

[F.No. AERA/20010/MYTP/Bhadra/GH/Chennai/2011-12]

**Airports Economic Regulatory Authority of India**

**Order No. 17/2011-12**

**AERA Building,  
Administrative Complex,  
Safdarjung Airport ,  
New Delhi - 110 003**

**Date of Order: 13<sup>th</sup> October, 2011**

**Date of Issue : 20<sup>th</sup> October, 2011**

**In the matter of continuing levy of tariff/ charges without approval of Authority by M/s Bhadra International India Limited for Ground Handling Services at Chennai, Kolkata, Trivandrum and Calicut Airports.**

As per clause 7.1 of the Guidelines issued by the Authority for services provided for Cargo facility, Ground Handling and Supply of Fuel to aircrafts, all service provider(s) were required to submit to the Authority for its consideration, a Multi Year Tariff Proposal (i.e. MYTP) for the first control period (from 01.04.2011 to 31.03.2016), within two months of the date of issue of the Guidelines.

2.1 The Authority vide Order No. 17/2011-12 dated 31.03.2011 extended the time limit for submission of MYTP by Independent Service Providers (ISP(s)) upto 30.04.2011 and also ordered that w.e.f. 01.04.2011, the ISPs may continue to charge the tariffs as were prevalent on 01.09.2009 or as may have been approved/determined by the Authority thereafter and upto the date when new tariff(s) as may be approved by the Authority became applicable.

2.2 M/s Bhadra International India Limited (hereinafter referred to as Bhadra the service provider), which provides ground handling services at Chennai International Airport, NSCBI Airport, Kolkata, Trivandrum International Airport and Calicut International Airport, was, therefore, required to file MYTPs for all these airports for the consideration of the Authority by 30.04.2011. Bhadra, vide their letter dated 30th April 2011, submitted a proposal seeking approval of the charges for its ground handling services at Chennai, Kolkata, Trivandrum and Calicut Airports which was found to be incomplete as per the Guidelines. Bhadra subsequently made additional submissions / information in support of their proposal vide letters dated 31.05.2011, 13.06.2011, 22.06.2011 and 14.07.2011.



2.3 On preliminary scrutiny of the documents it was observed that M/s Bhadra had started rendering the services since April 2011; and was raising invoices for services rendered and collecting charges without the approval of the Authority. It was therefore felt that the rates being levied were in contravention of the provisions of the AERA Act, 2008 and hence punishable under Section 38 of the AERA Act 2008 (herein after referred to as 'the Act').

2.4 Vide letter no. AERA/20010/MYTP/Bhadra/GH/Chennai/2011-12/776 dated 3.08.2011 the Authority informed Bhadra that services provided for ground handling relating to aircraft, passengers and cargo at an airport is an aeronautical service in terms of Section 2(a) (iv) of the Act, and that tariff for the same has to be approved by the Authority in terms of Section 13(1) (a) of the Act and the levy of such tariff/charges without the previous approval of this Authority, is a contravention of the provisions of the Act, which is punishable under Section 38 of the Act and that the continuing levy of a tariff/charges without the approval of the Authority is a continuing contravention of the provisions of the Act. Accordingly, Bhadra was asked to refrain from levying any tariff/charges for services provided for ground handling which have not been approved by the Authority and confirm the same.

2.5 In response, Bhadra vide letter dated 19.08.2011 enclosed letter dated 10.08.2011 from Punjab National Bank informing AERA that an escrow account for Bhadra has been created and no funds will be allowed to be withdrawn from the account pending approval from AERA. However Bhadra, did not confirm whether they have stopped levy of the tariff /charges as advised by the Authority.

3. The Authority vide letter dated 28.09.2011 requested Bhadra to confirm the action taken in respect of para 2 of the Authority's letter dated 3.08.2011. Bhadra vide letter Bhadra/AERA/2011-12/ dated 10.10.2011 has confirmed that they have stopped raising bills w.e.f. 01.10.2011.

4. From the facts indicated above, it prima facie appeared that Bhadra has been raising bills upto 30.09.2011, without the approval of the Authority despite being specifically asked by the Authority vide letter dated 03.08.2011 not to levy any tariff/charges and thus failed to comply with the various orders and directions of the Authority as mentioned supra.

5. Accordingly, M/s Bhadra (Noticee 1) and Shri Vipin Mahajan (Noticee 2), Chief Financial Officer of the Company who has been corresponding with the Authority in the matter and was the person in charge for due compliance with the direction and orders of the Authority were issued Show Cause Notice no. AERA/20010/MYTP/Bhadra/GH/Chennai/2011-12/1637 & 1638 dated 11.10.2011 as to why fine should not be imposed on them under Section 38 read with Section 40 of the Act.

6. Bhadra (Noticee 1) vide letter no. Bhadra/AERA-MYTP/2011-12/ dated 11.10.2011 submitted, inter alia, that they had been selected through competitive bidding process and since Bhadra signed its Standard Ground Handling Agreement





with Ethiopian Airlines and Neptune Air, and commenced their ground handling services, accordingly, bills were raised the bills at the agreement rates. Bhadra, regretted that they were under the impression that while they cannot draw any amount from the escrow account, they could perhaps continue to raise the bills since otherwise, while they were rendering services to the airlines, non raising of the bills on the airlines will only delay the realization process. Further, Bhadra also confirmed that they had stopped raising bills on airlines w.e.f 1.10.2011 and requested Authority to take a lenient view and condone the act of omission and commission if any committed.

7. The CFO, Bhadra (Noticee 2 ) has vide letter no. Bhadra/AERA-MYTP/2011-12/ dated 11.10.2011 submitted a reply on the same lines and requested the Authority to take a lenient view and condone the act of omission and commission if any committed for non compliance of the directions and orders of the Authority as contemplated under Section 38 and Section 40 of AERA Act.

8. The Authority, has carefully considered the submissions made on behalf of Noticee 1 and Noticee 2 and observes as under:

- (i) It is apparent that Bhadra have continued their billing despite the Authority's advise dated 03.08.2011, the proceeds from these services have been deposited in an Escrow Account and as per the Statement furnished by their Bankers, they have not withdrawn the same pending approval of the tariff of the Authority.
- (ii) Both Bhadra and its CFO have made written submissions to this Authority regretting the billing done upto 30.09.2011.
- (iii) Bhadra have confirmed that they have stopped the billing w.e.f. 01.10.2011. Bhadra has regretted the billing done upto 30.09.2011.
- (iv) Bhadra have requested for a lenient view and condone the act of omission and commission, if any, committed.

9. The Authority also noted that while the Noticee 1 and Noticee 2 have committed offences punishable under Section 38 of the Act, there are certain mitigating circumstances:

- (i) M/s Bhadra have submitted the requisite tariff proposals in respect of all the major airports where they are providing aero services.
- (ii) It has been confirmed vide letter no. Bhadra/AERA/2011-12/ dated 10.10.2011 that Bhadra have complied with the directions of the Authority and have stopped charging tariff w.e.f. 1.10.2011 as the same has not been approved by the Authority.
- (iii) The acts of omission and commission have been regretted.



10. Keeping in view the observation made above the Authority decided to take a lenient view and while holding noticee 1 and noticee 2 punishable of offences under Section 38 of the Act, it decided that in the facts and circumstances of the case the Show Cause Notices may be disposed off with a caution to both the noticees to be more vigilant in future.

11. Ordered Accordingly.

**By the Order of and in the  
Name of the Authority**



**(Capt. Kapil Chaudhary)  
Secretary**

**To**

- 1) **M/s Bhadra International India Limited,  
B-4/62, Safdarjung Enclave,  
New Delhi – 110029**
  
- 2) **M/s Bhadra International India Limited,  
B-4/62, Safdarjung Enclave,  
New Delhi – 110029  
(Through: Shri Vipin Mahajan, Chief Financial Officer)**

