, DIAL did not provide a break-up of legal expenses between matters pertaining to aeronautical and non-aeronautical services, and that legal expenses, being of a general nature, could not be

allowed in their entirety as aeronautical Operation and Maintenance costs. AERA's apportionment based on the ratio of aeronautical revenue to total income was, in its submission, a reasonable method of allocating these common costs.

**288.** We find this approach to be legally unsustainable. **The absence of a case-wise break-up may have entitled AERA to call for further particulars under Section 13(1)(e) of the AERA Act, it did not entitle AERA to adopt a proxy that bears no causal relationship to the cost being apportioned**.

**289.** The regulatory framework itself does not prescribe a revenue-based allocation for common costs. **The OMDA and the SSA contemplate that the airport operator will incur costs necessary for the efficient operation of the airport.** Legal expenses are a necessary incident of operating a major international airport within a heavily regulated environment.

**290.** AERA has defended the revenue-proportion method on the footing that it is "a more accurate indicator" of the aeronautical and non-aeronautical components of legal expense than an asset-based ratio, since legal cost is said to track revenue potential rather than asset value. We are unable to agree to this submission as, **Legal expenditure is, in its nature, a function**

**of the incidence, subject-matter and complexity of litigation and of regulatory compliance obligations; it does not vary in proportion to the revenue earned by the segment to which the dispute relates.**

**291.** There is a further and independent infirmity. It is not in dispute that legal expenses form part of the broader category of Professional and Consultancy Expenses, and that AERA has allocated Professional and Consultancy Expenses generally by reference to the Gross Fixed Assets ratio or the Terminal Building ratio, according to whether the expense was incurred outside or within the terminal building. AERA has singled out legal expenses alone from within that category and subjected them to a wholly different basis of allocation, namely revenue-proportion.

**292.** When called upon to justify treating the subset differently from the set of which it forms part, AERA has offered only that the separate treatment was "*a matter of regulatory prudence*" intended to guard against cross-subsidisation. That itself explains why AERA might examine legal expenses with particular care; it does not explain why, having examined them, it apportioned them by a method it applies to no other species of Professional and Consultancy Expense.

**293.** An unexplained departure of this kind, treating like categories unalike, is the antithesis of the reasoned and documented decision-making required by Section 13(4) of the AERA Act, and offends the Principle of Consistency in Schedule 1 of the SSA. The arbitrariness is compounded by the fact that AERA has itself, in previous Control Periods, allowed legal expenses without adopting the revenue-proportion methodology now applied and in the Fourth Control Period tariff order has identified no material change of circumstance.

**294.** AERA has further contended that DIAL is precluded, by the principle of constructive res judicata embodied in Explanation IV to Section 11 of the Code of Civil Procedure, 1908, from agitating the treatment of legal costs, in as much as the determination in the Third Control Period Tariff Order was not carried in appeal and has attained finality.

**295.** This objection is answered by the reasons already recorded by this Tribunal in respect of Issue No. II, which apply with equal force here. **It is pertinent to note that the true-up exercise is not an occasion for re-litigating a concluded determination; it is the statutorily contemplated stage at which projections are reconciled against actuals.**

**296.** The quantum of legal expenditure actually incurred across the Third Control Period could not have been known, and therefore could not have been challenged, before that Control Period concluded on 31.03.2024. A party is not to be visited with the bar of constructive res judicata for failing to raise a challenge to figures that did not then exist. Further, as this Tribunal has already observed, AERA has itself contended elsewhere in this very Appeal that a challenge is premature until the true-up stage is reached; it cannot simultaneously maintain that a challenge is barred for not having been brought before that stage.

**297.** We, therefore, quash and set aside the decision of AERA to exclude the legal expenses from professional and consultancy expenses incurred by DIAL.

**298.** **We, hereby also quash and set aside the decision of AERA to allocate the legal expenses between aeronautical and non-aeronautical based upon proportion of aeronautical revenue to the total income of DIAL.**

**299.** **We direct AERA to treat the entire actual legal expenses incurred by DIAL as allowable Operation and Maintenance costs, without any such apportionment. Consequential true-up adjustments shall be carried out accordingly**. **Issue No. X is accordingly answered in favour of the Appellant.**

## ISSUE XI Double accounting of deleted asset while computing true-up of RAB for the third control period.

**300.** Looking to the impugned tariff order which is at Annexure A-1, AERA has deleted value of one of the assets in the capitalization of Phase 3A project.

**301.** The Table 78 of the impugned tariff order from paragraph 4.4.182, which is the calculation of RAB decided by AERA for true-up for the third control period which reads as under:

**Table 78: Additions to RAB to be considered by the Authority for True up for the Third Control Period**

| FY Ending March 31, (Rs. Cr) | 2020 | 2021 | 2022 | 2023 | 2024 | Total |
|---|---|---|---|---|---|---|
| Aeronautical Asset Additions as per the Authority's analysis on Reclassification of Assets [Refer Table 68] (A) | 215.03 | 160.28 | 926.08 | 992.49 | 9,841.51 | 12,135.39 |
| Disallowances/Adjustments in Phase 3A Expansion Capex in the Third Control Period as per the Authority's analysis [Refer Table 77] | | | | | | |
| **Additions knocked off with deletions (B)** | | | | **33.61*** | | 33.61 |
| Reductions in IDC (C) | - | - | 1.89 | 1.87 | 26.37 | 30.13 |
| Reductions in Enabling and Miscellaneous Works (D) | 0.01 | 0.01 | 0.90 | 0.92 | 11.12 | 12.96 |
| Reductions in EPC Claims (E) | | | | | 24.44 | 24.44 |
| Total Adjustments in Phase 3A Expansion Capex (F=B+C+D+E) | 0.01 | 0.01 | 2.78 | 36.40 | 61.94 | 101.14 |
| Adjustments in General Capex in 3rd CP as per the Authority's analysis [Refer Table 66] (G) | 2.97 | 2.49 | 2.18 | 1.92 | 2.90 | 12.46 |
| Total Disallowances/Adjustments in Capex (H=F+G) | 2.98 | 2.50 | 4.96 | 38.32 | 64.83 | 113.60 |
| Aeronautical Portion of Asset Addition proposed to be considered by the Authority % [Refer Table 68] (I) | 93.52% | 83.15% | 94.04% | 97.11% | 94.63% | |
| Aeronautical portion of Adjustments in Capex (J=H×I) | 2.79 | 2.08 | 4.67 | 37.17 | 61.33 | 108.04 |
| Aeronautical Asset Additions as per the Authority's analysis (A-J) | 212.24 | 158.20 | 921.41 | 955.32 | 9,780.18 | 12,027.35 |
| **Asset additions amounting to Rs. 33.61 Cr knocked-off with deletions have been adjusted in the above computation in line with clarifications provided by DIAL. DIAL as part of clarifications submitted that total amount capitalised in the Third Control Period under Phase 3A Expansion was Rs. 11,864.09 Cr after deducting Rs. 33.61 Cr.* | | | | | | |

**302.** It is submitted by learned counsel appearing for respondent no.1-AERA, that there is no double accounting of the deleted assets while computing true-up of RAB for the third control period and it is also submitted by learned counsel appearing for respondent no.1 that DIAL did not raise any issue with respect to calculation of RAB at the time of consultation stage.

**303.** In view of the aforesaid calculation, there is already a deduction of Rs.33.61 Crores, and after deduction of the aforesaid amount, aeronautical asset additions as per AERA has been arrived at Rs.955.32 Crores for the financial year 2023.

**304.** Looking to Table 70, 71, to be read with 79 and 80 of the impugned tariff order, AERA has not appreciated the fact that total capitalized amount in the third control period under Phase 3A expansion was Rs.11,864.09 Crores, and this figure has been arrived at after deletion of aeronautical asset valued at Rs.33.61 Crores. To understand this, Table 70, 71, 79 and 80 reads as under:

**Table 70: Adjustments in Additions to RAB proposed to be considered by the Authority for the Third Control Period at the Consultation Stage**

the Third Control Period at the Consultation Stage

| FY Ending March 31, (Rs. Cr) | 2020 | 2021 | 2022 | 2023 | 2024 | Total |
|---|---|---|---|---|---|---|
| Aeronautical Asset Additions as per the Authority's analysis on Reclassification of Assets [Refer Table 68] (A) | 215.03 | 160.28 | 926.08 | 992.49 | 9,841.51 | **12,135.39** |
| **Disallowances/Adjustments in Phase 3A Expansion Capex in the Third Control Period as per the Authority's analysis [Refer Table 60]** | | | | | | |
| Additions knocked off with deletions (B) | | | | 33.61* | | **33.61** |
| Reductions in IDC (C) | - | - | 20.38 | 20.22 | 285.07 | **325.66** |
| Reductions in Enabling and Miscellaneous Works (D) | 0.01 | 0.01 | 0.90 | 0.92 | 11.12 | **12.96** |
| Reductions in EPC Claims (E) | | | | | 95.40 | **95.40** |
| **Total Adjustments in Phase 3A Expansion Capex (F=B+C+D+E)** | **0.01** | **0.01** | **21.28** | **54.70** | **391.57** | **467.57** |
| Adjustments in General Capex in 3rd CP as per the Authority's analysis [Refer Table 66] (G) | 2.97 | 2.49 | 2.18 | 1.92 | 2.90 | **12.46** |
| **Total Disallowances/Adjustments in Capex (H=F+G)** | **2.99** | **2.50** | **23.46** | **56.62** | **394.47** | **480.03** |
| *Aeronautical Portion of Asset Addition proposed to be considered by the Authority % [Refer Table 68] (I)* | *93.52%* | *83.15%* | *94.04%* | *97.11%* | *94.63%* | |
| Aeronautical portion of Adjustments in Capex (J=H*I) | 2.79 | 2.08 | 22.06 | 54.98 | 373.29 | **455.20** |
| **Aeronautical Asset Additions as per the Authority's analysis (A-J)** | **212.24** | **158.20** | **904.02** | **937.51** | **9,468.22** | **11,680.19** |

**Asset additions amounting to Rs. 33.61 Cr knocked-off with deletions have been adjusted in the above computation in line with clarifications provided by DIAL. DIAL as part of clarifications submitted that total amount capitalized in the Third Control Period under Phase 3A Expansion was Rs. 11,864.09 Cr after deducting Rs. 33.61 Cr.*

4.4.155 The Authority through its independent consultant proposed the following adjustments to the Aeronautical asset deletions submitted by DIAL based on the analysis of the FAR submitted by DIAL.

**Table 71: Adjustments in Deletions proposed to be considered by the Authority for the Third Control Period**

| FY Ending March 31, (Rs. Cr) | 2020 | 2021 | 2022 | 2023 | 2024 | Total |
|---|---|---|---|---|---|---|
| Aeronautical Deletions as submitted by DIAL (A) | 15.62 | 0.29 | 0.16 | 6.48 | 46.14 | **68.69** |
| Adjustments proposed by the Authority (B) | 0.03 | - | (0.09) | (0.02) | 0.01 | **(0.07)** |
| **Aeronautical Deletions proposed to be considered by the Authority (C=A+B)** | **15.65** | **0.29** | **0.07** | **6.46** | **46.15** | **68.62** |

**Table 79: Depreciation decided to be considered by the Authority for the Third Control Period**

| FY ending March 31 (Rs. Cr) | 2020 | 2021 | 2022 | 2023 | 2024 | Total |
|---|---|---|---|---|---|---|
| Depreciation on Aero RAB | 501.19 | 465.53 | 464.11 | 541.77 | 669.70 | **2,642.31** |
| Depreciation on HRAB | 25.69 | 23.43 | 22.08 | 23.71 | 19.60 | **114.52** |
| **Total (including Hypo RAB)** | **526.88** | **488.96** | **486.20** | **565.49** | **689.30** | **2,756.82** |

4.4.184 Based on the changes in the Aeronautical Asset Additions (Table 78) and depreciation (Table 79), the revised Regulatory Asset Base for the Third Control Period decided to be considered by the Authority is as shown in the table below:

**Table 80: Aeronautical Depreciation and RAB decided to be considered by the Authority for the Third Control Period**

| FY ending March 31 (Rs. Cr) | 2020 | 2021 | 2022 | 2023 | 2024 | Total |
|---|---|---|---|---|---|---|
| Opening Aero RAB (A) | 4,771.83* | 4,514.24 | 4,250.83 | 4,005.62 | 4,627.00 | |
| *Addition considered on Pro-Rata basis# [Refer Table 78] (B)* | *97.98* | *88.15* | *148.92* | *397.13* | *3,938.76* | *4,670.94* |
| *Adjustments from Previous Year on Pro-Rata basis [Refer Table 78] (C)* | *393.32^* | *114.26* | *70.05* | *772.49* | *558.20* | *1,908.31* |
| *Deletions [Refer Table 71] (D)* | *15.65* | *0.29* | *0.07* | *6.46* | *46.15* | *68.62* |
| *DF Adjustment (E)* | *232.05* | *-* | *-* | *-* | *-* | *232.05* |
| *Depreciation [Refer Table 79] (F)* | *501.19* | *465.53* | *464.11* | *541.77* | *669.70* | *2,642.31* |
| **Pro Rata Aero RAB (based on Pro Rata Additions) (G=A+B+C-D-E-F)** | **4,514.24** | **4,250.83** | **4,005.62** | **4,627.00** | **8,408.10** | |
| Opening HRAB (H) | 218.84* | 193.15 | 169.72 | 147.64 | 123.93 | |
| *Depreciation [Refer Table 79] (I)* | *25.69* | *23.43* | *22.08* | *23.71* | *19.60* | *114.52* |
| **Closing HRAB (J=H-I)** | **193.15** | **169.72** | **147.64** | **123.93** | **104.33** | |
| **Average HRAB (K=(H+J)/2)** | **206.00** | **181.44** | **158.68** | **135.78** | **114.13** | |
| **Average RAB for FRoR (G+K)** | **4,720.24** | **4,432.27** | **4,164.30** | **4,762.78** | **8,522.23** | |

**Closing Aero RAB and HRAB respectively as on March 31, 2019 as per the Tariff Order for the Third Control Period*

*#Pro-rata adjustment in additions in each year has been considered with the balance carried forward to subsequent year. For Eg: Of total aeronautical asset addition of Rs. 212.24 Cr in FY 2020 as per Table 78, Rs. 97.98 Cr is considered in FY 2020 on pro-rata basis while the balance Rs. 114.26 Cr is shifted to FY 2021 as mentioned above. Similarly, of the total aeronautical asset addition of Rs. 9,780.18 Cr as per Table 78, asset addition of Rs. 3,938.76 Cr is considered in FY 2024 on pro-rata basis, while the balance amount of Rs. 5,841.42 Cr is considered in the Opening Aero RAB for FY 2025.*

*^Carried forward from FY 2019*

*Note: Regulatory Asset Base considered for the purpose of estimating return was based on actual date of capitalization for a year and was arrived at by incorporating addition/deletions/adjustments to the aeronautical asset base of DIAL on a pro-rata basis on the opening balance of RAB in that year.*

**305.** In View of the aforesaid tables, it is explicitly clear that AERA has arrived at a calculation after double deduction of the deleted assets. Moreover, the contention of AERA that this issue was never raised by this appellant at the consultation stage is factually wrong. The present appellant has given calculation and informed AERA that the phase 3A capitalization amount of Rs.11,864.09 Crores was arrived at after deduction of Rs.33.61 Crores on account of deletion of assets.

**306.** While computing additions to RAB in the financial year 2023, the amount of Rs.955.32 Crores had been computed after deduction of Rs.33.61 Crores on account of deletion of assets as stated in Table number 78.

**307.** As per Table number 80, as stated hereinabove for computing aeronautical depreciation and RAB, the additions of RAB of Rs.955.32 Crores (as per Table number 78) split into two components, viz. Rs.397.13 Crores (recognized as pro-rata additions in financial year 2023) and the balance of Rs.558.20 Crores carried forward as an **"Adjustment from Previous Years"** in financial year 2024, **(Rs.397.13 Crores +Rs. 558.20 Crores is Rs.955.33 Crores).** Which is corresponding to the Rs. 955.32 Crores reflected in Table 78, the marginal difference of Rs. 0.01 Crore being attributable to rounding.

**308.** In Table number 80 for the financial year 2024, AERA has considered deletions for Rs.46.15 Crores by giving reference to Table number 71 and deducted the said amount while computing RAB, but, AERA has failed to consider or appreciate the fact that this amount of Rs.46.15 Crores includes the deletion of Rs.33.61 Crores.

**309.** **This is an Error Apparent on the Face of the Record as committed by AERA**. The deleted amount has been again deleted. Thus, there is a double deletion of Rs.33.61 Crores as Table 71 to be read with Table 80 of the impugned order. This amount of Rs.33.61 Crores has been deducted twice. Firstly, as mentioned in Table 78 while computing additions to RAB, and thereafter again the same amount has been deducted as per calculation again in Table 80 while computing aeronautical depreciation of RAB.

**310.** The sum of Rs.46.15 Crores as referred in Table number 80 under the heading deletions (by reference to Table 71) includes the value of deleted asset of Rs.33.61 Crores proposed by DIAL, audited financial statement for the financial year 2022-23, are at Annexure RA-5 to the memo of rejoinder

affidavit. Note number 13 to the financial statement makes it explicitly clear that the value of net block comes to Rs.46.50 Crores. This figure has been arrived at after deduction of total disposal value at Rs.165.06 Crores, accumulated depreciation of Rs.118.56 Crores.

**311.** The aforesaid net block of Rs. 46.50 Crores has been considered as Rs. 46.15 Crores in Table 71 by AERA, AERA having, on a pro-rata basis, considered that the majority of its impact pertains to the financial year 2024. Thus, the sum of Rs. 33.61 Crores, being the value of the deleted asset, has been considered twice by AERA.

**312.** AERA's contention in opposition to above is that there has been no double counting, and that DIAL did not raise any issue regarding the computation of RAB at the consultation stage. We, must admit that neither contention survives contact with AERA's own order.

**313.** As to the above, the premise of DIAL's complaint is not merely established but expressly admitted by AERA, in this regard reference may be drawn to the footnote to Table 78 of the impugned order, recorded by AERA itself, states that "*DIAL as*

*part of clarifications submitted that total amount capitalised in the Third Control Period under Phase 3A Expansion was Rs. 11,864.09 Cr after deducting Rs. 33.61 Cr*," and that the said sum has "*been adjusted in the above computation in line with clarifications provided by DIAL*." AERA reiterates this at paragraph 42 (iv) of its Counter Affidavit.

**314.** Once AERA accepts, on the face of its own order, that the capitalisation figure from which it proceeded was already net of the Rs. 33.61 Crore deletion and that it further adjusted its computation to give effect to that deletion, any subsequent deduction of the same asset in the course of the same true-up necessarily counts it twice. The vice in the facts of present case is not one of judgment or methodology, upon which minds might differ; it is an arithmetical consequence of AERA's own admitted starting point.

**315.** The mechanism by which the second deduction occurred is not in serious dispute. Having given effect to the Rs. 33.61 Crore deletion in Table 78, AERA proceeded, in Table 80, to deduct a further sum of Rs. 46.15 Crores under the head "Deletions" by reference to Table 71. That figure of Rs. 46.15 Crores is

itself derived from DIAL's audited financial statements for FY 2022-23, where *Note 13* records disposals of Rs. 165.06 Crores, a sum which *sub-note (c)* which is annexed to as Annexure RA-5 to the rejoinder affidavit thereto identifies as including the Terminal Arrival Building decapitalisation of Rs. 33.60 Crores against accumulated depreciation on disposals of Rs. 118.56 Crores, yielding a net block of approximately Rs. 46.50 Crores.

**316.** It is clear to us that Rs. 33.61 Crores is therefore embedded within the Rs. 46.15 Crores, and its deduction in Table 80 repeats the deduction already effected in Table 78. AERA has offered no explanation whatsoever, either in the impugned order or before us, as to why a further deduction of Rs. 46.15 Crores was warranted once the Rs. 33.61 Crore adjustment had already been made.

**317.** We also note that AERA's objection that DIAL did not raise this issue at the consultation stage is of no legal consequence. A computational error that results in a double deduction is not a mere procedural objection that can be waived by failure to respond to a consultation paper.

**318.** AERA exercises statutory functions in determining tariff, and its order must be correct in fact and in law. The consultation process under Section 13(4) of the AERA Act is designed to elicit stakeholder views; it does not operate as a limitation on the appellate power of this Tribunal or on the right of an aggrieved party to point out an error in the final order.

**319.** **An error that is patent on the face of the record is amenable to correction regardless of whether it was flagged in the consultation stage**. To hold otherwise would allow AERA to immunise its errors from judicial scrutiny by relying upon the silence of a stakeholder during consultation, a result not countenanced by the statutory scheme.

**320.** **We, therefore, direct AERA that, while computing the true-up of RAB for the Third Control Period, the sum of Rs. 33.61 Crores shall not be deducted a second time, that is to say, by excluding from the Rs. 46.15 Crores deletion carried into Table 80 the component of Rs. 33.61 Crores already given effect to in Table No. 78 and the computation shall be revised accordingly. The necessary true-up shall be given by AERA in the next Control Period**. **Issue No. XI is accordingly answered in favour of the Appellant.**

**ISSUE XII. Reduction of 1% of un-capitalized project cost from the target revenue in case any particular capital project is not completed or is not capitalized as per approved capitalization schedule in the next control period.**

**321.** AERA has decided as per paragraph 6.7.3 of the impugned tariff order, Annexure A-1, to reduce 1% un-capitalized project cost from the target revenue in case of any particular capital project is not completed as per the approved capitalization schedule in the next control period. For the ready reference, **paragraph 6.7.3** of the impugned tariff order, Annexure A-1 reads as under:

> ***Para 6.7.3:***
>
> *To reduce (adjust) 1 % of uncapitalized project cost from the Target Revenue in case any particular capital project is not completed/capitalized as per approved capitalization schedule, as mentioned in Table 251. The same will be examined at the time of tariff determination for the next Control Period.*

**322.** It has been contended by the learned counsel for Respondent No. 1–AERA that, having regard to paragraph 6.7.3 of the impugned tariff order, no final decision has yet been taken by AERA to impose a penalty of one per cent of the uncapitalised project cost, and that this issue cannot,

therefore, be decided at this stage. This contention is not accepted by this Tribunal, mainly for the reason that AERA has no power, jurisdiction or authority to impose such a penalty upon the Airport Operator for an uncapitalised project and such an observation in the impugned tariff order is an unwarranted threat to the Airport Operator. There is no provision for a penalty for delayed capitalisation, either under the AERA Act, 2008, or under the OMDA (Annexure A-2), or under the SSA (Annexure A-3).

**323.** If such powers were to be recognised, then in future, instead of a 1% penalty, there could be a 1.5% penalty, a 2% penalty, and thereafter a 2.5% penalty. It ought to have been appreciated by AERA that uncapitalized project have several reasons, sometimes beyond the control of Airport Operator like pandemic situations arising out of COVID-19, sometimes war between two mighty countries in the world, sometimes footfall is being reduced for varieties of reasons.

**324.** The project may be incomplete for all these reasons, and therefore, no penalty can be imposed on Airport Operator without any penalty Clause in the OMDA and SSA or in AERA Act, 2008. Moreover, even if there is a Penalty Clause in

existence, a show-cause notice ought to have been given for imposing penalty. Even if such notice is given, then also the quantum of punishment thereafter also amount of penalty should be proportionate. Over enthusiastic approach of AERA is being reflected in paragraph 6.7.3 of the impugned tariff order.

**325.** AERA should have appreciated the fact that, as per Clause 11.1.2 of OMDA (Annexure A-2), **the Airports Authority of India is getting an Annual Fee equivalent to 45.99% of projected Revenue** for each Year during the Term of the Agreement**.** Moreover, the Airport Operator is a bidder chosen by the Central Government on PPP mode to run IGIA. The Airport Operator has to take work from few dozen of agencies. Moreover, Airport Operator is also facing sometimes circumstances beyond its control.

**326.** The capitalisation of any project depends upon several factors and, therefore, even if some delay has been caused, AERA should have enquired into the reasons for the delay and should have issued appropriate guidelines. A direct allegation of a **'negligent approach' cannot be assigned to the Airport Operator alone**. The observation contained

in paragraph 6.7.3 of the impugned tariff order demoralises the concessionaire chosen by the Central Government (the present Appellant). For every delay in the capitalisation of a project, the Airport Operator may not be liable. These aspects of the matter have not been properly appreciated by AERA. AERA should have adopted a soft touch approach instead of didactic approach.

**327.** We state that the AERA's objection concerning prematurity cannot be accepted, as Paragraph 6.7.3 does not state that AERA may consider whether a one per cent adjustment should be introduced in the future. It contains a definitive determination, which reads as "*To reduce (adjust) 1 % of uncapitalized project cost from the Target Revenue in case any particular capital project is not completed/capitalized as per approved capitalization schedule, as mentioned in Table 251.*"

**328.** Upon holistic reading of the above it appears that the subsequent sentence stating that the matter will be examined during the next tariff determination postpones the application of the measure; however, it does not postpone the decision to impose the measure.

**329.** Thus, the triggering event and the rate of deduction have, therefore, already been prescribed. What remains is only the identification of projects which have not met their approved capitalisation schedules and the computation of the corresponding amount. In our view, DIAL is not precluded to wait until the deduction is actually made before questioning whether AERA possesses the jurisdiction to prescribe it.

**330.** AERA has sought to describe the measure as a regulatory adjustment or balancing mechanism rather than a penalty. The legal character of a measure depends upon its substance and effect and not merely upon the description assigned to it by the regulator as the bare reading of Paragraph 6.7.3 states that, apart from the ordinary consequences arising from non-capitalisation of an asset, an additional amount equal to one per cent of the uncapitalised project cost shall be deducted from Target Revenue.

**331.** Its quantum bears no demonstrated relationship with the duration of delay, the reason for delay, the extent of project completion, the amount actually recovered through tariff or the financial consequence suffered by airport users and such a 'predetermined monetary deduction' possesses the

essential attributes of a penalty, irrespective of whether AERA describes it as a rationalisation, readjustment, balancing measure or efficiency incentive.

**332.** AERA has relied upon Sections 13(1)(a)(i), 13(1)(a)(ii), 13(1)(a)(vii), 13(1)(f) and 14(4) of the AERA Act. These provisions empower AERA to take into consideration timely investment, quality of service and other relevant factors, to perform functions necessary for tariff determination and to issue directions for monitoring performance.

**333.** **They do not, however, expressly or by necessary implication confer an unrestricted power to impose a fixed monetary exaction unrelated to the actual regulatory consequence of the delay.** We must clarify that a general power to determine tariff and monitor performance cannot be employed to create a penal consequence for which the statute and governing agreements provide no standard, limit or methodology.

**334.** AERA has relied upon *Bangalore International Airport Limited Vs. Airports Economic Regulatory Authority of India*, AERA Appeal No. 8 of 2018, decided on 16.12.2020. In the facts of the aforesaid judgement on this issue, it is relevant to point

out that in BIAL's case the project was accorded capitalisation during the relevant Control Period upon a specific assurance by BIAL that Terminal II–Phase 1 would be commissioned within the stipulated period. The deduction was treated as a limitation upon the benefit obtained through such advance recognition. More importantly, paragraph 54 of the judgement expressly relied upon Clause 9.2.9 of BIAL's Concession Agreement, which recognised the regulator's authority concerning performance standards and penalties.

**335.** However, no corresponding provision in DIAL's OMDA or SSA has been identified before us. Nor has AERA demonstrated that DIAL has been granted an equivalent advance capitalisation benefit upon a specific assurance which would otherwise permit recovery of return or depreciation despite the asset remaining unavailable for use. The contractual and factual foundation upon which the BIAL judgment proceeded on this issue is therefore absent in the present case.

**336.** It has been held by this Tribunal in its judgment dated 06.10.2023 in *Mumbai International Airport Limited Vs. Airports Economic Regulatory Authority of India*, AERA

Appeal No. 2 of 2021, at paragraph 303 & 308, which reads as under:

***"303.*** *Learned senior advocate for the respondent has placed heavy reliance upon the decision rendered by this Tribunal in AERA Appeal No.8 of 2018 dated 16.12.2020 in case of Bangalore International Airports Ltd.* ***Looking to the facts and circumstances of the case, the Clause of penalty was prevailing in Article 9.2.9 of Concession Agreement of BIAL dated 05.07.2004 whereas there is no such provision of penalty in OMDA entered into between this appellant and AAI.***

*308.* ***Moreover, in absence of any provision for penalty under OMDA or SSA or AERA Act, 2008, no such penalty can be imposed, otherwise highly discriminatory position will prevail because today 1% of project cost penalty is imposed and subsequently it may be increased to 1.5%. If 1% penalty is allowed then 1.5% penalty would also have to be allowed then in forth coming years, as there are unguided powers, the penalty might be 3% also and, thereafter it can be 5% or more also. There will be no end to penalty in absence of any provision under OMDA, SSA and AERA Act, 2008****. It ought to be kept in mind that unguided and uncontrolled power always leads to discrimination. In case of one airport operator penalty imposed will be 1% and in case of another airport operator it can be 2% because there is no law, there is no contract, there is no provision and there are no guidelines. The balance has already been created under OMDA and SSA in the methodology of true up in next control period and as stated hereinabove, as per the said methodology, excess amount recovered shall be trued up with carrying cost in next control period. Therefore, in the aforesaid example, if Rs.83 Crores has been recovered, the true up amount in the next control period, if the project is not commenced or completed within the time bound schedule, would be at Rs.121 Crores which is in fact more than sufficient revenue clawed back from the airport operator and*

*perhaps for this very reason no powers have been given to AERA for imposing penalty. Hence, we hereby quash and set aside the decision of AERA of carrying out 1% of readjustment to project cost and applicable carrying cost in the target revenue at the time of determination of tariff for next control period.***"**

**337.** The same principle has been reiterated by this Tribunal in its judgment dated 14.02.2024 in ***GMR Hyderabad International Airport Limited Vs. Airports Economic Regulatory Authority of India*, AERA Appeal No. 4 of 2021**, at paragraph 510, which reads under:

> **"***510. Looking to the facts and circumstances of the present case and also keeping in mind the AERA Act, 2008 and Concession Agreement under dated 20.12.2024 (Annexure-A3 to the memo of this appeal)* ***there is no provision under the AERA Act, 2008 nor in there is any provision in the Concession Agreement which contemplates the levy of penalty much less levy of penalty 1% on delayed execution and hence, deduction of 1% of the total value of the project cost from ARR is beyond the power, jurisdiction and authority of AERA****."*

**338.** In view of the aforesaid decisions, AERA has no power, jurisdiction and authority to reduce 1% of any uncapitalized project cost from the target revenue in case any particular project is not capitalized as per the approved capitalization schedule in the next control period and, therefore, we hereby quash and set aside the observations in paragraph 6.7.3 of the impugned tariff order. **Issue No. XII is accordingly answered in the favour of the Appellant.**

**ISSUE XIII. Non-consideration of expenditure pertaining to beautification of airport gateway and other areas as an Operation and Maintenance Cost Pertaining to Aeronautical Services.**

**339.** As per **paragraph 6.6.11** at Annexure A-1, AERA has decided not to consider the expenditure pertaining to beautification of airport gateway and other areas as an operation and maintenance cost because, in the opinion of AERA, this expenditure does not add any tangible benefit to the users. AERA has allowed expenditure towards landscaping as an operation and maintenance cost for the Bangalore International Airport Limited, however, a different treatment has been meted out to the present appellant. Moreover, this issue has also been decided in a judgment delivered by this Tribunal dated **14.02.2024 in GMR Hyderabad International Airport Limited Vs. AERA, in AERA Appeal No.4 of 2021, at paragraph 449**, which reads as under:

> **"***449. Landscaping is an integral part of customer experience at the airport campus, as submitted by the counsel for the appellant and it is an integral part of airport operations as it enables the airport operator to attract more passengers at*

*the airport.* ***Looking to the facts of the case and keeping in mind the purpose of landscaping at the airport, it is meant for the passengers at the airport. The landscaping at the airport is always facilitating to attract more passengers at the airport. Landscaping is an integral part of the airport. This aspect of the matter has not been properly appreciated by AERA and has therefore wrongly treated landscaping as common i.e. aeronautical and non-aeronautical."***

**340.** It thus emerges from the above that this Tribunal has already recognised that expenditure pertaining to beautification of airport, gateway, and other areas through landscaping adds tangible benefit to the users. It enhances environmental mitigation, reduces dust and noise pollution, which directly support aeronautical usage and traffic attraction.

**341.** AERA contends that the treatment accorded to Delhi must differ from that accorded to Bangalore and Hyderabad "on account of the concessions granted to each of these airports". However, AERA does not identify any provision of the SSA or the OMDA that excludes landscaping from Operation and Maintenance cost, nor any provision in the Bangalore or Hyderabad concessions that expressly includes it.

**342.** On the contrary, it is not in dispute that in the case of Bangalore International Airport Limited, AERA itself treated landscaping as an operation and maintenance cost pertaining to Aeronautical Services, and that in the case of GMR Hyderabad International Airport Limited, this Tribunal directed the same treatment.

**343.** For future guidance it is made clear that where a regulator such as AERA, accords materially different treatment to the same category of expenditure at different airports, the burden lies upon it to identify the material distinction. AERA has not discharged that burden conclusively. An unexplained divergence of this kind offends the Principle of Consistency in Schedule 1 of the SSA, which obliges AERA to maintain "*a consistent approach in terms of underlying principles.*"

**344.** Further contention that landscaping "has not added any efficiency to the airport operations," and is therefore not an efficient cost within Schedule 1 of the SSA, is an afterthought. Paragraph 6.6.11 of the impugned order rejects the expenditure on the single ground that it *"does not add any tangible benefit to the users."* It records no examination whatsoever of the efficiency of the expenditure,

no comparison against any benchmark, and no finding that the cost was excessive or imprudently incurred. For ready reference Paragraph 6.6.11 reads as under:

> *"6.6.11 The Authority has noted DIAL's submission to allow the expenditure pertaining to beautification of airport gateways as submitted in the MYTP. During the Consultation Stage,* ***the Authority proposed not to consider this expenditure as it did not add any tangible benefit for the users.*** *The Authority decides to retain the same stand as taken during the Consultation Stage."*

**345.** It appears that AERA has disallowed the expenditure in its entirety, which is not an efficiency assessment at all but a rejection in principle.

**346.** As to the substance, AERA's premise that beautification confers no tangible benefit upon users cannot be accepted. Landscaping at an airport is not ornamental indulgence. It performs identifiable operational functions such as mitigation of dust and noise, the improvement of ambient air quality, and the maintenance of the environment in which passengers arrive at, move through, and depart from the airport.

**347.** This Tribunal has already so held in *GMR Hyderabad International Airport Limited Vs. AERA*, judgment dated 14.02.2024, at paragraph 449, observing that landscaping

*"is an integral part of customer experience at the airport campus,"* that it *"is an integral part of airport operations as it enables the airport operator to attract more passengers at the airport,"* and that *"landscaping at the airport is always facilitating to attract more passengers at the airport."*

**348.** We must also observe that these points are not without foundation in the concession documents themselves, as upon analysis of **Entry 4 & 16 of Schedule 5 of the OMDA** at Annexure A-2, it identifies, among Aeronautical Services, and reads as under:

> ***"4. general maintenance and upkeep of the Airport;***
> ***...***
> ***...***
> ***16. Airside and landside access roads and forecourts including writing, traffic signals, signage and monitoring.***"

**349.** From the perusal of the record it appears that the gateway and forecourt of the Airport are precisely the areas to which the disputed expenditure relates. It may also be observed, that the Indira Gandhi International Airport remains a State asset operated under concession, and is for a great many international travellers the first and last point of contact with this country.

**350.** Landscaping of an airport gateway cannot be regarded as wholly ornamental or unrelated to airport operations merely because it does not directly increase runway, terminal or passenger-handling capacity. Airport operations include the maintenance of the physical environment through which passengers enter, leave and move within the airport campus.

**351.** AERA has further not identified any provision in DIAL's OMDA or SSA which requires landscaping within airport gateways, landside access areas or forecourts to be treated differently from similar landscaping at Hyderabad Airport. We observe, that merely making general assertion in the Counter Affidavit that the concession agreements are different, cannot by itself become a substitute for identification of the particular contractual provision which corroborates the alleged distinction.

**352.** It is worth keeping in mind that purely decorative expenditure undertaken exclusively for corporate branding or for enhancement of a non-aeronautical commercial development need not be passed through to aeronautical users, as these are not covered as per the clauses of OMDA.

**353.** But, landscaping undertaken at airport gateways, access roads, forecourts, boundary areas and other parts of the operational airport campus for passenger experience, environmental mitigation and maintenance of airport ambience is, however, aeronautical in character.

**354.** It is entirely reasonable that the Airport Operator should maintain its gateway and approaches to a standard befitting the international stature of IGIA, which is adjudged as the best airport in the India & South Asia for 8 successive years under the relevant category and same should not in principle considered as extravagance without any corroborating material; rather it ought to be presumed as an ordinary incident of operating a major international airport.

**355.** **In view of the aforesaid facts, reasons and judicial pronouncements, we hereby quash and set aside the decision of AERA in paragraph 6.6.11 of the impugned tariff order. We, hereby hold that the expenditure pertaining to beautification of the airport gateway and other areas shall be considered as an operation and maintenance cost pertaining to Aeronautical Services and necessary true-up, shall be given for this expenditure in the next control period**. **Issue No. XIII is accordingly answered in the favour of the Appellant.**

**ISSUE XIV. Consideration of refundable security deposit at the rate of Cost of Debt (CoD) instead of Cost of Equity (CoE).**

**356.** The Appellant has received interest-free Refundable Security Deposits ("RSDs") from lessees in connection with concessions granted to third parties for the development of Non-Transfer Assets. The deposits are contractually refundable to the concerned lessees upon expiry or termination of the respective concession arrangements.

**357.** However, where this RSD has been utilised by DIAL for meeting the project cost of the IGI Airport, the amount so deployed assumes the character of funds placed at the risk of the project, and hence should be considered at the rate of cost of equity, and not at the rate of cost of debt, for the determination of WACC.

**358.** 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 paragraphs 172 to 175**, which reads as under:

*"172. Thus, even while getting the debt from the financial companies, this appellant had mentioned RSD as equity.* ***Moreover, this amount has been utilised to fund the capex, which is expected to have risk, inherent to that associated with equity, hence opportunity cost equivalent to cost of equity should be considered for this appellant****.*

*173. It is submitted by Learned Senior Advocate appearing on behalf of the appellant that other infrastructure sector regulators such as Petroleum and Natural Gas Regulatory Board (PNGRB) and Tariff Authority for Major Ports (TAMP) where the tariff is regulated have allowed return on capital employed. These regulators do not provide return on the basis of source and associated cost of funds. Hence,* ***we are of the considered opinion that once RSD has been utilised for meeting the capital expenditure, it should be treated as a part of Equity Share Capital invested by the appellant in the business and, therefore, this appellant is entitled to reasonable rate of return treating RSD as equity.***

*174. Moreover, RSD raised by the appellant has been deployed for meeting the project cost of the Chhatrapati Shivaji Maharaj International Airport, Mumbai. If this fund is not available with this appellant, they would have been compelled to infuse same amount of equity for the project of Chhatrapati Shivaji Maharaj International Airport, Mumbai.*

*175.* ***It is presumed by AERA that if the amount of RSD would not have been available, the appellant would have incurred a debt and, therefore, AERA has given return on debt on an amount equal to RSD. This is an error on the part of AERA, in fact, if the amount of RSD would not have been available with this appellant, this amount equal to RSD would have been brought by this appellant through equity infusion****."***

**359.** In view of the aforesaid decision, it appears that DIAL has used the RSD as a means of finance for the IGI Airport, and its

lenders have treated this amount as equity for the purpose of computing the debt-equity ratio for lending purposes. The aforesaid decision is equally applicable to the facts of the present case, and therefore, the amount of RSD, having been utilised by DIAL for meeting the project cost of the IGI Airport, should be considered as equity, and should accordingly be considered at the rate of cost of equity instead of cost of debt.

**360.** It ought to have been appreciated by AERA that, had this amount of RSD not been received from the lessees , which amount was ultimately used by DIAL for meeting the project cost of the IGI Airport, an equivalent amount would have had to be brought in by DIAL to meet the project cost. AERA has presumed that such amount would have been necessarily borrowed, and has accordingly applied the cost of debt. That presumption is erroneous.

**361.** It is material to note that the Refundable Security Deposits were funds which the Appellant was under no obligation to deploy towards the Indira Gandhi International Airport at all. As DIAL has asserted, and AERA has not disputed, the deposits, generated from lease arrangements in respect of Non-Transfer Assets, were available to the Appellant for

application to any purpose, with no contractual compulsion to invest them in the airport project.

**362.** The Appellant nonetheless elected to deploy them towards the creation of aeronautical assets, thereby reducing to that extent the equity it would otherwise have been required to infuse. Funds were voluntarily committed to the project, and exposed to the project's risk, in place of equity that would otherwise have had to be raised.

**363.** As had the RSD not been available, the Airport Operator would have been compelled to infuse an equivalent amount by way of equity. It is immaterial by which methodology the Airport Operator brings in the funds required for the project; what matters is the risk to which those funds are exposed once deployed. The cost of equity should therefore have been applied for the determination of WACC.

**364.** The fallacy in AERA's approach lies in its presumption that, had the Refundable Security Deposits not been available, DIAL would have raised an equivalent sum by way of debt, and this presumption is contradicted by the very treatment the funds received through market, as it is not disputed that DIAL's own lenders, in computing the debt-equity ratio for lending purposes, treated the RSD as equity. In view of the above, a

regulator cannot assign to a fund a character that the commercial parties dealing with that fund at arm's length have declined to assign to it.

**365.** Even, in the face of the above, the determinative question for us is not the source of the fund but the risk to which it has been exposed. Money deployed into the construction of aeronautical assets is money placed at the risk of the project it is subject to the hazards of execution, of traffic, and of regulatory outcome, in precisely the manner that equity is, and in a manner that a lender's advance, secured and contractually serviced, is not.

**366.** Once the RSD was deployed to meet the project cost of the Indira Gandhi International Airport, it assumed the risk profile of equity, and the opportunity cost of that deployment is the cost of equity. It is reinforced by the Paragraph 2 of Commercial Principle in **Schedule 1 of the SSA**, which obliges AERA to have regard to the need for the Joint Venture Company to *"achieve a reasonable return on investment commensurate with the risk involved."*

**367.** To the above AERA's contention is, in substance, two fold, and neither limb avails it. AERA reliance upon the pendency of its Civil Appeal against the MIAL judgment has already been dealt

with by this Tribunal under Issue No. I, and requires no further elaboration and in the absence of any stay, that judgment binds and guides AERA.

**368.** Its further contended, that Schedule 1 of the SSA confines it to "efficient capital expenditure" and the "efficient cost of debt/equity,". AERA has not suggested that the deployment of the RSD towards the project cost of the Airport was itself inefficient, nor could it sensibly do so as the deployment reduced DIAL's recourse to external borrowing and thereby reduced the financing cost ultimately borne by users.

**369.** **We have observed that time and again, AERA has invoked efficiency principle not to identify any inefficiency, but as a general licence to depart from a binding determination of this Tribunal.** It does not serve that purpose. Beyond these, AERA has identified no provision of the OMDA, the SSA, or the AERA Act that requires the RSD to be treated at the cost of debt, and has recorded no reasoning in the impugned order engaging with the risk character of the deployed funds.

**370.** AERA has further submitted that treating the Refundable Security Deposits as equity would confer an unjustified return upon the Appellant and impose an additional burden on airport users. This submission misapprehends the nature of the

exercise. The purpose of WACC is to reflect the appropriate regulatory return on the capital actually deployed in the regulated business, having regard to the economic function and risk characteristics of each component of that capital.

**371.** Where funds bearing the risk of equity are remunerated only at the cost of debt, the operator is under-compensated for a risk genuinely borne, and the Weighted Average Cost of Capital is thereby understated. The higher return associated with equity is not, by itself, a windfall; it represents compensation for the greater risk borne by such capital.

**372.** AERA's submission therefore assumes the very issue requiring determination, whether the RSD, as deployed, functioned as debt or as equity-side capital. Once the latter character is established on the facts, allowing the corresponding regulatory return cannot be described as unjustified, subject always to verification of the quantum and period of actual eligible deployment and the exclusion of any duplication.

**373.** In view of the aforesaid facts, reasons and judicial pronouncements, **we hereby quash and set aside the decision of AERA at paragraph 2.2.7 of the impugned tariff order (Annexure A-1)**, whereby AERA has decided to consider RSD at the rate of cost of debt. We hereby hold that

AERA shall consider RSD at the rate of cost of equity for the determination of WACC. **Issue No. XIV is accordingly answered in favour of the Appellant, and this Appeal is allowed to the aforesaid extent.**

**374. As a cumulative effect of the aforesaid facts, arguments, findings and applicable legal principles discussed hereinabove, this AERA Appeal No. 1 of 2025 is hereby allowed to the aforesaid extent and accordingly stands disposed of. Consequently, AERA Order No. 20/2024-25 dated 28.03.2025 (Annexure A-1) passed by Respondent No. 1 – AERA stands modified to the extent of the issues allowed in the present Appeal. AERA is directed to give effect to the same within a period of three months from the date of receipt of a copy of this judgment. All pending miscellaneous applications connected with this Appeal are also disposed of.**

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

/NS/

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**(DR. SANJEEV BANZAL)**
**MEMBER**