

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

Date of Order: 6th January, 2015

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Amendment to the Order No.08/2014-15 dated 10.06.2014 issued by the Authority in respect of aeronautical charges of Kempegowda International Airport (earlier known as Bengaluru International Airport) in view of the Orders of Hon'ble High Court of Delhi in the Writ Petition (civil) no. 4338/2014

The Authority after detailed consideration of the Multi Year Tariff Proposal (MYTP) and the Annual Tariff Proposals (ATP) submitted by Bangalore International Airport Limited (BIAL), had determined the Aeronautical Tariffs in respect of BIAL vide Order No. 08/2014-15 dated 10th June 2014 (MYTO). In the MYTO, the Authority had, vide Decision No. 17(a)(i), inter alia, decided to consider revenue from ICT services (Common User Terminal Equipment (CUTE) charges, Common User Self Service (CUSS) charges and Baggage Reconciliation System (BRS) charges) as revenues arising out of Aeronautical service and had thus considered these charges as Aeronautical charges. Accordingly, as part of the tariff structure of BIAL, the Authority had approved CUSS/CUTE/BRS Charges @ US\$ 1.25 per departing passenger, effective from 1st July 2014.

2. Appeal filed by Federation of Indian Airlines (FIA) and Court Order

2.1 Subsequent to the issue of MYTO, Federation of Indian Airlines (FIA) filed an appeal in the Airports Economic Regulatory Authority Appellate Tribunal (AERAAT) against the aforesaid order of the Authority. The AERAAT vide its order dated 1st July 2014 had ordered status quo in respect of these ICT charges as on 10th June 2014, when the impugned order was passed.

2.2 Subsequently, BIAL filed a writ petition before the Hon'ble High Court of Delhi against the aforesaid Order dated 1st July 2014 passed by AERAAT.

2.3 The Hon'ble High Court has now passed an order dated 23rd December 2014 which inter-alia states as under:

"...The parties submit that the petitioner and Respondent No. 2 have now arrived at a settlement whereby it is agreed that the charges at the rate of US\$ 1.25 be scaled down to US\$ 1.0 for each departing passenger for CUSS, CUTE and BRS respectively.

In the circumstances the petition is disposed of with a direction that AERA shall consider the aforesaid settlement and pass an appropriate order within a period of two weeks from today. It is clarified that the impugned order dated 01.07.2014 shall not come in the way of AERA in fixing the charges as agreed between the parties..."



3. Authority's consideration of the Court Order dated 23rd December 2014.

3.1 In accordance with the Orders of the Hon'ble High Court of Delhi, the Authority vide letter dated 24th December 2014 requested BIAL to file the details of settlement/ agreement between BIAL and FIA at the earliest, for further consideration of the Authority.

3.2 BIAL, vide its letter dated 25th December 2014 has inter-alia, stated the following:

" Due to the order of stay, BIAL was placed in an extremely incongruous situation where, while services were being continuously provided, BIAL was receiving no remuneration for the same. Therefore, in order to overcome this anomaly forthwith, after discussion, FIA had indicated that its members are willing to pay a sum of \$1 (one USD) towards CIC services. To settle the matter amicably and also to upgrade the system BIAL has agreed to charge towards CUTE, CUSS and BRS, \$ 1 for both domestic as well as international passengers. BIAL understands that, under the current tariff mechanism, this shortfall can only be augmented by the Authority by way of the truing up mechanism in the next control period.

The above settlement was recorded by the Hon'ble High Court and as requested by SR. Counsel for AERA, the Court further ordered BIAL to place the terms of settlement before AERA for its consideration and necessary order within two weeks. We have applied for a certified copy of the order and will provide you with a copy on its receipt....."

3.3 BIAL had also submitted a copy of the agreement, duly signed by it and the representative of the FIA, which has been uploaded on the Authority's website as Annexure to the Consultation Paper No. 15/2014-15 dated 26.12.2014. The Authority notes the terms of the settlement are as under:

".....BIAL and FIA, after mutual discussions, have resolved the impasse in relation to CIC charges whereunder CIC charges has been agreed to be reduced to \$1 (instead of \$1.25 as per AERA Order dated 10.06.2014) per departing passenger (both national and international) will now be leviable for and on behalf of BIAL...."

3.4 The Authority notes that the charges for ICT (CUTE, CUSS and BRS) as approved by the Authority vide the MYTO w.e.f. 1st July 2014 has not yet been levied by BIAL in view of the stay granted by AERAAT. As a result BIAL may have a shortfall in collection of ARR due for this control period.

3.5 The Authority feels that any prolonged period of non-levy of the ICT charges would not be in the interest of passengers as it may contribute towards a shortfall in aggregate revenue that BIAL has been allowed to collect in the first control period. This may lead to a situation where this shortfall may be required to be trued-up at the time of determination of tariffs for the second control period in respect of BIAL, thus having an impact on the passenger charges to be determined at that point of time.

3.6 The Authority therefore is of the view that agreeing to the rates of CUTE, CUSS and BRS agreed between BIAL and FIA, would be in public interest, as it would allow BIAL to commence the levy of these charges at an early date.

3.7 Considering the revised rate agreed between BIAL and FIA and the Order of the Hon'ble High Court of Delhi, in public interest, and in line with the terms of the settlement between BIAL and FIA, the Authority had proposed to amend its Order No. 08/2014-15 dated 10th June 2014 (MYTO) to the extent that the revised rate for CUTE, CUSS and BRS would be fixed at \$ 1 per



departing passenger (as against \$1.25 per departing passenger fixed in the MYTO), to be charged effective from 15th January 2015.

3.8 The Authority had also felt that any shortfall in aggregate revenue collected by BIAL on this account during the 1st control period would need to be trued up based on Authority's philosophy.

4. Issue of Consultation Paper No. 15/2014-15 dated 26.12.2014

4.1 Keeping in view the detailed consideration of the Authority's analysis as outlined in para 3 above, the Authority had proposed the following for stakeholder consultation:

- (i) CUTE, CUSS and BRS Charges leviable on Domestic and International departing passengers will be US\$1 effective from 15th January 2015, for the current control period.
- (ii) The difference in collections between the CUTE, CUSS and BRS Charges that would accrue to BIAL now under revised rates and the amount considered as per the MYTO will be trued up at the end of the current control period, during the determination of Aeronautical tariff for the next control period.
- (iii) All other decisions issued as part of the MYTO will continue to be applicable and the proposals given herein would be considered as an amendment to the already issued MYTO.

4.2 Accordingly, a Consultation Paper No. 15/2014-15 dated 26.12.2014 was issued. The last date for receipt of comments was 31.12.2014.

5. Stakeholders' consultation

5.1 The Authority has received responses from Federation of Indian Airlines (FIA), Bangalore International Airport Limited (BIAL) and the Association of Private Airport Operators (APAO).

5.2 FIA has in their response submitted as under:

".....It is submitted that from 01.07.2014 till 23.12.2014, the status quo as imposed by AERAAT was in force on account of which BIAL was prohibited from levying any ICT Charges. It was only by the order of the Hon'ble High Court of Delhi dated 23.12.2014 in W.P (C) No. 4338 of 2014 that AERA was directed to consider the settlement between the parties and pass an appropriate order. In light of the above, it is pertinent to note that AERA ought to amend the Tariff Order to give effect to the order of the Hon'ble High Court of Delhi and the settlement reached between the parties by way of the levy of charges prospectively. AERA's proposed decision rightly makes levy of ICT Charges effective from 15.01.2015. However, by allowing the true-up of the difference in collections of ICT Charges under the revised rates i.e., \$1 and the ICT Charges under the Tariff Order, i.e., \$1.25, AERA has allowed/entitled BIAL to illegally recover the charges with effect from 01.07.2014, which is contrary to the terms of settlement and order of the Hon'ble High Court dated 23.12.2014. Allowing ICT Charges to be levied retrospectively by AERA would render (a) AERAAT's order dated 01.07.2014, (b) Hon'ble High Court of Delhi's order dated 23.12.2014 and (c) the settlement between the parties as infructuous and meaningless. Therefore, AERA must clarify that no ICT charges would be applicable from 01.07.2014 till 15.01.2015.



5.3 FIA has further submitted that the proposal in the Consultation Paper seems to be based on BIAL's request to AERA made vide its letter dated 25.12.2014 and is contrary to the nature and spirit of the settlement. FIA has submitted that neither the High Court Order dated 23.12.2014 nor the terms of settlement between BIAL and FIA, provide for any adjustment of the difference between the original and revised ICT charges, by way of true-up at the time of determination of aeronautical tariff for the next control period and allowing for adjustment of the aforesaid difference is contrary to the terms of the settlement and would render the said settlement as meaningless.

5.4 Further, FIA has submitted that:

'.....the settlement between BIAL and FIA intends to permanently reduce the ICT Charges from \$1.25 to \$1.00 per departing passenger (both domestic and international). The said settlement never intended or agreed to postpone the payment of the balance amount i.e. \$0.25 per passenger to the next control period. It is submitted that AERA solely at unilateral request of BIAL cannot interpret the terms of settlement in a way which would render meaningless (a) AERAAT's order dated 01.07.2014, (b) High Court of Delhi's order dated 23.12.2014 and (c) settlement arrived at between BIAL and FIA. It is submitted that order of the Hon'ble High Court of Delhi dated 23.12.2014 in W.P(C) No. 4338 of 2014 was passed in the matter when all the parties were represented including AERA, therefore any deviation by AERA from the said order dated 23.12.2014 and the terms of settlement should not be permitted.

Without prejudice to the above, it is submitted that:

(a) AERA being an independent Regulator ought to conduct the true-up exercise after analysing the data and material placed before it.

(b) It is submitted that the second part of the decision which provides for adjustment of the difference between the original and revised ICT charges by way of true-up at the time of determination of aeronautical tariff for the next control period would amount to loading past financial burdens of BIAL on future consumers for services which have not been used by them. This is against the settled position of law that future consumers cannot be burdened with past liabilities etc."

5.5 In response to the Consultation Paper, BIAL, vide letter dated 31.12.2014 has inter-alia stated the following:

".....BIAL is in agreement with the proposals in CP No.15/2014-15 and has no further comments to offer. BIAL thus requests the Authority to finalize the proposals in the consultation paper and permit BIAL to levy CIC charges of \$1 per departing passenger directly or through the concessionaire and further consider the shortfall for true up in the next control period as proposed."

5.6 In their comments, APAO, agreeing to the proposal, has inter-alia stated as under:

"..... we agree with the proposal of AERA to levy CUTE, CUSS and BRS charges on domestic and international passengers at \$1 effective from 15th January 2015 for the current control period.

....We also agree with the proposal of AERA that the difference in collection between the CUTE, CUSS and BRS charges that will accrue to BIAL now on the revised rates and the amount considered as per the MYTO will be trued up at the end of the

current control period during the determination of aeronautical tariff for the next control period.

5.7 The Authority had forwarded the observations of FIA for the comments of BIAL. In response, BIAL has, inter alia, vide its submission dated 05.01.2015, stated that the submissions of FIA are not tenable and are flawed in its assumptions and reasoning. BIAL has further stated that it is incorrect to state that, by allowing true up of the difference in collection of Information and Communication Technology Charges/ Common Infrastructure charges ("CIC") charges, the Authority has allowed BIAL to illegally recover charges with effect from July 1, 2014.

5.8 BIAL has further stated that the AERAAT Order dated 01.07.2014 had not finally decided the issue with regard to the quantum of ICT / CIC charges and the same was an interim order which has been effectively vacated by the Hon'ble Delhi High Court vide its final order and therefore, the tariff order i.e., Order No.8/2014-15 dated June 10, 2014 comes into effect with full, force, subject only to the observations of the Hon'ble Delhi High Court in its final order.

5.9 BIAL has stated that:

"It is likewise incorrect to state that ICT / CIC charges are to be levied retrospectively. Tariff determination in this sector does not and cannot proceed on the basis of exact apportionment of cost and consequently the submission that proposals result in a retrospective levy does not hold water. Moreover, it is completely incorrect to state that true up of ICT / CIC charges would render the final order of the Hon'ble High Court of Delhi dated December 23, 2014 and/or the settlement between the parties infructuous or meaningless. On the contrary, the proposals of the Authority give complete effect to the settlement as well as order of the Hon'ble Delhi High Court by permitting Levy of One Dollar per departing passenger and permitting true up of the shortfall at the time of tariff determination for the next control period. In this Light, the submission that ICT /CIC charges would not be applicable from July 1, 2014 to till January 15, 2015 is meaningless. It is false and denied that the Consultation Paper is contrary to the nature and spirit of the settlement. Since the settlement was arrived at with regard to proceedings arising out of an interim order, the settlement was always intended to take effect as a temporary measure and the settlement was always meant to be compliant with the tariff order dated June 10, 2014 passed by the Authority, subject, of course, to the contentions urged by the parties in their appeals. In that light, it is astonishing that FIA contends that the proposals of the Authority are allegedly contrary to the terms of settlement between BIAL and FIA.

It is false and completely denied that the settlement between BIAL and FIA intends to permanently reduce ICT / CIC Charges from 1.25 to 1 Dollar per departing passenger. It is likewise false and denied that the settlement never intended or agreed to postpone the payment of balance amount of 0.25 Dollar per passenger to the next control period. Not only is it incorrect to state that the settlement did not intend for trueing up, but such a settlement would also be impermissible in as much as, the parties cannot substantially vary or modify tariff order dated June 10, 2014 by private contract. The present settlement only reworks the tariff order and that too, to a limited extent by posting certain payments. With regard to the contentions that true up exercise would allegedly amount to loading past financial burdens on future consumers, it is submitted that these issues have also been urged in the appeal against order No.8 and therefore the said issues need not be considered at this stage



and BIAL craves liberty to deal with such arguments at the time of hearing of the appeal.

It may not be out of place to submit that the AERA has determined the total revenue requirement of the Airport comprising of different components wherein ICT / CIC Charges are one such component for the entire control period. Any shortfall or excess revenue collection is required to be trued up in the next control period. Thus it is evident that truing up does not necessarily results into burden on the future passengers and on contrary it may even result into beneficial proposition to passengers. Hence it can be concluded that truing up exercise is in relation to total ARR and not towards ICT / CIC charges alone.

Consequently, BIAL is entitled to recover aggregate revenue as determined by the Authority in the said tariff order. The proposal of the Authority is therefore in accordance with its tariff determination in the tariff order and cannot be found fault with.

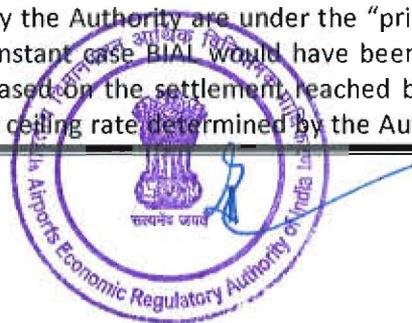
In light of the above, BIAL submits that the submissions of FIA are not tenable and therefore, submits that the proposals of the Authority contended in Consultation Paper No.15/2014-15 be finalized and a Levy of One Dollar per departing passenger be permitted be levied by concessionaire and/or BIAL, subject to the consequent shortfall in the ARR being trued up at the time of tariff determination for the next control period.

6. Authority's analysis

6.1 The Authority had in the Consultation Paper No. 15/2014-15 dated 26.12.2014 already noted the terms of the settlement between BIAL and FIA who had mutually resolved the impasse in relation to CIC charges, and had agreed to reduce the CIC charges to \$1 (instead of \$1.25 as per AERA Order dated 10.06.2014) per departing passenger (both national and international), leviable for and on behalf of BIAL. The Authority had also noted that the charges for ICT as approved by the Authority vide the MYTO w.e.f. 1st July 2014 had not yet been levied by BIAL in view of the stay granted by AERAAT and as a result BIAL may have a shortfall in collections of ARR due for the first control period, which may have to be trued up at the end of the current control period, at the time of determination of Aeronautical Tariffs for the next control period.

6.2 The Authority had in the Consultation Paper noted that any prolonged period of non-levy of the ICT charges would not be in the interest of passengers as it would add to the shortfall in revenue (if any) to be trued-up at the time of determination of tariffs for the second control period in respect of BIAL, thus having an impact on the passenger charges to be determined at that point of time. The Authority therefore had in the Consultation Paper noted that it is of the view that agreeing to the rates of CUTE, CUSS and BRS agreed between BIAL and FIA, would be in public interest as it would allow BIAL to commence the levy of these charges at an early date.

6.3 The Authority notes that it has, as per the provisions under the AERA Act, 2008, already undertaken a detailed determination of the tariffs for aeronautical services after extensive stakeholder consultation and issued the tariff Order No.08/2014-15 dated 10.06.2014. The tariffs that have been determined by the Authority are under the "price cap approach" i.e. the tariffs are the ceiling rates. In the instant case BIAL would have been well within its rights to charge the mutually agreed rates based on the settlement reached between BIAL and FIA, as long as the same did not breach the ceiling rate determined by the Authority. However, in view



of the directions issued by the Hon'ble High Court Order dated 23.12.2014, BIAL has approached this Authority for a specific Order to be issued. In view of the Hon'ble High Courts direction, as well in public interest, the Authority has undertaken the current exercise to determine the CUTE, CUSS and BRS Charges leviable on domestic and International departing passengers, as mutually agreed to between BIAL and FIA, as US\$1 effective from 15th January 2015.

6.4 The Authority notes the concern of FIA regarding true up "*....adjustment of the difference between the original and revised ICT charges by way of true-up at the time of determination of aeronautical tariff for the next control.....*" (Refer para 5.4 above). The Authority is conscious of the fact that one of the important objectives of economic regulation of airports is to protect the reasonable interests of the end users (viz. the passengers and cargo facility users) balancing it with the legitimate interests of the airport operator of getting a fair rate of return on his investment consistent with the risk profile with all the attendant risk mitigating measures proposed by the Authority.

6.5 As already brought out vide para 6.3 above, the Authority has determined the tariffs for aeronautical services for BIAL vide its Order No. Order No. 08/2014-15 dated 10.06.2014, vide which it had estimated the Aggregate Revenue Requirement (ARR) for the first control period. The Authority has noted that the ARR estimated by it during the determination of tariffs for BIAL for the first control period, takes into account recovery of ICT charges at US\$1.25. However, now in terms of the agreement and re-fixing of this charge at US\$1.00, there would be a shortfall in recovery of ARR for the first control period in respect of BIAL. Ideally, this shortfall should have required ex-ante re-calibration of other components of the aeronautical tariffs so as to match the ARR. However, conscious of the complexities involved in this process, the Authority has decided that at this stage it would go ahead in re-fixing only the agreed tariffs for the ICT, and would not change any other component of the aeronautical tariffs.

6.6 The Authority notes that any shortfall or excess in revenue collection is required to be trued up in the next control period in line with Authority's philosophy. The shortfall or excess, if any, of the revenue collected by BIAL during the first control period vis-à-vis that considered by the Authority for determination of aeronautical tariffs, would require to be evaluated at the time of determination of aeronautical tariffs in respect of BIAL for the second control period. This shortfall or excess can be on account of any or all components of aeronautical charges, wherein ICT / CIC Charge are just one of the components. The difference, in collections of ARR will be trued up at the end of the current control period, during the determination of Aeronautical tariff for the next control period as per the procedure for truing up elaborated in para 4.170 of the Order No. 08/2014-15 dated 10.06.2014.

6.7 In its analysis and from past determination, the Authority notes that the truing up process does not necessarily result into a burden on future passengers, and it may on the contrary, also result into beneficial proposition to passengers, depending on whether there is a shortfall or excess of revenue realized by BIAL as compared to what was considered by the Authority while determining the tariffs for the 1st control period. Thus the truing up exercise shall be in relation to total ARR of BIAL for the control period and not towards ICT / CIC charges alone.

ORDER

7. Upon careful consideration of material available on record, the Authority, in exercise of powers conferred by Section 13(2) read with 13(1)(a) of the Airports Economic Regulatory Authority of India Act, 2008, hereby orders in public interest that:



- (i) CUTE, CUSS and BRS Charges leviable on Domestic and International departing passengers will be US\$1 effective from 15th January 2015, for the current control period.
- (ii) The shortfall or excess of the revenue collected by BIAL for the first control period vis-à-vis that considered by the Authority for determination of aeronautical tariffs in its respect of BIAL for the 1st control period in Multi Year Tariff Order No.08/2014-15 dated 10.06.2014, will be trued up at the end of the current control period, during the determination of Aeronautical tariff for the next control period as per the procedure for truing up elaborated in para 4.170 of the Order No. 08/2014-15 dated 10.06.2014.
- (iii) All other decisions issued as part of the Multi Year Tariff Order No.08/2014-15 dated 10.06.2014 would remain unaltered.

By the Order of and in the
Name of the Authority

Alok Shekhar
(Alok Shekhar)
Secretary

To,

Bangalore International Airport Limited
Alpha – 2,
Bengaluru International Airport,
Devanahalli,
Bangalore – 560 300.
(Through Shri B. Bhaskar, Sr. Director – Finance & Support Services)

