

[F. No. AERA/20010/MYTP-Indo Thai/GH/2010-11]
Airports Economic Regulatory Authority of India

Order No. 08/2011-12

AERA Building,
Administrative Complex,
Safdarjung Airport,
New Delhi – 110 003.

Date of Order : 26th August, 2011
Date of Issue : 29th August, 2011

In the matter of delay in submission of Multi Year Tariff Proposal by M/s Indo Thai Airport Management Services Pvt. Ltd. for ground handling services at Jaipur Airport.

M/s Indo Thai Airport Management Services Pvt. Ltd (ITAMS), vide their letter dated 29.04.2011, submitted a proposal (purported to be the MYTP) for approval of the charges for its ground handling services at Jaipur Airport. However the submission was not as per the Guidelines issued by the Authority. The Authority in its 38th meeting, after careful consideration, observed that ITAMS have made some efforts to comply with the requirements. Therefore, it would be fair to afford them one last opportunity to fully comply with the requirements and decided that they may be advised to submit a complete proposal in the prescribed formats latest by 31.05.2011 failing which the interim arrangement of the older tariff continuing to be applicable post 04.04.2011 may lapse. ITAMS was, accordingly, informed vide this Authority's letter dated 13.05.2011. However, based on the request of ITAMS, vide their letter dated 26.05.2011, further extension of time for submission was considered and extension was granted upto 15.06.2011. ITAMS was also granted a personal meeting with officials of the Authority and consultants from Deloitte on 25.05.2011 wherein the required clarifications were rendered to the service provider.

2. ITAMS failed to submit the required information by extended time limit of 15.06.2011 nor did they submit any clarification in this behalf. The Authority, in its 42nd meeting held on 21.06.2011, decided to extend the time line upto 30.06.2011 as a last opportunity and ITAMS was, accordingly, informed vide Authority's letter dated 24.06.2011.

3. ITAMS, vide their letter dated 29.06.2011, requested for further extension of time upto 15.07.2011. The Authority considered the issue, in its 43rd meeting held on 08.07.2011, and took a serious view of the service provider's repeated requests for extension and non compliance and decided that as a last opportunity, the extension upto 15.07.2011 may be granted. Further, the Authority also decided that ITAMS may also be apprised that in case the requisite proposal complete in all respects is not received by 15.07.2011, the Authority may be constrained to initiate coercive action including penal action as provided for under the AERA Act, 2008.



4. ITAMS was, accordingly, informed, vide letter dated 14.07.2011. In response, ITAMS forwarded a mail attaching therewith letter no. ITAMS/15-AERA/99 dated 14.07.2011 vide which, it was, inter-alia, indicated that they were in the process of working on the MYTP and sought further extension of time for submission till 31.07.2011.

5. The matter was considered, in the 44th meeting of the Authority held on 26.07.2011, when after careful consideration it was decided to reject the request for further extension of time. The Authority also decided that the interim arrangement ordered by it, vide Order No. 17/2010-11 dated 31.03.2011, to the effect that all independent service providers may continue to charge tariffs as prevalent on 01.09.2009 or as may have been approved thereafter, w.e.f. 01.04.2011 would cease to be effective w.e.f. 16.07.2011 as the last extended time line had lapsed on 15.07.2011. Consequently, Direction No. 1/2011-12 was issued under section 15 read with section 13 of the Act directing ITAMS to stop charging the tariff in respect of ground handling services relating to aircraft, passengers and cargo provided by them at the Jaipur airport w.e.f. 16.07.2011.

6. Further, the Authority also decided to initiate penal action against ITAMS under section 38 and against Shri P. C. Sinha, Chief Operating Officer under section 38 read with section 40 of the AERA Act, 2008. Accordingly, Show Cause Notices were issued on 28.07.2011 to ITAMS and Shri P. C. Sinha requiring them to show cause as to why fine should not be imposed on them under section 38 read with section 40 of the AERA Act, 2008.

7. ITAMS vide their letter dated 05.08.2011, inter alia, submitted the following:

- (i) a personal hearing on the matter as soon as possible;
- (ii) that the representative of the professional firm, appointed by them, to undertake this activity be allowed to clarify doubts, if any, to enable them to submit the comprehensive MYTP;
- (iii) allow final extension of 25 days from the date of this letter for submission of MYTP;
- (iv) take a sympathetic view considering that the company is presently handling only one international flight daily at Jaipur;
- (v) waive the punitive action communicated vide the Show Cause Notice issued to the company / its officers dated 28.07.2011;

8. Pursuant to the aforesaid submission, ITAMS and Shri P. C. Sinha, Chief Operating Officer were advised to remain present on 16.08.2011 at 1100 hrs. for personal hearing before the Authority.

9. Neither of the notices, namely, ITAMS (Noticee 1) and Shri P. C. Sinha, Chief Operating Officer (Noticee 2) were present for the personal hearing nor any communication had been received from the noticees. Authority took a serious note of the matter. However, in order to provide a fair chance to the noticees, the Authority decided to give them last and final opportunity to appear for personal hearing on Friday,



the 19.08.2011 at 1100 hrs. The same was conveyed to the noticees vide the Authority's letter dated 16.08.2011.

10.1 Shri P.C. Sinha, Chief Operating Officer, ITAMS and Sh. Sanjay Aggarwal, Consultant appeared for personal hearing, in the 47th meeting of the Authority held on 19.08.2011, on behalf of Noticee No.1 and Noticee No. 2. Shri Sinha submitted that:

- (i) The matters relating to tariff filing are handled by their Head Office at Kolkata.
- (ii) In the past a Consultant had been appointed by them to prepare the required MYTP. However, the said Consultant could not prepare the same which had led to present delay.
- (iii) They have now appointed new Consultants who are working on the proposal and the same is likely to be submitted by 29.08.2011.
- (iv) ITAMS regrets the delay in submission and requests the Authority to take a lenient view in the matter.
- (i) They have complied with the directions issued by the Authority (Direction No. 1/2011-12 dated 28.07.2011) to stop charging the tariff in respect of ground handling services relating to aircraft, passengers and cargo provided by them at Jaipur airport.

10.2 The Authority pointed out that the ITAMS had been allowed extension of time for submission of MYTP on several occasions in the past. However, at no stage, ITAMS ever disclosed that due to the failure of the Consultants to prepare the MYTP they have failed to submit the same. Instead other reasons were pleaded. In response, Shri Sinha admitted that they have failed to disclose this reason to the Authority.

10.3 The Authority also observed that ITAMS had started the ground handling services at Jaipur airport w.e.f. 01.01.2011. No proposal for tariff determination has been received from ITAMS thereafter. ITAMS also renders ground handling service at Lucknow airport, which has become a major airport on the basis of passenger throughput during the year 2010-11. No tariff proposal in respect of Lucknow airport has also been received by the Authority. In this background, upon being asked, Shri Sinha stated as under:

- (i) He admitted that the tariff is being charged at both the airports, i.e., Lucknow and Jaipur without the approval of the Authority. However, as indicated earlier, in respect of Jaipur airport, they have stopped charging the tariff in compliance of the Direction No. 1/2011-12. At Lucknow airport also they would stop charging the same.
- (ii) A written confirmation, in respect of (i) above, would be submitted by them before 26.08.2011 .

11. The Authority deferred further consideration of the matter pending confirmation in respect of the commitments given by Sh. P.C. Sinha as indicated in the para no. 10.3 above. Shri Sinha was informed that the matter would be considered by the Authority on



26.08.2011 at 3.00 PM. It was further clarified that deferment of the matter should not, in any way, be construed as Authority's approval for extension of time for submission of MYTP or its inclination to not impose any fine as contemplated under the subject Show Cause Notices.

12. Accordingly, vide letter dated 24.08.2011, Noticee 1 and Noticee 2 were advised to furnish the requisite confirmation and remain present for the meeting of the Authority on 26.08.2011 at 3.00 p.m.

13. Shri P. C. Sinha, Chief Operating Officer and Shri Kapil Mittal, Consultant, who appeared for personal hearing on behalf of noticee 1 and noticee 2 submitted as under:

- (i) They are ready with the requisite proposals in respect of aeronautical services provided by them at Jaipur and Lucknow airports which are being submitted separately for the consideration of the Authority.
- (ii) As they have already prepared the proposals and are submitting the same to the Authority, a lenient view may be taken in the matter.

14. The Authority has carefully considered the records and submissions made on behalf of noticee 1 and noticee 2, including in the personal hearings held on 19.08.2011 and 26.08.2011, and observed as under:

- (i) ITAMS have failed to file the requisite MYTP in respect of Jaipur airport within extended timeline of 15.07.2011. The tariff proposal is required to be submitted in discharge of the Authority's functions under section 13(1)(a) and section 13(1)(e) of the AERA Act, 2008.
- (ii) The Authority, had vide the guidelines issued on 10.01.2011, required the necessary tariff proposals to be submitted by 10.03.2011, which was subsequently extended upto 30.04.2011. The Authority had also issued a direction under section 15 of the Act to all service providers including ITAMS to act in accordance with the guidelines.
- (iii) It is an admitted fact that ITAMS have failed to submit the requisite proposals and, therefore, have contravened the provisions of the section 13(1)(a) and section 13 (1)(e) of the AERA Act, 2008. Further, they have failed to comply with the directions issued by the Authority under section 15 of the Act. As such, ITAMS have committed an offence punishable under section 38 of the Act.
- (iv) Shri P. C. Sinha, Chief Operating Officer, i.e., noticee 2 is the person-in-charge. Though in the personal hearing held on 19.08.2011, it was stated that matters relating to tariff filing are handled by the head office of ITAMS at Kolkata there is no averment that Shri P. C. Sinha is not the person-in-charge. In view of this, Shri P. C. Sinha is liable to be punished under section 38 read with section 40 of the Act.

15. 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:

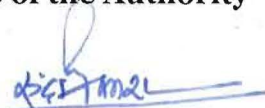


- (i) ITAMS have submitted the requisite proposals not only in respect of Jaipur airport but also in respect of Lucknow airport on 26.8.2011.
- (ii) It has been confirmed vide letter Ref. ITAMS/15-AERA/113 dated 19.08.2011 that ITAMS have complied with the directions of the Authority and have stopped charging tariff at Jaipur airport w.e.f. 16.07.2011 and Lucknow airport w.e.f. 19.08.2011 as the same has not been approved by the Authority.
- (iii) The delay in submission of the proposals has been regretted.

16. 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 the show cause notices may be disposed off with a caution to both the Noticees.

17. Ordered Accordingly,

By the Order of and in the name of the Authority


(Sandeep Prakash)
Secretary

To,

1. **M/s Indo Thai Airport Management Services Pvt. Ltd.,
904-907, Time Tower,
M. G. Road, Sector 28,
Gurgaon, Haryana- 122002.
(Through : Shri P. C. Sinha, Chief Operating Officer)**
2. **Shri P. C. Sinha,
Chief Operating Officer,
M/s Indo Thai Airport Management Services Pvt. Ltd.,
904-907, Time Tower,
M. G. Road, Sector 28,
Gurgaon, Haryana- 122002.**

Copy to :-

Secretary, Ministry of Civil Aviation, Rajiv Gandhi Bhawan, New Delhi- 110 003.

