

[F.No. AERA/20010/MYTP/BIAL/2011-12]

**Airports Economic Regulatory Authority Of India**

**Order No. 27/2011-12**

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

**Date of Order: 21<sup>st</sup> September, 2011**

**Date of Issue: 1<sup>st</sup> November, 2011**

**In the matter of Information submitted for tariff determination by Bangalore International Airport Ltd, Bengaluru.**

The Authority, vide Order No. 13/2010-11 dated 10.01.2011 had finalized its approach in the matter of Regulatory Philosophy and Approach in Economic Regulation of Airport Operators. Further, the Authority issued the Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Airport Operators), Guidelines 2008 ("the Guidelines") on 28.02.2011 and vide Direction No. 5/2010-11 dated 28.02.2011 directed all airport operators to act in accordance with the Guidelines.

2.1 As per Clause 3.1 of the Guidelines, all airport Operator(s) shall, within four months of the date of issue of the Guidelines, submit to the Authority for its consideration, a Multi Year Tariff Proposal (MYTP) for the 1<sup>st</sup> Control Period in the form and manner specified in the Guidelines. The last date for submission of the MYTP in terms of the Guidelines was 30.06.2011.

2.2 Bangalore International Airport Ltd. (BIAL) filed an appeal (Appeal No.7/2011) before the AERA Appellate Tribunal against the Order No. 14/2010-11 and Direction No. 5/2010-11 issued by the Authority. The Hon'ble Tribunal, in its Order dated 11.05.2011 in Appeal no. 07/2011, had held that, without prejudice to the stands taken, the requisite information / details / data / tariff proposal shall be furnished by the appellants to the Regulatory Authority and time for submission of the details was extended till 31.07.2011.

2.3 BIAL filed a Miscellaneous Application in Appeal No. 7, on 25.07.2011, requesting the Tribunal to direct extension of time to file the MYTP till next date of hearing, i.e., 17.08.2011.

2.4 Also, BIAL, vide letter ref. BIAL/AERA/MYTP/2011 dated 25.07.2011, requested the Authority to extend the time for submission of MYTP by two months, i.e., till 30.09.2011. This request of BIAL was considered by the Authority and it was decided that, in view of the Order dated 11.05.2011 of the Tribunal, the request for extension cannot be accepted and the



decision was conveyed to BIAL, vide Authority's letter No. AERA/20010/BIAL-AC/2009/670 dated 28.07.2011.

3.1 BIAL, vide their letter No. BIAL/AERA/MYTP/2011 dated 29.07.2011, submitted certain information in respect of tariff determination. Preliminary scrutiny of these documents, submitted on 31.07.2011, revealed that many Form(s)/ information required to be furnished as part of the MYTP were not furnished. Further, as per Clause A5.1.3 of the Guidelines issued by this Authority, the Airport Operator was required to submit one hard bound original and four hard bound copies and one soft copy of for the MYTP. However, only one set of the document was submitted by BIAL.

3.2 It was also observed that most of the information essential for tariff determination, such as information relating to the RAB, FRoR, Revenue from services other than Regulated Services, Operational and Maintenance Expenditure, Capital Expenditure and the Aggregate Revenue Requirement etc., had not been made available. In other words, the documents submitted were bereft of essential details/information in respect of tariff determination.

3.3 As indicated in para 2.2 above, the Hon'ble AERA Appellate Tribunal, in Appeal No.07/2011 filed by BIAL, had, vide Order dated 11.05.2011, ordered as under:

*"In the meantime, without prejudice to the stands taken, let the requisite information/details/data/tariff proposal be furnished by the appellant to the Regulatory Authority. It may continue the process of the determination, but shall not make a final determination without leave of this Court. Time for submission of information/details/data/tariff proposal/details is extended till 31st July, 2011. it is made clear that since the tariff proposal/information/data/details are being directed to be given without prejudice to the claims involved, they shall be treated as confidential by the Regulatory Authority."*

It was observed that the Hon'ble Tribunal had, in no way, interfered with the information requirement etc., specified in the Guidelines. In fact the Hon'ble Tribunal had directed that the "requisite" information/details/data/tariff proposal to be furnished to the regulatory Authority i.e. AERA. Further, the Hon'ble Tribunal had desired that upon submission the Authority "may continue the process of determination". Therefore, BIAL was required to submit the MYTP with all requisite information details/data as would have enabled the Authority to proceed with the determination as ordered by the Hon'ble Tribunal.

3.4 In view of the above, the submissions made by BIAL were neither in accordance with the order dated 11.05.2011 of the Hon'ble Tribunal nor in accordance with the Guidelines and Directions issued by the Authority. Accordingly, a letter dated 31.07.2011 was issued to BIAL bringing out the above position as well as stating that acknowledgment was being issued without prejudice to such action as the Authority may initiate, as per law, for non-submission of required information/details/data/proposal.



4. It was observed that as per Section 13(1) (e) of the AERA Act, 2008 (the Act), it is a function of the Authority to call for such information as may be necessary to determine the tariff. Information requirement in the Guidelines is in discharge of the said function. Further, the Authority has, for the purpose of discharge of its function of determination of tariff issued directions under Section 15 of the Act directing the airport operator(s) to act in accordance with the Guidelines. Therefore, non-submission of requisite information/data/proposal, prima facie, appeared to be in contravention of the provisions of Section 13(1)(e) of the Act as well as in contravention of the Directions issued under Section 15 of the Act. As such, BIAL appeared to be liable for punishment under Section 38 of the Act.

5. Further, it was observed that the submissions made by BIAL vide its letter dated 29.07.2011, were made by Shri B. Bhaskar, Director Finance, on behalf of BIAL. Therefore, Shri B. Bhaskar appeared to be person-in-charge in respect of the conduct of business of the company in so far as the affairs regarding determination of tariff were concerned. Therefore, Shri B. Bhaskar appeared liable to punishment under Section 38 read with Section 40 of the Act.

6. Considering that BIAL's non-submission of requisite information / data / proposal, prima facie appeared to be in contravention of the provisions of Section 13(1) (e) of the Act as well as in contravention of the Directions issued under Section 15 of the Act, the Authority issued a Show Cause Notice on 16.08.2011 to the Operator (BIAL) and to Shri B. Bhaskar, Director (Finance), BIAL requiring them to show cause as to why they should not be punished under section 38 read with section 40 (as may be applicable) of the Act.

8. Meanwhile BIAL filed a Writ Petition (C) 6376/2011 before the Hon'ble High Court of Delhi praying, inter alia, for restraining AERA from taking any coercive action against them for alleged non-compliance of the Order No. 13/2010-11. This petition came up for hearing before the Hon'ble High Court of Delhi on 01.09.2011 wherein the same was disposed off by the Hon'ble High Court of Delhi and time was granted to BIAL upto 15.09.2011 to submit the requisite details to AERA.

9. Thereafter, BIAL vide their letter no. BIAL/AERA/MYTP/2011 dated 14.09.2011, submitted that in compliance of Order of Hon'ble High Court of Delhi, they are submitting the balance information and particulars relevant for MYTP for the 1<sup>st</sup> control period.

10. The Authority, noted that the Delhi High Court, in its order dated 01.09.2011, has stated that:

*".....However, to put finality to the matter, it is deemed expedient to grant time till 15th September, 2011 to the petitioner to submit to the respondent the balance information/particular sought. Subject to the petitioner furnishing the*



*information by the said date, no fine shall be imposed and no prosecution shall be initiated against the petitioner.....”*

11. In view of the above and the fact that BIAL submitted its MYTP on 14.09.2011, i.e., within the time permitted by the Hon' ble High Court of Delhi, the Show Cause Notice dated 16.08.2011 issued to BIAL and Shri B.Bhaskar, Director (Finance), Bengaluru International Airport has become infructuous by virtue of the Delhi High Court Order mentioned supra and thus stands disposed off.

12. Ordered Accordingly.

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



**(Capt. Kapil Chaudhary)  
Secretary**

To

- 1. Bangalore International Airport Pvt. Ltd.,  
Alpha-2, Administration Block,  
Bengaluru International Airport,  
Devanahalli,  
Bangalore – 560 300.**
- 2. Bangalore International Airport Pvt. Ltd.,  
Alpha-2, Administration Block,  
Bengaluru International Airport,  
Devanahalli,  
Bangalore – 560 300.  
(Through: Shri B. Bhaskar, Director (Finance))**

