

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

**Airports Economic Regulatory Authority of India**

**Order No. 18/2011-12**

**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 delay in submission of Multi Year Tariff Proposal by M/s GMR Hyderabad International Airport Limited (HIAL) for Hyderabad Airport.**

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.

2.1 The Authority had vide Order No. 13/2010-11 dated 10.01.2011 finalized its approach in the matter of Regulatory Philosophy and Approach in Economic Regulations 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.

2.2 HIAL had filed an appeal (Appeal No. 08 and 10/2011-12) before the AERA Appellate Tribunal against the Order No. 14/2010-11 and Direction No. 5/2010-11. The Hon'ble Tribunal in its Order dated 11.05.2011 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 is extended till 31.07.2011.

2.3 In view of the Hon'ble Tribunal's Order and the last date of submission falling on a Sunday, the Authority, vide its letter no. F.N. AERA/20010/HIAL-AC/2009/707 dated 27.07.2011, informed HIAL that the office of the Authority would remain open on 31.07.2011 for receiving the MYTP proposals from 1000 hrs to 1700 hrs.

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2.4 HIAL, vide their letter no. GHIAL/AERA/2011-12/01 dated 31.07.2011, submitted certain information in respect of the tariff determination. Preliminary scrutiny of the documents submitted on 31.07.2011 showed that none of the Form(s)/ information/data required to be furnished as part of the MYTP as prescribed in the Guidelines issued by this Authority had been furnished by HIAL.

2.5 It was observed that HIAL had, suo-moto, changed the model for tariff determination and had failed to submit information which would enable the Authority to give due consideration to the factors enumerated in Section 13(1)(a) of the AERA Act, 2008. In other words, the documents submitted were bereft of essential details/ information in respect of tariff determination.

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

2.7 In view of the above, the submissions made by HIAL were neither found to be 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 HIAL 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.

2.8 As per Section 13(1)(e) of the AERA Act, 2008, 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, appears 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, HIAL appeared to be liable for punishment under Section 38 of the Act.

2.9 Further, the submissions were made by Shri Sidharath Kapur, CFO on behalf of HIAL and therefore, Shri Sidharath Kapur was the person-in-charge in respect of the conduct of business of the company in so far as the affairs under consideration were concerned. Therefore, Shri Sidharath Kapur, CFO, HIAL appeared liable to punishment under Section 38 read with Section 40 of the Act.



2.10 In view of the above, Authority, upon careful consideration, decided that appropriate show cause notices may be immediately issued, after requisite legal vetting, to HIAL and Shri Sidharath Kapur, CFO, HIAL 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 and a period of 14 days may be given for reply.

2.11 Meanwhile, HIAL, vide their letter No. GHIAL/AERA/2010-12/02 dated 05.08.2011 in continuation of their letter dated 31.07.2011, submitted same Form(s)/ Information/ data. Initial examination revealed that HIAL had suo-moto submitted information "to the extent possible under dual till" instead of submitting it as per the guidelines issued by the Authority.

2.12 Show Cause Notice (SCN) was issued on 16.08.2011 to HIAL (i.e., Noticee-1) and Shri Sidharath Kapur, CFO, HIAL (Noticee-2) 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. HIAL and Shri Sidharath Kapur, CFO, HIAL were granted a period of 14 days to submit their reply.

2.13 HIAL, vide their letter No. GHIAL/AERA/2011-12/03 dated 30.08.2011, received on 01.09.2011, in reply to Authority's Show Cause Notice dated 16.08.2011, inter alia, stated that pursuant to this Authority's letter No. AERA/20010/HIAL/AC/2009 dated 27.07.2011 and the Hon'ble AERA Tribunal's order dated 11.05.2011, HIAL had filed the requisite information/details/data/tariff proposal with AERA, vide their letter No. GHIAL/AERA/2011-12/01 dated 31.07.2011 and was ready and willing to file a tariff proposal under 'Single Till' regime within 15 days. In view of the aforesaid they requested the Authority to withdraw the Show-Cause Notice dated 16.08.2011 and Interim Application dated 16.08.2011 in Appeal No. 10/2011 pending adjudication before Hon'ble AERA Appellate Tribunal.

3.1 After considering the above submission of HIAL, the Authority deferred the decision in the matter of Show-Cause Notice upto 15.09.2011 and also granted time upto 15.09.2011 to Shri Sidharath Kapur to submit his reply to the Show-Cause Notice.

3.2 HIAL submitted its MYTP under Single Till vide letter dated 13th September 2011.

3.3 Thereafter, Shri Sidharath Kapur submitted a reply, vide letter dated 15.09.2011, wherein he submitted as under:

*"This is in reference to your letter dated 9<sup>th</sup> September, 2011 whereby the Authority has sought reply to the Show Cause Notice. In this regard I would like to submit as under.*

*The Authority will appreciate that; in my personal capacity I cannot file any data before the Authority for GMR Hyderabad Airport.*



*In this respect I draw your attention to the letter dated 30<sup>th</sup> August, 2011 submitted by GMR Hyderabad International Airport on the above mentioned subject in response to the Show Cause Notice. Further, GMR Hyderabad International Airport has already submitted the information as sought by the authority under Single Till under covering letter No. Letter No. GHIAL\AERA\2011-12\04 dated 13th September 2011. In view of the above and the reply submitted by GMR Hyderabad International Airport, the matter stands closed.”*

4.1 The Authority also obtained legal opinion in respect of the reply submitted by Shri Sidharath Kapur, CFO, in response to the Show Cause Notice dated 16.08.2011.

4.2 The Authority perused the records and carefully considered submissions made by Noticee 1 and Noticee 2, especially in the light of the opinion of advocate on panel and observed as under:

4.2.1 The tariff proposal is required to enable the Authority to discharge its functions under section 13(1)(a) and section 13(1)(e) of the AERA Act, 2008.

4.2.2 The Authority had, vide its Guidelines issued on 28.2.2011, required the necessary tariff proposals to be submitted by 30.4.2011 (extended upto 30.6.2011 by the Authority), which was subsequently extended to 31.7.2011 by the AERA Appellate Tribunal vide its Order dated 11.5.2011. Vide this Order dated 11.5.2011, the Tribunal had ordered that:

*“.....the requisite information/details/data/tariff proposal be furnished by the Appellant to the Regulatory Authority.....  
Time for submission of information/details/data/tariff proposal is extended till 31<sup>st</sup> July, 2011.....”*

4.2.3 HIAL failed to file the requisite MYTP in respect of RGI Hyderabad Airport within the time limit – as ordered by AERA Appellate Tribunal, i.e. 31.07.2011.

4.2.4 Thus, it is evident that HIAL failed to comply with the various Orders and directions issued under section 15 of the AERA Act, by the Authority and have therefore committed an offence punishable under section 38 of the Act.

4.2.5 Further, in his reply to the SCN, Shri Kapur (i.e, Noticee 2), inter-alia, submitted that:

*“.....The Authority will appreciate that; in my personal capacity I cannot file any data before the authority for GMR Hyderabad Airport.....”*

4.2.6 As per section 14 of the AERA Act-

*“14. Powers of Authority to call for information, conduct investigations, etc.*



- (1) Where the Authority considers it expedient so to do, it may by order in writing-
- (a) Call upon any service provider at any time to furnish in writing such information or explanation relating to its functions as the Authority may require to access the performance of the service provider; or
  - (b) Appoint one or more persons to make an inquiry in relation to the affairs of any service provider; and
  - (c) Direct any of the officers or employees to inspect the books of account or other documents of any service provider.
- (2) Where any inquiry in relation to the affairs of a service provider has been undertaken under sub-section (1) –
- (a) every office of the government department, if such service provider is a department of the Government; or
  - (b) every director, manager, secretary or other officer, if such service provider is a company; or
  - (c) every partner, manager, secretary or other officer, if such service provider is a firm; or
  - (d) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (b) or (c), shall be bound to produce before the Authority making the inquiry, all such books of account or other documents in his custody or power relating to, or having a bearing on the subject matter of such inquiry and also to furnish to the Authority with any such statement or information relating thereto, as the case may be, required of him, within such time as may be specified.
- (3) Every service provider shall maintain such books of account or other documents as may be prescribed.
- (4) The Authority shall have the power to issue such directions to monitor the performance of the service providers as it may consider necessary for proper functioning by service providers.”

4.2.7 Thus, it is clear that;

- (a) Show cause notice was issued to Shri Sidharath Kapur in his capacity as CFO, HIAL– person-in-charge and not in his personal capacity.
- (b) There was an obligation on Shri Sidharath Kapur, in his capacity as CFO, HIAL, to be found to produce before the Authority the information/details/data/tariff as mandated by Section 14 of the Act quoted above – in capacity as CFO, person-in-charge.



- (c) Shri Sidharath Kapur did not comply with the said direction and accordingly rendered himself liable as CFO – person-in-charge HIAL.

4.2.8 Hence, the reply submitted by Shri Kapur, i.e., Noticee 2 cannot be accepted. The Authority finds that in his capacity as CFO, HIAL, he was the person-in-charge and hence is liable to be punished under section 38 read with section 40 of the Act.

5. The Authority also noted that while Noticee 1 and Noticee 2 have committed offences punishable under section 38 of the Act, HIAL has now submitted the MYTP in respect of Hyderabad Airport, as was undertaken by them in their reply to the SCN.

6. Keeping in view the observations 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, SCN may be disposed off with a caution to both the noticees to be more vigilant in future.

7. Ordered Accordingly.

By the Order of and in the  
Name of the Authority

  
(Capt. Kapil Chaudhary)  
Secretary

To

1. M/s GMR Hyderabad International Airport Ltd.,  
GMR HIAL Airport Office,  
Rajiv Gandhi International Airport,  
Shamshabad,  
Hyderabad – 500409.
2. M/s GMR Hyderabad International Airport Ltd.,  
GMR HIAL Airport Office,  
Rajiv Gandhi International Airport,  
Shamshabad,  
Hyderabad – 500409.  
(Through: Shri Sidharath Kapur, CFO)

