

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

Dated **16th** July, 2020

AERA Appeal No.5 of 2013

Federation of Indian Airlines (FIA)

....Appellant

Vs.

Airport Economic Regulatory Authority of India & Ors.

....Respondents

AERA Appeal No.2 of 2013

Mumbai International Airport Ltd.(MIAL) & Ors.

....Appellants

Vs.

Airport Economic Regulatory Authority of India

....Respondent

BEFORE:

HON'BLE MR.JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

AERA Appeal No.5 of 2013

For Appellant(FIA)

: Mr. Buddy Ranganadhan, Advocate
Ms. Divya Chaturvedi, Advocate
Ms. Srishti Rai, Advocate

For Respondent No.2(MIAL) : Mr. P. Chidambaram, Sr. Advocate
 Ms. Amrita Narayan, Advocate
 Mr. Ankur Chawla, Advocate
 Ms. Meenakshi Chatterjee, Advocate
 Mr. Abhishek Kr.Shrivastava, Advocate

AERA Appeal No.2 of 2013

For Appellant (MIAL) : Mr. P. Chidambaram, Sr. Advocate
 Ms. Amrita Narayan, Advocate
 Mr. Ankur Chawla, Advocate
 Ms. Meenakshi Chatterjee, Advocate
 Mr. Abhishek Kr.Shrivastava, Advocate

For AERA : Mr. Prashanto Chandra Sen, Sr. Advocate
 Mr. Nitin Dahiya, Advocate

For AAI & MoCA : Ms. Anjana Gosain, Advocate
 Ms. Shalini Nair, Advocate

For Impleader(LGA) : Ms. Neelam Rathore, Advocate
 Ms. Pooja Sharma, Advocate

ORDER

By S.K. Singh, Chairperson – By Order No.29/2012-13 dated 21.12.2020
 (impugned order) the Airports Economic Regulatory Authority of India (AERA)
 has exercised its statutory powers under Section 13(1)(b) of the Airports Economic
 Regulatory Authority of India Act, 2008 (AERA Act). By this order, AERA has
 determined the allowable Project Cost for arriving at the funding gap and for the
 purpose of meeting this gap, it has determined the rate for levy of Development

Fee(DF) for Mumbai International Airport Pvt. Ltd. (MIAL) in respect of Chhatrapati Shivaji International Airport, Mumbai(the Airport). Both the appeals are against the said impugned order and in fact they are like cross-appeals to each other.

2. Whereas MIAL is dissatisfied with the capping of various items – viz., the Project Cost for the Airport, the claims for Escalation, the Contingencies and the interest rate, the appellant of AERA Appeal No.5/2013, the Federation of Indian Airlines, has not only sought reduction in the final Project Cost which would have the effect of reducing the burden of DF upon the passengers but has also raised a wider issue that no DF is permissible in the light of various agreements entered into between the Airports Authority of India(AAI) and MIAL and that between the Ministry of Civil Aviation (MOCA) and MIAL.

3. The parties have been heard through video-conferencing and they have also availed the opportunity of filing written submissions. The arguments on behalf of MIAL were advanced by learned Senior Counsel, Mr. P.Chidambaram. He clearly submitted that though some minor difference in facts are bound to exist in these two appeals relating to the Airport at Mumbai when compared with the facts relating to IGI Airport, New Delhi but the issues and the relevant provisions of law involved in these appeals are identical to those in **AERA Appeal No.7 of 2012[Delhi International Airport Ltd.(DIAL) Vs. Airports Economic**

Regulatory Authority of India(AERA) & Ors.] and AERA Appeal No.3/2013[Federation of Indian Airlines(FIA) Vs. Airports Economic Regulatory Authority of India(AERA) & Ors.]. The latter two appeals relating to the Airport at Delhi were heard by this Tribunal and disposed of recently on 20.03.2020.

4. Mr. Chidambaram has placed reliance upon that judgment dated 20.03.2020 to submit that save and except three issues which shall be indicated hereinafter, the appellant is satisfied with the law settled by that judgment in respect of all the rest issues raised in these appeals. The three issues have been enunciated as follows:

- (i) AERA has erred in capping the Project Cost for the Airport; the AERA Act does not give power to do so and whatever expenditure is incurred by the Airport Developer has to be accepted as lawful and valid expenditure for the purposes of Project Cost of the Airport without any scope of scrutiny by AERA.
- (ii) AERA has erred in capping the Escalation, Claims and Contingencies at a particular amount (Rs.630 crores). According to Mr.Chidambaram the same reasons as applied to the Project Cost would apply against capping of these items as well.

- (iii) The interest rate on loan availed through securitization of Development Fee(DF) at 11.25% has been wrongly capped at the given rate when in fact such rate can always change and according to learned counsel, it rose to a higher rate some time in 2016.

5. On the other hand, learned counsel for AERA has placed reliance upon the judgment dated 20.03.2020 in case of DIAL to submit that similar issues were involved in those appeals relating to Airport at Delhi for which DF was determined by AERA in 2011 followed by some subsequent modification. The stand of learned counsel for AERA is that in the case of DIAL also AERA had exercised its regulatory powers available under the Act to find out the proper Project Cost which appeared just and proper for development of the Airport. According to learned counsel, the AERA exercised such power of capping not only for the Project Cost at a just and allowable limit but for various other items as well which was upheld by this Tribunal in almost identical circumstances in AERA Appeal Nos.7 of 2012 and 3 of 2013 and there is no good reason shown by MIAL for reversing the view already taken in respect of such powers of AERA.

6. So far as rate of interest at 11.25% is concerned, on behalf of AERA it was explained that the same rate of interest finds mention in the loan agreement; it was prevailing at the time of the Order and it was also projected in the demand papers submitted by MIAL. The Regulator has sufficient powers to take care of impact of

some changes either way in the rate of interest in future, if the impact is significant and requires consideration. According to learned counsel, this issue also has no merits so as to require any interference with the exercise fairly done by AERA in arriving at the allowable Project Cost at Rs.3400 crores and the rates of DF as Rs.100/- per embarking domestic passenger and Rs.600/- per embarking international passenger, w.e.f. 01.01.2013.

7. Learned counsel for FIA and also learned counsel for Lufthansa Airways which has filed MA No.2/2014 for impleadment have taken the same stand in respect of the Project Cost and DF which they had taken in the case of DIAL. According to learned counsel, AERA should not have accepted the Project Cost only because Government had accepted the said figure of Rs.9820 crores. More scrutiny should have been done by AERA to reduce the figures but since that has not been done, the burden of DF has increased for meeting the huge deficit of Rs.3400 crores. According to learned counsel for Lufthansa Airways, the upfront fee ought not to have been included in the Project Cost and this issue has not been decided correctly in favour of DIAL in the judgment dated 20.03.2020.

8. The three issues raised in these appeals on behalf of MIAL, as noted above, are not new issues based upon any new materials or provisions of law. In similar facts and circumstances, this Tribunal in the judgment dated 20.03.2020 had upheld the Order of AERA determining the Project Cost and DF for the IGI

Airport, Delhi. No good reasons are found to take a different view so far as the Issue Nos.(i) and (ii) noted above are concerned. Such power of capping or redetermining certain allowable expenses incurred or arising in future was questioned in Delhi case by DIAL. In that matter, it was noted in Para 4 that MIAL has a similar case as DIAL which is pending and on that ground counsel for MIAL was permitted to address the Tribunal on questions of law only. Those submissions of MIAL on questions of law were noted and considered in that judgment. The same issues have been re-paraphrased but no new grounds have been advanced to warrant taking a contrary view. The three issues noted above have been raised as issues of law and in the considered opinion of this Tribunal the first two issues stand directly answered in the judgment of 20.03.2020 in favour of AERA and against DIAL.

9. So far as rate of interest is concerned, the issue is found to be non-substantial and of no practical effect. Changes in the rate of interest in future cannot be predicted and if changes have taken place, the effect can always be trued-up in future if the effect is substantiated and requires redressal at the hands of AERA. Hence, none of the three issues that have been agitated are found to have any merit, particularly in the light of judgment dated 20.03.2020 rendered in the case of DIAL.

10. So far as appeal of FIA is concerned, the submissions are same as were advanced in the case of DIAL. The stand on behalf of Lufthansa Airways is also the same as had been noticed and decided in the case of DIAL vide judgment dated 20.03.2020.

11. Nothing further remains to be decided in these appeals. The impugned order of AERA is held to be lawful requiring no interference. Hence, both the appeals fail and are disposed of accordingly.

12. In the facts of the case, there shall be no order as to costs.



(S.K. Singh)
Chairperson

sks

