[F.No. AERA /20011/DCSC/2010-11/Vol-II]

Airports Economic Regulatory Authority of India

Order No. 16/2010-11

AERA Building,
Administrative Complex,
Safdarjung Airport,
New Delhi-110003

Date of Order: 22nd March, 2011
Date of Issue: 24th March, 2011

In the matter of proposal submitted by Delhi Cargo Service Centre for approval of the Tariff for Terminal Storage and Processing Charges applicable to shippers/consignees/agents and the TSP, handling and X-Ray machine usage and other charges on Airlines

The Delhi Cargo Service Centre (DCSC) has vide its proposal dated 06.12.2010 sought the approval of the Authority in respect of the Tariff, i.e TSP Charges applicable to shippers/consignees/agents and the TSP, handling and X-Ray machine usage and other charges on Airlines.

2.1 A brief facts of the case are as under:

(i) M/s Domestic Air Cargo Agents Association of India (DACAAI) filed an application dated 30.04.2010 against the levy of TSP, X-Ray screening charges, Unitization and De-unitization charges by DCSC at its newly created Common User Domestic Cargo Terminal (CUDCT) at IGI, Airport, New Delhi. DACAAI submitted that, presently, all domestic airlines provide the warehouse and X-Ray screening facilities and undertake the process of unitization / de-unitization; that they never charged separately for these facilities ; that the overall freight charges charged by the airlines were inclusive of the charges for these facilities ;that M/s. Delhi International Airport Pvt. Ltd (DIAL) has commissioned common user terminal for domestic cargo at IGI Airport and concessioned it to DCSC ; and that DIAL has proposed to charge, cargo handling charges under the heads of unitization charges, de-unitization charges and X-Ray screening charges. DIAL and DCSC had not obtained any approval from the Authority for the levy of TSP, X-Ray screening charges, Unitization and De-unitization charges.

(ii) The Authority vide letter dated 30.04.2010, addressed to M/s DIAL stated that in terms of Section 2 (a) (v) of the Act, any service provided for the cargo facility at an airport is an "aeronautical service", and tariff for such service at the major airports is to be determined by the Authority, in terms of Section 13(1)(a) of the Act. IGI airport, New Delhi is a major airport and, therefore, imposition of any new charges in respect of cargo facility or change in rates of any existing charges would require previous approval of the Authority.

(iii) DCSC vide its letter dated 14.05.2010, inter-alia, submitted that there has been no increase in the charges for cargo services at CUDCT at IGIA; that CUDCT is an extension of Cargo Services being provided at IGIA; and that the charges for services offered are identical or lower for similar services at the International Cargo Terminal in Delhi as well as other locations in the country.

(iv) DIAL, vide its letter dated 26.06.2010, stated that CELEBI is handling and operating the brownfield cargo terminal, servicing the international cargo operations and DCSC, which is undertaking the setting up and operation of the Greenfield Cargo Terminal, is servicing the domestic cargo operation from the CUDCT till the new Greenfield Terminal is developed and commissioned by DCSC, which is expected by January, 2011. Eventually both the cargo terminals (i.e. Brownfield Cargo Terminal and the Greenfield Cargo Terminal) shall offer, undertake and service both domestic and international Cargo terminal services thereby bringing in the desired competition as mandated in OMDA.

(v) DCSC in its additional submission vide letter dated 26.06.2010 inter-alia, submitted that, earlier, as airlines were themselves performing domestic Cargo handling (i.e. unitization, de-unitization) and X-Ray screening, these charges were in built by the Airlines as part of freight charges. Now, Cargo handling services are being provided by DCSC as Cargo terminal operator, and the X-ray screening is being handled by DIAL; that these charges are not extra costs, but only reallocation of charges; that TSP is a standard charge levied at all the airports in the country having Common User Domestic Cargo facility for the facilities provided at the terminal and is, thus, not a new charge; that the CUDCT has been developed at IGI Airport now and the charges have been levied in line with prevalent practice at other airports; and that the TSP charges at IGI Airport are identical or lower among all the other airports having similar facility.

(vi) DACAAI, vide letter dated nil (received on 07.07.2010) submitted that creation of Cargo Service Centre for domestic cargo is a new development. Hence, charges introduced are also new charges which needs approval of the Authority and submitted that domestic cargo was never processed through Common User Terminal but was tendered to the Airlines directly who did not levy any charges for the services.

(vii) The Authority, in its 19th Meeting (No.13/2010-11) held on 23.09.2010 considered the issue in detail. Upon careful consideration of the material available on records, the Authority was of the opinion that the processing of domestic cargo at Cargo Service Centre is a new activity which was earlier being done by airlines themselves; that this new activity was being carried out by a new entity viz. DCSC. TSP and other related charges for handling of such cargo, therefore, appeared to be new charges and DCSC and DIAL, as the case may be, were required to obtain previous approval of the Authority for the same. Therefore, the levy of such charges without previous approval of the Authority was in contravention of S.13(1)(a) of the Act and continuance of such levy was a continuing contravention of the statutory provisions. The Authority also observed that the submission of information had been delayed by the concerned entities and both DIAL and DCSC have refrained from clarifying whether the charges being levied from domestic cargo carriers were new in so far as such carriers or their agents were concerned.

(viii) In view of the observations made at (vii) above, the Authority in exercise of powers conferred on it under Section 15 read with Section 13 of the Act, issued directions (Direction No.03/2010-11 dated 06.10.2010) to DCSC to stop charging the TSP charges, Unitization and De-unitization charges and DIAL to stop charging the X-Ray screening charges with effect from 01.05.2010, in respect of domestic cargo at the IGI Airport, New Delhi.

(ix) Aggrieved by the said direction, DCSC filed an appeal u/s 18 of the Act before the Hon'ble AERA Appellate Tribunal to quash and set aside the said direction and issue an appropriate order or direction to the Authority not to fix any tariff in respect of the 'Non-Aeronautical Service' under the OMDA and other transaction documents entered in to by DCSC.

(x) Meanwhile, DACAAI vide its letter No.Nil dated 25.10.2010, addressed to the Authority requested implementation of the Direction No.03/20010-11 issued by the Authority. The Authority, in its 22nd Meeting held on 04.11.2010 decided that following action may be taken before this matter is considered further:

a. DIAL and DCSC may be asked to confirm compliance with the Direction No. 03/2010-11 dated 6.10.2010 within 10 days.
b. Penal provisions of the Act may also suitably be brought to their notice.
c. DACAAI may be asked to substantiate its claim that the directions have not been implemented by DIAL and DCSC with documentary evidence.

(xi) Accordingly, the Authority vide its letter dated 09.11.2010, addressed to DIAL and DCSC sought confirmation regarding the compliance of the subject Direction by 19.11.2010 failing which the Authority may be constrained to take further necessary action in the matter, as per law, without any further reference to DIAL/DCSC. By way of a separate communication dated 09.11.2010, DACAAI was also asked to substantiate its claim that the directions have not been implemented by DIAL and DCSC with documentary evidence.

(xii) M/s DCSC vide letter dated 19.11.2010 submitted that direction dated 06.10.2010, had been complied with under protest; and that they had not invoiced any customer TSP, unitization and de-unitization charges for services rendered in respect of domestic cargo at CUDCT at IGI Airport.

(xiii) DCSC, thereafter, withdrew the appeal filed by them before the Hon'ble Tribunal.

2.2 M/s DCSC had forwarded two tariff proposals for the Authority's consideration:

a) Tariff Proposal for levy of Terminal Storage and Processing Charges applicable to shippers/consignees/agents;
b) Tariff Proposal for levy of TSP, handling and X-Ray machine usage and other charges to Airlines.

3.1 DCSC had justified the proposal on following grounds:

(i) The base reference for fixation of traffic was AAI's notified tariff for various cargo handling services. Other references for tariff fixation were existing cargo handling rates at International cargo terminals at Mumbai, Delhi, Chennai & Bangalore Airport the only reference for comparison of domestic cargo handling tariff.
(ii) The rate proposed by company for domestic cargo handling was lower than that applicable to international cargo since number of activities and process on domestic side is comparatively lesser than at international side.
(iii) The TSP charges for international cargo is Rs. 4.5 per Kg (assuming cargo to stay in warehouse for at least 3 days before custom clearance) whereas the TSP charges for domestic cargo is Rs. 0.70 per Kg per day.
(iv) There is no palletisation or de stuffing in domestic cargo, unlike international cargo.

(v) The tariff proposed had been arrived at through extensive consultation with DACAAI in March 2010. In fact, the earlier proposed rate for TSP was higher than the current proposed rate which was brought down through consultation process.

(vi) DCSC stated that DACAAI had never opposed the proposed tariffs through any mode of communication – emails or meetings.

(vii) As regards handling rates and security charges, DCSC stated that several meetings were held with Airlines as a result of which the current proposed rate had been lowered as compared to the earlier higher rate proposed. The domestic airlines had signed letters of intent (LOI) accepting the proposed tariff.

(viii) Pursuant to Concession Agreement, the present interim cargo handling terminal was leased out to DCSC by DIAL on payment of Rs. 5 crore, which would be operated by company until November 2011. Subsequently, entire operation will be shifted to Greenfield Air Cargo terminal. As such, the sum of Rs. 5 crore had been written off within this period i.e. May 2010 to November 2011.

(ix) Further, as per Financial Plan at Annexure 07 to DCSC's proposal , the rate of equity return was not more than 7%, even though the expected rate of return was around 30%. The lower return had been adopted to attract customers before moving into Green field Cargo Terminal.

(x) Prior to setting up of common user facility, airlines were handling their cargo through a makeshift arrangement near old domestic terminal causing traffic obstruction and becoming security hazard. The common user facility offers better infrastructure with proper facilities.

3.2 DCSC requested for approval of tariff on the basis of justification given above rather than based on regulated asset pricing model and stated that this being an interim facility, detailed examination of tariff proposal be dispensed with.

3.3 DCSC had forwarded copies of correspondence with DACAAI and those had with the concerned airlines viz. Kingfisher, Go Air, Indigo Air, Spicejet airlines, which broadly highlighted the following:

(i) DACAAI was not against the TSP payment, but only against the mode of payment proposed by DCSC. DACAAI had confirmed the TSP charges and their willingness to pay the same, but stressed for routing the TSP charges through Airway Bill. DACAAI had clearly indicated that its members were not ready for payment of TSP charges in cash or through PDA account which had been due to the bad experience they had at the airports of BLR/HYD.

(ii) DCSC vide a mail to all the airlines had brought out that a meeting was held with the representatives of Kingfisher, Go Air, Indigo Airlines and Spicejet wherein the airlines were generally satisfied with the procedures with a request to implement the new rates from 16.05.2010.

(iii) DCSC had forwarded the proposed IATA SGHA to the concerned airlines. Kingfisher vide mail dated 21.04.2010 had accepted, interalia, the handling rates fixed by DCSC and also conveyed acceptance of TSP charges in AWB.

(iv) Copies of LOI signed with Interglobe on 26.04.2010, with Spicejet on 29.04.2010 and with Kingfisher on 21.04.2010 were forwarded by DCSC in support of their claim that the airlines had accepted the TSP, handling and X-Ray machine usage and other charges.

(v) DCSC vide mail dated 06.05.2010 to all the airlines had conveyed the terms and conditions agreed between them in the meeting held on 06.05.2010 wherein, interalia, all the airlines had agreed to include the TSP charges in the AWB. They had however, refused to sign an additional agreement but had informed that collection of TSP charges could be covered in a side letter or the present SGHA Annex B modified to include agreed TSP charges to be put on the AWB.

(vi) The summary record of discussion had by DIAL with DCSC and the airline operators on 12.08.2010 was submitted wherein the timeline/action on behalf of each had been outlined.

3.4 DCSC's financial plan assumed the following:

(i) The financial plan covered a period of 19 months from May, 2010, i.e., the time when DCSC's operations commenced from the Interim Domestic Terminal to November, 2011, i.e., when the Green Field terminal is expected to be ready.

(ii) DCSC assumed that the operations of Interim Domestic Terminal will be shifted to the Green Field terminal once it is ready by 30.11.2011 as per the project plan of the company.

(iii) The data/numbers furnished in the financial plan for the period ending 31.03.2011 were based on historical recording of transactions in the books of the company from April'2010 to October' 2010 and management estimates for the rest of the financial year.

(iv) It has been assumed that from 01.01.2011, business of the company will be reduced by 30% as the second operator will be allowed to operate and handle domestic cargo and management expects some migration of clients to the new operator.

(v) DCSC had paid a sum of Rs.5 crores to DIAL for operation of Interim Domestic Terminal as per clause 2.9.1(d) of the Concession Agreement entered between DCSC and DIAL on 19.11.2009.

(vi) DCSC had apportioned, 15.83% of the cost of Handling Equipment and IT Hardware deployed at the interim terminal (Rs.0.37 crores) for the period of actual use considering the life of the assets of 10 years.

(vii) The sum of Rs.5 Crores along with the cost of Handling Equipment and IT Hardware deployed at the interim terminal have been shown as depreciation and has been totally written off within the 19 month period.

(viii) DCSC had reflected the amount of concession fees payable to DIAL (@ 24% of gross revenue as per clause 3.1.1 of the Concession Agreement). The total amount of concession paid is estimated to be Rs.8.64 crores against a projected turnover of Rs.36 crores in the 19 month period.

(ix) DCSC had accounted for the Airport land license fees (Rs.0.75 crores) payable to DIAL effective 1st April, 2011, after taking into consideration 7.5% upward increase as per clause 3.4 of the Concession Agreement.

(x) A total amount of Rs.1.26 crores (for the 19 month period) had been provided by DCSC as business support service expenses payable to the shareholders of the DCSC, in the nature of marketing support, know-how, development of brand equity and general facilitation for cargo handling @ 3.5% of gross revenue, as per clause 3.7 of the Share Transfer cum Shareholders Agreement.

(xi) DCSC stated that *"The management has neither paid nor provided for the remuneration of top management viz; Managing Director and other Directors of the company in this financial plan".*

(xii) The effective rate of Income Tax taken by DCSC on book profits generated from operations carried out at Interim Domestic Terminal is @ 30.90%, currently applicable to corporate entities.

(xiii) The amount of capital deployed for the Interim Domestic Terminal Operation comprises of Equity Share Capital contribution made by both the shareholders of DCSC.

4. The proposal was examined and the Authority observed that:

(i) DCSC had withdrawn the appeal filed before the AERA Tribunal against the Direction No.03/2010/11 dated 06.10.2010 issued by the Authority. Further, DCSC had also confirmed that pursuant to the Directions issued, no charges are being levied on the users, under protest.

(ii) DCSC had submitted that they were facing financial difficulties as on one hand they were unable to charge and collect user charges for the services rendered while on the other hand they were regularly incurring expenditure for operating the facility including staff cost so as not to inconvenience the trade and industry by stopping handling services

(iii) The application made by DCSC sought approval of the Authority for the tariff applicable to shippers/consignees/agents i.e the TSP and the tariff for TSP, handling and X-Ray machine usage and other charges to Airlines.

(iv) The subject determination would be an ad hoc determination of the cargo tariff in the CUDCT for a period of 19 months from May, 2010, i.e., the time when DCSC's operations commenced from the CUDCT to November, 2011 when the green field terminal is scheduled to be in place.

(v) The tariff applicable to shippers/consignees/agents, i.e, the TSP had been arrived through extensive consultation with DACAAI in March 2010.

(vi) The TSP applicable to shippers/consignees/agents as compared with the rates at BIAL and HIAL appeared to be lower and reasonable.

(vii) The tariff for TSP, handling, X-Ray machine usage and other charges, leviable on the Airlines, had been arrived after consultation with the domestic airlines viz., Spicejet, Kingfisher, GoAir and Indigo.

(viii) The proposal submitted by DCSC was for both inbound and outbound cargo with no minimum rates as agreed to by DCSC in para 10 of the amended Minutes of the Meeting held with stakeholders on 06.05.2010.

(ix) The proposal to approve the tariff based on comparison with other entities and user agreements instead of detailed financial analysis appeared to be justified in as much as the rates proposed were to be made applicable to an interim terminal with a life of 19 months, of which 8 months had already elapsed.

5. In view of the above, the Authority in its 26th Meeting held on 04.01.2011, decided to propose the approval of the tariff as proposed by the DCSC, w.e.f. 01.05.2010 and upto 30.11.2011 for stakeholder consultation. This ad-hoc determination was proposed to be reviewed at the stage of tariff determination for the first cycle and thereafter at such intervals as the Authority may decide.

6.1 A Consultation Paper No.12/2010-11 was issued on 05.01.2011, seeking feedback, comments and suggestions from stakeholders on the proposal by 19.01.2011

6.2.1 The airlines (SpiceJet, Green Airways, Jet Airways, Deccan Cargo and the Federation of Indian Airlines) commented that the pre-CUDCT services were more professional in terms of cut-off times, delivery, pilferage and claims. They also stated that they were constrained to sign the LoI since restrictions were imposed on them in carrying out the operations and hence they had no other option but to sign the same. Further, the CUDCT being only a temporary arrangement, the present tariffs should be reduced and tariffs could be reviewed when the Greenfield terminal was in place. DACAAI too in their comments stated that the charges proposed by DCSC were on a higher side and the approved charges should be effective from the date of Order and not from a retrospective date.

6.2.2 AAI vide their comments submitted that the rates are broadly in line with the rates charged by Airports Authority of India and the same have been proposed to be implemented after user consultation and agreement, the proposal of DCSC may be considered favorably.

6.2.3 MIAL in their submission welcomed the Authority's recognition of light touch approach for these services with negotiated, comparable rates and two entities meeting the competition requirement and appreciated the Authority's views to allow tariffs from retrospective effect considering financial implications of the same on the service provider. However, MIAL felt that the 7% return on equity envisaged by DCSC is not acceptable proposition.

6.3 The Comments received from the stakeholders were forwarded to DCSC for their comments/feedback vide the Authority's letter dated 25.01.2011. The comments were also uploaded on the AERA website vide Public Notice No.10/2010-11 dated 28.01.2011, with a request to furnish the feedback if any by 04.02 2011. No comments / additional comments were received from any stakeholder in connection with the aforesaid public notice.

6.4.1 DCSC, vide their letter dated 04.02.2011 furnished their replies to the issues raised by the airlines and their association and stated that the stakeholders instead of commenting on the tariff proposal have commented on issues which have no relation to the tariff fixation. Further, in some cases the parties have given misleading facts. DCSC have observed that the comments received are from the airlines, their association and DACAAI and no comments have been received from the actual shippers who are actually affected by the charges proposed.

6..4.2 Further, DCSC pointed out that the contention of the airlines that they were forced to sign the LoI's is factually incorrect.

6.4.3 DCSC also highlighted that while they had complied with the Direction of the Authority by not charging any client from the day the Direction was passed, the airlines continued to levy and collect the charges from the agents.

6.4.4 On the inadequacy of infrastructure, DCSC submitted that the observation made by the airlines was baseless; the stakeholders have not clarified the meaning of cut-off time; nor defined what exorbitant rate is. On the issue of temporary arrangement, DCSC has stated that the airlines were well aware of the shifting 6 months in advance and that the airlines have not incurred any additional costs but have only passed on the same to their agents/shipper.

6.4.5 As regards the comments received from DACAAI, DCSC pointed out that on the one hand DACAAI does not want any charges to be levied and on the other hand DACCAI want the charges to be levied on the airlines.

6.4.6 In conclusion, DCSC have submitted that neither the airlines nor DACCAI have submitted any relevant objection nor produced sufficient evidence on record to counter the proposal put forth by DCSC and have requested the Authority to approve the tariff as any further delay in approval would lead DCSC to serious financial hardship.

6.5 The Authority observed that none of the airlines or their associations had agreed to the proposal and that the airlines had commented on the inadequacy of the infrastructure; exorbitant rates and level of service. DCSC have on the other hand countered the views of the airlines stating that the airlines were aware of the shifting of the operations to the CUDCT in advance, that the level of service and infrastructure is adequate and the rates have been arrived at only after lengthy dialogues, discussions through formal meeting or exchange of emails.

7. In view of the divergent views of the stakeholders in the subject issue, a stakeholder consultation meeting was convened on 24.02.2011 which was attended by various stakeholders. The Authority also visited the DCSC facility along with the stakeholders on the same day. The Minutes of the Meeting were also uploaded on the Authority's website.

8. As an outcome of stakeholder consultation, DCSC were requested to re-examine their proposal and address the problems brought out regarding the lack of manpower, quality of service, etc., at the earliest. On the issue of unreasonable returns to DCSC, FIA was requested to indicate as to what, in their view, would be the return the service provider would earn. As regards the shifting of the operations to the interim Terminal, the Authority decided that it will peruse the relevant papers/decisions. In this light, DCSC, DIAL and FIA were requested to file necessary papers/documents to substantiate their views expressed by them in the meeting so that the Authority could thereafter take a final view in the matter. Vide letter dated 04.03.2011, to DCSC, DIAL and FIA were requested that the necessary papers/documents to substantiate their views expressed by them in the meeting be forwarded to the Authority. DCSC submitted its response vide letters dated 02.03.2011 and 08.03.2011. A reminder was sent to DIAL and FIA on 11.03.2011 stating that the desired information may be furnished latest by 14.03.2011 failing which it shall be construed that the submissions made during the stakeholder consultation were made without any basis or documents and the matter shall be considered by the Authority accordingly, without any further reference to DIAL/FIA. While DIAL vide letter no.DIAL/2010-11/Comm-Cargo/2702 dated 14.03.2011 has furnished its response, FIA did not respond as on date.

9.1 DCSC, vide letters No. Nil dated 02.03.2011 and 08.03.2011, furnished their clarifications on the various points raised by the stakeholders during the stakeholder consultation meeting.

9.2 As regards TSP charges, DCSC has clarified that it is a charge which is not only for services being provided for integrated cargo terminal operations but also involves element of infrastructure cost incurred on city side facilities of the cargo terminal including truck manoeuvring area, truck docks, cargo receiving and delivery areas, canteen and washroom facilities etc. It also includes offloading of 'ready for carriage' outbound cargo from trucks and getting it 'weight and volume checked', X ray screened etc. and that it is a 'pay and use' charge as is the worldwide practice. In the case of inbound cargo, it involves identical infrastructure and physical services rendered till delivery of cargo and loading the trucks and the same also involves interim storage and safe custody of goods in case of outbound cargo.

9.3 On the issue that TSP charges at IGIA should be lower because the volume is quite large compared to other airports, DCSC has stated that large volumes do not necessarily result in lower cost because there is step up cost related to bigger infrastructure, manpower and other operational cost like electricity and fuel. It has been submitted that the charges proposed at Delhi airport are already lower than Hyderabad and Bangalore airports by almost 30% and lower than Mumbai airport. Mumbai has considerable cargo volume and operates from a facility which is at an off the airport location. Further, from the profit and loss statement based on the existing charges already submitted to the Authority, it can be seen that the charges are quite reasonable and that the return on investment for the interim facility is very nominal. As far as handling rates are concerned, DCSC has claimed that their rates are comparable to Mumbai and lower than Hyderabad and Bangalore as per table below:

Charges	**DCSC**	**MIAL**	**HYD**	**BLR**
TSP-inbound	0·70	0·90	1.10	1.10 to 4.90
TSP-outbound	0.70	0.90	0.65	0.65
Handling- inbound	0.80	0.80	0.97	1.00
Handling- outbound	0.80	0.80	0.97	1.00
X-Ray charges m/c usage	0.75	1.25	1.50	1.70
X-Ray charges Screening	DIAL	Self screening	All inclusive	All inclusive
Build up area (Sq mts)	3500	1000 off airport facility	2000	4900
Tons handled per day	300 tons/day	100 tons/day	100 tons/day	100 tons/day

9.4 As regards the infrastructure cost, DCSC have submitted that any airport cargo facility needs to be built to a specification based on nature of cargo to be handled, load factor on flooring, area of facility required for facility etc and that higher the flooring strength, greater will be the cost per sqmt of flooring per civil work. It has been submitted that the flooring at domestic cargo terminal is to the tune of 3MT per sqmt; that almost 52% of cost is towards the civil cost to the warehouse space plus area on city side as well as landside (3500 sqmt built up plus 4000 sqmt open area). The Pre engineered structures and Electricals account for 29% and 10%, respectively of the total cost of Rs.5 crores.

9.5 In respect of the service standard related issues, it has been submitted that the delivery issues of goods in the beginning have been sorted out and the service levels are of very high standard. DCSC have stated that the average timing of cargo delivery is around 40 to 45 minutes and they are ready to enter into service level agreements with the airlines, which however have cost implications as it may entail deployment of additional resources. DCSC have also furnished the data indicating manpower deployment, % of service failures, timings of various activities etc.

9.6 Vide another letter dated 08.03.2011, DCSC reiterated their submissions made vide letter dated 02.03.2011 and requested the Authority to decide on the tariff proposal at the earliest as they have been rendering the services in the interest of trade and commerce but were not being paid for the same.

9.7 DCSC have reiterated that while TSP and handlings of DCSC are being compared or benchmarked against TSP and handling charges at other airports, the determination of these rates are done based on the cost incurred by DCSC against possible revenue to be earned to earn a reasonable return. DCSC has stated that, even though the return was very less they had gone ahead with these rates since:

(i) it was negotiated and discussed with DCSC customers prior to start of service; and

(ii) DCSC wanted to create an incentive for their customers to use their service.

9.8 It has been stated that if the facility was made for long term activities, then the cost of such facility would have been even higher and that the cost of X-ray machine, handling equipment are all being charged only on very low percentage basis, given that life of such equipment is 5 to 7 years depending on the nature and quantum of work. It may be noted that this is a 24 hours facility and, therefore, the X-ray machine is being continuously used, reducing its life further. It has also been submitted that additional equipment by way of scanners and hand held terminals are now installed or in the process of installation and the cost of such equipments is not considered in the cost of investment shown in the cost sheet submitted earlier. In DCSC's view if this facility would have been used for period longer than what is considered, it may have increased substantially the ROE due to increased asset base, increased operating cost due to inflation and reduced tonnage. DCSC have also pointed out that while they had shown a tonnage of 120677 MT for year 2010-11, actually they had handled only 96500 MT this financial year, a reduction of 20% in volume of cargo. Hence, revenue earned is expected to be lower, even though their costs have gone up due to increased manpower deployed which has major implication for their return, which was already low. Further, irrespective of the fact that the instant facility was prepared for interim solution, the facility is by no stretch of imagination deemed to be worse than the sheds from which the airlines were operating earlier. DCSC has submitted that this is a proper infrastructure of a warehouse and is comparable to similar warehouse anywhere else, protected from the vagaries of weather unlike the earlier arrangement of the airlines.

9.9 DCSC has reiterated that since this facility became functional, there has been no reported incident of pilferages except one in the beginning which was not substantiated by the concerned airline. Another incident of pilferage that happened outside the facility in the open was resolved with the help of CCTV feed.

9.10 DCSC have supported their claim with tables showing the:

(i) Deployment of manpower, which has kept pace with the increase in cargo volumes;

(ii) Percentage service failures since May'2010

9.11 DCSC also submitted the revised P&L Statement with returns. DCSC claimed a RoE of 8.99% from the financial projections over a three years, i.e., May'2010-March'2011; 2011-12 and 2012-13.

10.1 DIAL, vide their letter no.DIAL/2010-11/Comm-Cargo/2702 dated 14.03.2011 submitted that as per the provisions in the OMDA:

"JVC shall ensure that, within six (6) months from Effective Date, at least two unrelated (non-Group) Entities (of which one may be the JVC) are responsible for provision of cargo handling services at the Airport"

Accordingly, the DIAL Master plan envisaged two common user Cargo Terminals that would accommodate all international and domestic cargo careers operating from IGI Airport. Since the plan was still under execution and the need was immediate, to ensure provision of uninterrupted services, DIAL decided to create an interim domestic cargo terminal.

10.2 Further, DIAL submitted that the interim facility was setup to provide business continuity, since there was pressure from the concerned authorities to discontinue these activities from the Steel Gate area as it was creating congestion at the Steel Gate close to T1D area. The traffic congestion occurred because of road side cargo handling by domestic airlines which restricted free movement from this area and created security concerns. The congestion and security issue was raised strongly several times by various Government authorities like Central Industrial Security Force, Delhi Police, NSG, etc. who demanded to clear the area of encumbrances as it led to heavy traffic jams and security hazard. Subject issue was also raised by the Ministry of Civil Aviation in the Co-ordination meeting held on 25.01.2010 and in support of the claim have enclosed a copy of letter dated 02.02.10 from the CISF Unit IGI Airport, addressed to the Delhi Police with copy endorsed to the Ministry of Civil Aviation. DIAL has also stated that the Delhi Police wanted this area to be cleared as the road is designated as an alternate route for the movement of VVIP convoy from and to airside and enclosed a letter dated 09.02.2010 from CISF to Delhi Police in this regard.

10.3 DIAL have also enclosed a letter from SpiceJet dated 06.11.2008 wherein it has been stated that in view of the inadequacy of space most of their delivery is being effected at the Steel Gate and that for security reasons Ministry had taken objection to the same.SpiceJet had in view of the same requested DIAL to provide additional space until DIAL finds a permanent solution to the problem. DIAL vide its letter no.DIAL/CARGO/CoMM/SpiceJet/08/164 dated 20.11.2008 replied that they proposed to build a Common User Domestic Cargo Facility with proper airside and cityside access near gate 09, close to the present International Terminal. Accordingly, the interim Common User Domestic Terminal Interim Facility was commissioned moving Go Air, Indigo, Kingfisher and Spice Jet Airlines to the new facility and the steel gate was closed for movement effective 16.04.2010 duly notifying all the concerned Airlines and law enforcing agencies.

11. To Summarise:

(i) The Authority in its 26th Meeting held on 04.01.2011, after careful consideration of the proposal submitted by DCSC, decided to propose the approval of the tariff as proposed by the DCSC, w.e.f. 01.05.2010 and upto 30.11.2011 for stakeholder consultation. This ad-hoc determination was proposed to be reviewed at the stage of tariff determination for the first cycle and thereafter at such intervals as the Authority may decide.

(ii) As an outcome of stakeholder consultation, DCSC were requested to re-examine their proposal and address the problems brought out regarding the lack of manpower, quality of service, etc., at the earliest.

(iii) On the issue of unreasonable returns to DCSC, FIA was requested to indicate as to what, in their view, would be the return the service provider would earn.

(iv) As regards the shifting of the operations to the interim Terminal, DIAL was requested to justify/substantiate the move with the relevant papers/decisions.

(v) DCSC have vide their submissions dated 02.03.2011 and 08.03.2011 reiterated their proposal and justified the tariff.

(vi) DIAL have submitted relevant papers where the security concerns raised by the CISF/Delhi Police and the Ministry of Civil Aviation in the delivery of cargo at the Steel gate by the airlines have been discussed.

(vii) FIA have not replied, as on date, on the issue of unreasonable returns to DCSC despite the Authority's reminder dated 11.03.2011.

(viii) DCSC have submitted that they are facing financial difficulties as on one hand, they are unable to charge and collect user charges for the services rendered while on the other hand, they are regularly incurring expenditure for operating the facility including staff cost so as not to inconvenience the trade and industry by stopping handling services

(ix) The proposal made by DCSC seeks approval of the Authority for the tariff applicable to shippers/consignees/agents i.e the TSP and the tariff for TSP, handling and X-Ray machine usage and other charges to Airlines.

(x) The subject determination is a determination for the cargo tariff in the CUDCT for a period of 19 months from May, 2010, i.e., the time when DCSC's operations commenced from the CUDCT to November, 2011 when the green field terminal is scheduled to be in place.

(xi) The tariff applicable to shippers/consignees/agents, i.e , the TSP is claimed to have been arrived through consultation with DACAAI in March 2010.

(xii) The TSP applicable to shippers/consignees/agents as compared with the rates at BIAL and HIAL appear to be lower and reasonable.

(xiii) The tariff for TSP, handling, X-Ray machine usage and other charges leviable on the Airlines, is claimed to have been arrived after consultation with the domestic airlines viz., Spicejet, Kingfisher, GoAir and Indigo.

(xiv) The proposal submitted by DCSC is for both inbound and outbound cargo with no minimum rates as agreed to by DCSC in para 10 of the amended Minutes of the Meeting held with stakeholders on 06.05.2010.

(xv) The Authority's approach in respect of Cargo Services wherever such services are provided by Independent Service Providers, has been finalized vide Order No.12/2010-11 dated 10.01.2011. The Guidelines for determination of tariff for services for Cargo facility, Ground handling and supply of fuel to aircraft at airports have also been issued vide Direction No.04/2010-11 on 10.01.2011. However, DCSC has requested approval of tariff on basis of justification given above rather than based on Regulated Asset pricing model and have also stated that this being an interim facility, detailed examination of tariff proposal be dispensed with.

(xvi) During the stakeholder consultation process undertaken by the Authority, most of the users have expressed their disagreement with the rates proposed and have complained of bad quality of service.

(xvii) DCSC has claimed a RoE of 8.99% from the financial projections over a three years, i.e., May'2010-March'2011; 2011-12 and 2012-13. This does not appear to align with the 19 month lifespan assigned to the interim facility.

12. In the above background the Authority took up the matter for consideration in the 33rd meeting held on 22.3.2011 wherein the Authority sought clarifications in respect of position summarized in para 11 above from Shri Tushar Jani and Shri Radharaman Panicker who stated that:

(i) The interim terminal is proposed to be in operation only during the period May, 2010 to November, 2011. They have, however, indicated the financials for the period May 2010 to March 2013 to illustrate that even with a much longer period of operation return on equity would be only 8.99%.

(ii) The capital goods procured for utilization in the interim terminal are not being expensed out in the 19 month period of operation. They are in fact being depreciated over their useful life.

(iii) The expenditure on the interim terminal is likely to substantially increase from April 2011 mainly on account of higher staff costs and the license fee to be paid to DIAL. In terms of the agreement between DIAL and DCSC, the license fee is payable for the land utilized by DCSC from the second financial year onwards. Though, DCSC is in occupation of land both for the constructed facilities as well as open docking area the DCSC have attempted to contain the expenditure on this account by projecting license fee only in respect of the constructed area and small open area adjacent thereto.

(iv) The other cargo operator at IGI airport namely Celebi was originally scheduled to start only the domestic cargo from 1.1.2011 onwards. It is now estimated that they may commence these operations from July, 2011 onwards. Keeping in view this, DCSC estimates that after Celebi commence domestic cargo operations 30% of their business may shift to Celebi.

(v) It is true that quality of service in the interim terminal is not at a level which DCSC would want to provide. This is due to the fact that interim facility has a limited period of operation and any substantial capital expenditure in the facility would not be viable. However, DCSC has taken several steps in consultation with DIAL and stakeholders to ensure that quality of service is progressively improving. This has also been recognized by the stakeholders during the stakeholder consultation meeting held by the Authority on 24.2.2011. They undertake so further strengthen these efforts and put in place a grievance redressal system. Compliance will be reported to the Authority within 15 days. They are also agreeable to a rebate of 15% on the charges proposed by them on this count.

13. Upon careful consideration of material available on record, submissions made by the stakeholders and the personal submissions made on behalf of DCSC, the Authority is of the view that:

(i) Tariff has been proposed in respect of a facility which has a very limited period of operation, i.e., 19 months out of which more than 10 months have already elapsed. Therefore, a detailed tariff determination exercise would not be appropriate.

(ii) The charges have been proposed with reference to charges being levied at Delhi, Hyderabad and Mumbai airports for domestic cargo.

(iii) AAI have suggested a favorable consideration as the rates proposed are broadly in line with the rates charged by AAI.

(iv) The issue of quality of service is of paramount importance and the users have expressed serious concerns in this regard which have been very fairly admitted by DCSC. However, DCSC has made efforts to improve quality of service and have also undertaken to further strengthen their efforts in this regard. DCSC have also agreed to put in place a grievance redressal system. Therefore, the Authority, in its judgment felt that a rebate of 15% on the charges proposed (to be rounded off appropriately, if necessary) would strike a reasonable balance between the interest of the service provider (DCSC) and the users who have felt that the quality has not been at the desired level.

ORDER:

14. Accordingly, in exercise of powers conferred by Section 13(1)(a) of the Act, the Authority hereby approves the tariff leviable by Delhi Cargo Service Centre at the Common User Domestic Cargo Terminal, IGI Airport, New Delhi, for TSP Charges applicable to shippers/consignees/agents and the TSP, handling and X-Ray machine usage and other charges on Airlines as per the rates indicated below with effect from 01.05.2010 and upto 30.11.2011:

Tariff of charges by DCSC

I. Tariff Proposal for levy of Terminal Storage and Processing Charges (TSP) applicable to shippers/consignees/agents

S.No	CHARGES		
1	TSP CHARGES	If invoiced	If paid in Cash
a.	General Cargo	INR 0.60/kg	INR 0.55/kg
b.	Special Cargo		
	Live Animal	INR 1.20/kg	INR 1.15/kg
	Dangerous Goods	INR 1.20/kg	INR 1.15/kg
	Valuable Cargo	INR 1.20/kg	INR 1.15/kg
c.	Couriers	INR 0.60/kg	INR 0.55/kg

2	DEMURRAGE CHARGES	
a.	General Cargo	INR 0.60/kg/day
b.	Special Cargo	
c.	Live Animal	INR 1.20/kg/day
	Dangerous Goods	INR 1.20/kg/day
	Valuable Cargo	INR 1.20/kg/day
c.	Couriers:	INR 0.60/kg/day

II. Tariff Proposal for levy of TSP, handling and X-Ray machine usage and other charges to Airlines.

OUTBOUND & INBOUND HANDLING	
1 Outbound & Inbound Cargo	INR 0.70 per kg.
2 Trans-shipment Cargo & Offloaded Cargo	INR 1.00 per kg.
3 Storage Charges beyond Free Period of 24 hrs.	INR 0.70 per kg.
4 X-Ray Machine Usage Charges) (except Airlines Stock)	INR 0.65 per kg
5 X-Ray Machine Charges (except Airlines Stock) if provided by Handling company	INR 0.65 per kg.
6 TSP & Demurrage charges	As applicable to shippers/Consignees

ADDITIONAL SERVICES & CHARGES	
1.DGR acceptance check	INR 1190/- per AWB subject to maximum of 20 pieces per AWB. Additional pieces will be charged @ INR 64/- per additional piece
2. Dry Ice acceptance checklist	INR 595/- per AWB
3. Live Animal acceptance and Handling	INR 1795/- per AWB
4. Valuable Handling	INR 637/- per AWB

Consequent to the above approval, the Direction No.03/2010-11 dated 06.10.2010, which was issued in the interim to DCSC to stop charging to stop charging the TSP charges, Unitization and De-unitization charges with effect from 01.05.2010, in respect of domestic cargo at the IGI Airport, New Delhi would not be applicable any more.

By the Order of and in the Name of the Authority

(Sandeep Prakash)
Secretary

To,

Delhi Cargo Service Center Pvt Ltd.,
A-294/1, Road No.06,
NH- 8, Mahipalpur Extension,
New Delhi – 110 037
(Through : Shri Radharamanan Panicker, Director & CEO)

Copy to

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