

**AIRPORTS ECONOMIC REGULATORY AUTHORITY APPELLATE TRIBUNAL**

**APPEAL No. 07, 08, 09, 10 & 11 of 2011**

(Under Section 18(2) of the Airports Economic Regulatory Authority of India Act, 2008 against the Order dated 28.02.2011 and Direction No.5 of even date passed by the Airports Economic Regulatory Authority of India)

**CORAM**

**Hon'ble Mr. Justice V.S. Sirpurkar**  
**Chairman**

**Hon'ble Mr. Rahul Sarin**  
**Member**

**In the matter(s) of :**

<b>Bangalore Int'l Airport Ltd. Vs. UOI &amp; Ors.</b>	<b>Appeal No.07/2011</b>
<b>GMR Hyderabad Int'l Airport Ltd. Vs. AERA &amp; Anr.</b>	<b>Appeal No.08/2011</b>
<b>Cochin Int'l Airport Limited Vs. AERA</b>	<b>Appeal No.09/2011</b>
<b>GMR Hyderabad Int'l Airport Ltd. Vs. AERA &amp; Anr.</b>	<b>Appeal No.10/2011</b>
<b>Cochin Int'l Airport Limited Vs. AERA</b>	<b>Appeal No.11/2011</b>

**Appearances:** Mr. Arvind P. Dattar, Sr. Advocate with Mr. Ankur Chawla, Ms. Pallavi Langar, Mr. Ashish Jha, Mr. Manu Kulkarni & Ms. Smriti Dutta, Advocates for BIAL.

Mr. C.S. Vaidyanathan, Sr. Advocate with Mr. Kirat Nagra, Mr. Jatin Aneja, Ms. Garima Sharma & Mr. Amit Ojha, Advocates for HIAL & CIAL.

Mr. Atul Nanda, Senior Advocate with Ms. Rameeza Hakeem, Mr. Naresh Kaushik, Ms. Aditi Gupta, Ms. Amita Kalkal Chaudhary and Ms. Sanjana Ramachandran, Advocates for AERA.

Mr. Ramji Srinivasan, Senior Advocate with Ms. Poonam Verma, Ms. Divya Chaturvedi, Ms. Kabita Das, Mr. K.S. Bhatia and Mr. Varun Singh, Advocates for FIA/intervener.

**ORDER**

**15<sup>th</sup> February, 2013**

**Common Order in Appeal Nos. 07/2011, 08/2011, 10/2011, 09/2011, 11/2011**

All these Appeals are against the common order No. 14/2010-11 dated 28<sup>th</sup> February, 2011 and direction no. 5 of even date. According to the Appellants, all these guidelines and the pursuant directions thereto suggest that the Airports Economic Regulatory Authority (*in short "AERA"*) has finalized its

stance vis-à-vis the contentions raised by the appellants while responding to the consultation papers. We, at this juncture must give a little history.

2. There was a group of Appeals which were filed against the Order No. 13/2010-11 dated 12<sup>th</sup> January, 2011. At the time of disposing of these appeals this Tribunal by its order dated 11<sup>th</sup> May, 2011 passed the following orders:-

***“This appeal prima facie is not maintainable because there is no determination of tariff and therefore the provision of Section 18(2) of the Airports Economic Regulatory Authority of India Act, 2008 (in short the “Act”) have no application. The appeal is held not to be maintainable. It is made clear that we have not expressed any opinion on merits and have decided only the question of maintainability. This observation shall, however, not apply in case of Appeal No. 7 of 2011.”***

**We will deal with Appeal No. 7 separately.**

3. Challenging this order of the Tribunal, the aggrieved parties and more particularly Bangalore International Airport Ltd. (BIAL) went before the Delhi High Court by way of a writ petition which was registered as W.P. (C) No. 6376 of 2011. While disposing of this writ petition, Delhi High Court has recorded (in para 4,5,6) as under:-

***“4. However, the Order No. 13/2010-11 dated 12<sup>th</sup> January, 2011 is but a stage/step in the process of ultimate fixation of tariff by the Authority. Upon it being put to the senior counsel for the petitioner as to how the challenge to the successive stages in the decision making process can be entertained and which if entertained would not allow the final decision to be made and that the challenge if any has to be to the final decision only,***

**the senior counsel for the petitioner has fairly stated that the petitioner would be satisfied if it is clarified by this Court that all pleas as taken by the petitioner in the challenge to the Order 13/2010-11 dated 12<sup>th</sup> January, 2011 would be available to the petitioner against the challenge if any required to the final order or to any subsequent order. It is further informed that in pursuance to the order No. 13/2010-11 dated 12<sup>th</sup> January, 2011, an Order No. 14 has already been passed by the Authority and which is subject matter of the challenge before the Appellate Tribunal in appeal No. 7 of 2011 which is being considered by the Appellate Tribunal.**

5. **The senior counsel for the respondent appearing on advance notice has stated that in fact it was so observed by the Appellate Tribunal also while disposing of the appeal No. 2/2011 as not maintainable vide order dated 11<sup>th</sup> May, 2011(supra). He has also fairly stated that he has no objection to it being clarified that the dismissal of the appeal No. 2/2011 would not be construed as the grounds/pleas taken therein being not available to the petitioner in challenge to any subsequent decision in furtherance to the Order No. 13/2010-11 dated 12<sup>th</sup> January, 2011.**

6. **It is clarified accordingly.”**

(Emphasis supplied)

4. This is to be noted that during the pendency of Appeal No. 2/2011 which is disposed on 11<sup>th</sup> May, 2011 the AERA had already issued the consultation papers and as a response to the consultation papers passed the impugned order No. 14 as also the directions thereof(direction no. 5) We must note here that the said guidelines or the directions issued in pursuance thereof were also brought to the notice of the Delhi High Court. The Delhi High Court ultimately seems to have suggested in pursuance of

the statement made to it by the Senior Standing Counsel of AERA that all the plea and defenses would be open to be considered by AERA on their own merits inspite of the guidelines as also the directions in Appeal nos. 8, 9, 10, 11 of 2011 alongwith Appeal no. 7 which was not disposed of by this Tribunal by its order dated 11<sup>th</sup> May, 2011. These appeals as indicated above came to be filed against the guidelines more particularly against order no. 14 and directions.

5. Today, when the matters came for disposal on merits it was found that in spite of the guidelines the directions issued pursuance thereto yet there would be no impediment for the AERA to consider all the relevant issues and then to finalise the order regarding the determination of tariff of airports. Shri Nanda, Counsel appearing on behalf of the AERA categorically says that though these guidelines are binding yet it would still be possible to the contesting parties to canvass their views regarding the principles to be applied in determination of the tariff and that the Authority had only indicated its mind prima facie, in the impugned orders.

6. If this is so, there would not be any question of proceeding with the hearing of these appeals at this stage since in spite of the impugned orders it will be open for the appellants to canvass all the contentions which they want to raise in these appeals and convince AERA about their merits.

7. It has so happened that in spite of elapse of substantial time period the tariff has still not been determined which causes prejudice to both the concerned parties as well as the stakeholders.

8. In that view, we would dispose off these appeals with the direction to the AERA to complete this exercise of determination of tariff and while doing so, the AERA would give opportunities to all the stakeholders to raise all the plea and contentions and consider the same. The impugned orders herein would not come in the way of that exercise. We would, however, request AERA to complete the determination exercise as expeditiously as possible. We have taken this view as we are of the firm opinion that it would not be proper to entertain the appeals on different stages of determination of tariff and to give the finality to the questions of final determination of tariff.

9. Needless to mention that this Tribunal has not mentioned any view regarding the “*merits*” of the matter.

***Appeals disposed of with the directions.***

**[Justice V.S. Sirpurkar]  
Chairman**

**[Rahul Sarin]  
Member**