

[F. No. AERA/30010/HC-WP/2011] / 14 & 15

Airports Economic Regulatory Authority of India

Order No. 11/2011-12

**AERA Building
Administrative Building,
Safdarjung Airport,
New Delhi – 110003.**

Date of Order: 30th September, 2011

Date of Issue: 30th September, 2011

**In the matter of representations made by Resources for Aviation
Redressal Association for including them in the list of AERA
stakeholders**

1. Background:

1.1. In terms of Section 13(4) of the Airports Economic Regulatory Authority Act, 2008 (i.e. the Act), the Airports Economic Regulatory Authority of India (i.e. the Authority) is required to ensure transparency while exercising its powers and discharging its functions, inter-alia, "(a) by holding due consultations with **all stakeholders** with the airport".

1.2. The Act defines stakeholders (in Section 2(o) thereof) as under:

"stake holder includes a licensee of an airport, airlines operating thereat, a person who provides aeronautical services, and any association of individuals, which in the opinion of the Authority, represents the passenger or cargo facility users."

1.3. In pursuance of the above provisions of the Act, the Authority had issued a Consultation Paper No.2/2009-10 on 8.10.2009 to solicit comments of all concerned on the Guidelines proposed to be adopted in respect of "stakeholders" for conduct of due consultation under the Act. It was noted in the said Consultation Paper that ".... 3.2 The 'stake-holders' would, as such, fall in following categories:

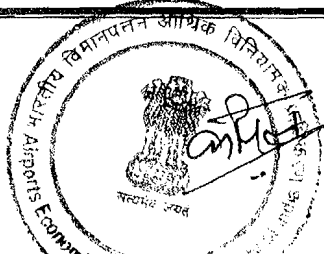
1.3.a. licensee of an airport;

1.3.b. airlines operating at an airport;

1.3.c. any person who provides aeronautical services;

1.3.d. any association of individuals, which in the opinion of the Authority, represents the passengers; and

1.3.e. any association of individuals, which in the opinion of the Authority, represents the cargo facility users"



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1.4. It was observed that the entities at (i) to (iii) above can be easily identified in respect of any airport. As regards, the association of individuals which represent the cargo facility users, i.e., (v) above, it is understood that, normally, at every airport having cargo facility, the Associations representing Freight Forwarders, Custom House Agents etc. are duly identified, which are, as a matter of practice, consulted by the airport operators/regulatory agencies. Further, most of the air cargo movements in our country relate to international trade, i.e., import and export. The Federation of Indian Export Organizations (FIEO) is recognized as an apex body representing the interests of the importers and exporters.

1.5. The passengers at airports, broadly, fall in the following categories:

1.5.a. *travellers where cost of travel is borne by the relevant corporate house/business enterprise.*

1.5.b. *Government/PSU/Statutory Body officials where cost of travel is borne by the Government/PSU/Statutory Body concerned.*

1.5.c. *Leisure/individual travellers where cost of travel is borne by the individual concerned.....”*

1.6. Keeping in view above, it was proposed that:

1.6.a. ***The interests of the corporate houses/business enterprises are represented at national level by three apex chambers of commerce and industries viz., Federation of Indian Chambers of Commerce and Industry (FICCI), Confederation of Indian Industry (CII) and Associated Chambers of Commerce and Industry (ASSOCHAM). Therefore, these apex chambers could represent the concerns of the business travellers whose travel is paid for by the corporate houses/business enterprises concerned. In addition, at local levels, several chambers of commerce and industries are generally recognized to represent the interests of the local industry and enterprise such as the PHD Chambers of Commerce and Industry (in Delhi), Indian Merchants Chamber (in Mumbai) etc.....***

1.6.b. *Travel on account of Government is normally guided by the instructions issued by the Department of Expenditure in so far as the Central Government and its organizations are concerned. In respect of the State Governments, mostly State Finance Departments are concerned in the matter. Therefore, concerns of the passengers traveling on Government account could be represented by the Department of Expenditure, Government of India and the respective State Government through their nominees*

1.6.c. *The leisure/individual travellers would need to be represented adequately through representative consumer organizations. The Department of Consumer Affairs, Government of India, which is the nodal Department in this regard, could suggest one or more consumer organizations to represent the interests of such passengers at major airports.....”*



1.7. Accordingly it was proposed to hold consultation with the following entities/representatives in so far as the **passenger or cargo facility users** are concerned: “....

1.7.a. Cargo Facility Users:

1.7.a.i Local Associations of Freight Forwarders, Custom House Agents etc. In addition, apex chambers such as FIEO, FICCI, CII, and ASSOCHAM may also be consulted.

1.7.b. Passengers:

1.7.b.i FICCI, ASSOCHAM, CII and any local chamber;

1.7.b.ii Representative(s) of the Central Government;

1.7.b.iii Representative(s) of the State Government concerned;

1.7.b.iv One or more consumer organizations as may be suggested by the Department of Consumer Affairs.....”

1.8. In reply to the Consultation Paper No 02/2009-10, comments of various organizations, including FIEO, CII, FICCI etc were received who agreed to be a regular part of the consultation process with the Authority. The Ministry of Finance, suggested that the Joint Secretary & Financial Advisor of Ministry of Civil Aviation and one representative of MOCA could represent views of the Central Government. Similarly, the various state Governments welcomed the consultation process and agreed to be a part of this process on regular basis.

1.9. The Department of Consumer Affairs, Govt. Of India vide its letter O-14011/15/2009-CWF dated 14.10.2009 furnished a list of 33 consumer organizations, which were nominated to the Central Consumer Protection Council or nominated to the BIS or were registered under the BIS scheme. After due stakeholder consultation, the Authority decided that following organizations/persons shall be consulted, on a regular basis, so as to represent the cargo facility users and the passengers:

1.9.a. Cargo Facility Users:

1.9.a.i Local Associations of Freight Forwarders, Air Cargo Agents, Custom House Agents etc. In addition, apex chambers such as FIEO, FICCI, CII, and ASSOCHAM may also be consulted.

1.9.b. Passengers:

1.9.b.i Business Travellers: FICCI, ASSOCHAM, CII and any local chamber;

1.9.b.ii Passengers travelling on account of Central Government/ Central PSUs/Statutory Body/Autonomous Bodies – Joint Secretary & Financial Advisor, Ministry of Civil Aviation, and a representative of Ministry of Civil Aviation.

1.9.b.iii Passengers travelling on account of State Governments/ State PSUs/Statutory Bodies/Autonomous Bodies – Respective State Governments through the Chief Secretary concerned.

1.9.b.iv Leisure/Individual Travellers –



- 1.9.b.v Voluntary Organization in Interest of Consumer Education (VOICE), 441, Jangpura, Mathura Road, New Delhi – 110014.
- 1.9.b.vi Consumer Education and Research Center (CERC), Suraksha Sankool, Thaltej, Sarkhej-Gandhinagar Highway, Ahmedabad-380054, Gujarat.
- 1.9.b.vii Consumer Unity & Trust Society (CUTS), D-127, Bhaskar Marg, Bani Park, Jaipur 302 016, Rajasthan.

1.10. Thereafter, the Authority issued the policy guidelines titled "Guidelines on Stakeholder Consultation" dated 14.12.2009, wherein all the above organizations were included in the list of stakeholders to be regularly consulted on various issues. However, it was clarified in the Guidelines that issues coming up for decision of the Authority would be decided through an open consultative process in which organizations/ persons other than those listed can also comment/respond.

1.11. Subsequently, the Authority received a representation that Express Cargo Industry is an important part of the air cargo industry. Therefore, there was a need to separately recognize this industry and appropriately represent it in the stakeholder consultation process. It was observed that the Express Industry Council of India (EICI), a representative body of the express industry, had been representing the interests of this part of air cargo industry even in the Working Group of Air Cargo/Express Service Industry under the Civil Aviation Economic Advisory Council constituted by the Ministry of Civil Aviation, vide Order F. No. AV.13011/13/2011-ER dated 17.1.2011.

1.12. Further, the Authority observed that the Air Passenger Association of India (APAI) has been recognized and associated by the Ministry of Civil Aviation in the Civil Aviation Economic Advisory Council constituted by it vide Order F. No. AV.13011/06/2010-DT dated 9.12.2010 and the Working Group on regulatory framework to protect consumer interest constituted vide Order F. No. AV.13011/07/2010-DT dated 20.12.2010. APAI had air passengers as its focus and hence could be particularly germane to the consultation process of the Authority.

1.13. Keeping in view the above facts, the Authority issued Consultation Paper No. 15/2010-11 dated 1.03.2011 proposing the inclusion of EICI and APAI in AERA's stakeholder list. After due consultation process, the Authority included EICI and APAI, so as to represent the interest of cargo facility users and passengers, as stakeholders to be regularly consulted vide its order issued from F. No. AERA/35014/Stake/2009 dated 24.03.2011.

1.14. It may be noted that before they were included in the list of stakeholders to be consulted by the Authority, both EICI as well as APAI contributed to the various consultation processes by way of their comments on issues being dealt with by the Authority in various Consultation Papers.

1.15. Subsequently, the Resources of Aviation Redressal Association (hereinafter referred to as ROAR), claiming to be an association of individuals, vide its letter dated 7.5.11 (received by the Authority on 09.05.2011) informed:



1.15.a. That it was an association of 4000 members and fighting for the causes of air travellers.

1.15.b. That it had filed a PIL before the Hon'ble Delhi High Court against levy and collection of DF at IGI Airport, New Delhi and the matter was finally decided by the Supreme Court wherein it was held that

1.15.b.i DF could not be levied and collected by DIAL & MIAL

1.15.b.ii Declared that w.e.f. 01/01/2009 no DF could be levied or collected from embarking passengers at major airports under Section 22A of the AAI Act unless AERA determines the rates of such DF through proper process.

1.15.b.iii That as the association was stakeholder for the interest of the air travellers, it be taken on the panel of AERA to take suggestions in the interest of general travelling public so that interest of air travellers is taken care of; and

1.15.b.iv It enclosed a brief of major issues taken up by it (though not supported by any documents).

1.16. ROAR reiterated its request vide letter dated 12.5.2011, which was received on 18.05.2011. This letter of 12.05.2011 was followed by a legal notice dated 19.5.2011, wherein the following was highlighted:

1.16.a. List of certain cases filed by them were elaborated upon, including the case pertaining to levy and collection of DF by DIAL & MIAL, matter regarding formation of JVs by DIAL in contravention of the provisions of OMDA, possible rigging of tendering process pertaining to Consultancy Contract for Commercial Department and Non traffic revenue.

1.16.b. It was stated that they are an organisation dedicatedly pursuing issues of public importance vis-a-vis air travel sector.

1.16.c. It raised some objections regarding issuance of the Consultation paper No 02/2011-12 in respect of Review of DF at IGI Airport, Delhi.

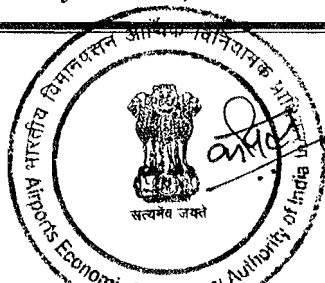
1.16.d. It requested that ROAR be included as stakeholder in terms of section 2(o) of the AERA Act 2008, failing which it shall seek legal remedy.

1.17. However, along with the above referred communications no document was annexed in support of the claims regarding ROAR being an association of individuals or in reference to various issues/achievements mentioned in the letter.

2. Proceedings in Writ Petition No. 5007/2011:

2.1. Subsequently, ROAR filed a Writ Petition No. 5007/2011 in the Hon'ble Delhi high Court seeking issue of a Writ of Mandamus directing the Authority to take it on the list of stakeholders and to restrain the Authority from taking any decision regarding levy of DF at IGI airport without considering its objections.

2.2. The Hon'ble High Court issued notice to the Authority on the above Writ Petition, inter alia directing to file its counter affidavit, vide its order dated 19.7.2011. However, in view of the position indicated above, it was decided by the Authority to consider the said representations dated 7.5.2011, 12.5.2011 and 19.5.2011 submitted by ROAR, with the leave of the Hon'ble



High court. Accordingly, a Civil Miscellaneous Application was filed before Delhi High Court with following submissions:

2.2.a. *That the Authority may be permitted to decide representation dated 7.5.2011 of M/s ROAR with a speaking order within a period of four weeks as and when permitted by the Hon'ble High Court.*

2.2.b. *That the Writ Petition may be disposed off by the Hon'ble High court with liberty to ROAR to assail order as may be passed by the Authority, in case aggrieved.*

2.3. The Hon'ble High Court of Delhi allowed the said CM NO. 11298/2011 and disposed off the Writ Petition vide order dated 4.8.2011 wherein the Authority was asked to consider the representations of ROAR and ROAR was asked to submit within a period of seven days, any further material, which it wishes to submit before the Authority for consideration of its representation. The Court ruled that the decision on the said representation will be communicated both to ROAR as well as DIAL. Further, during the course of hearing, DIAL's advocate represented to the Court that the Authority while deciding so may also take into consideration submissions made by DIAL in opposition to the petition of ROAR.

2.4. Accordingly, both ROAR and DIAL made separate submissions before the Authority and were given personal hearing. The summary of these submissions is given below, including the ones made during personal hearing (paras 3 & 4 infra). Thereafter, the observations of the Authority are indicated in para 5. The Conclusions arrived at by the Authority are in para 6 and its order is in para 7.

3. Further Submission of ROAR

3.1. In compliance with the directions contained in Hon'ble High Court's Order dated 4.8.2011, ROAR has submitted additional material vide its letter dated 10.08.2011, whereby it has submitted:

3.1.a. *Copy of Registration Certificate,*

3.1.b. *Memorandum of Association,*

3.1.c. *List of Ordinary members,*

3.1.d. *list of contributory members,*

3.1.e. *Balance Sheet,*

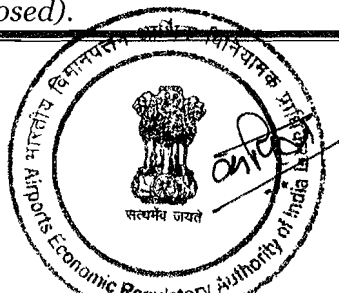
3.1.f. *Income/Expenditure Statement and Computation of Income*

3.1.g. *Income Tax Returns for Assessment Year 09-10 and 10-11;&*

3.1.h. *Bank Statements.*

3.2. ROAR has stated that:

3.2.a. *It is a society registered under Societies Registration Act 1860 registered with Assistant Registrar of Societies, Greater Bombay Region with Registration No. 15(5) Maharashtra State, Mumbai. (A copy of Registration certificate, MOA and list of Ordinary and contributory members have been enclosed).*



3.2.b. *Reiterated its achievements like –*

- 3.2.b.i *Filing of PIL against levy and collection of DF by DIAL & MIAL before the Hon'ble Delhi High Court, which was finally heard by the Supreme Court and it was ordered that DF being levied by DIAL & MIAL on ad hoc basis was illegal & ultra vires and the same was finally struck down.*
- 3.2.b.ii *Filing of PIL before the Delhi high Court against levy of DF by DIAL pursuant to Public Notice No 03/2010-11 issued by AERA and filing of appeal on this issue before the AERA Appellate Tribunal – consequent upon such direction by the Delhi High Court.*
- 3.2.b.iii *Filing of PIL before the Hon'ble Bombay High Court assailing air traffic congestion at Mumbai Airport and resultant improvement in the situation thereat.*
- 3.2.b.iv *Raising the issue of formation of JVs by DIAL in contravention of the provisions of OMDA and resultant loss of revenue to the state exchequer.*
- 3.2.b.v *Submission of its comments on the Consultation Paper No 02/2011-12 in the matter of review of DF at IGI Airport. (on direction of Hon'ble Delhi High Court).*
- 3.2.b.vi *Raising the issue of possible rigging of tendering process pertaining to Consultancy Contract for Commercial Department & Non Traffic Revenue.*
- 3.2.b.vii *Persistent follow up with AAI, DIAL, MIAL, MoCA and DGCA and other authorities, with regard to any substantial grievance, which affects a large cross section of the air travelling passengers.*

3.3. It stated that for vested reasons, DIAL would not prefer ROAR to be included as stakeholder under any circumstances.

3.4. It further mentioned that the allegations on ROAR of being “busy body” or “persons with vested interest”, are wrong. It narrated following facts in support of the claim:

3.4.a. *The levy of ADF pursuant to the latter dated 9.2.2009 and 27.2.2009 was illegal and ultra vires, so declared by the Hon'ble Supreme Court shows that both DIAL and MIAL have collected and retained the development fees illegally.*

3.4.b. *The fact that no permission of any nature whatsoever, was given by the Authority to levy interim ADF vide public notice dated 23.04.2010, was also supported by the Authority.*

3.4.c. *On the issue of forming joint ventures at IGI Airport by DIAL and thereby, causing a systematic drain on the state exchequer, the Authority not only found substance in the contention of the ROAR, but also included its own assessment of the fallacy of arrangement indulged into by DIAL in its letter dated 4.11.2010 written to the Ministry.*

3.4.d. *With regard to the matter of Air Traffic Congestion at Mumbai Airport the Ministry issued directions to the Airlines to control the delayed departure only after it was impleaded in the public interest litigation file by the ROAR.*



3.4.e. Giving reference to above, ROAR contended that none of the above narrated examples can remotely be linked with any kind of "vested interest" on part of ROAR. They also mentioned that Federation of Indian Airlines (FIA) had also raised serious objection against the levy of ADF on similar grounds. Further, it mentioned that merely some of Members of ROAR were in contractual relations/litigation with DIAL, it is wrong on part of DIAL to label them a busy body with vested interests.

3.5. The representations made by ROAR (dated 7.5.2011, 12.5.2011, 19.5.2011 & 10.8.2011) were forwarded to DIAL for obtaining its comments thereon, vide Authority's Letter dated 19.8.2011. DIAL submitted its comments/objections on the representations of M/s ROAR vide its letter no. DIAL/2010-11/Fin-Acc/1019 dated 26.8.2011 inter alia mentioning therein:

3.5.a. ROAR is a busy body formed by some vested interests, with the ulterior purpose/objective of chocking/blocking funds and blackmailing Airport Operators for contracts and concessions at these airport and does not truly espouse the cause of air passengers.

3.5.b. ROAR is owned and controlled by one Mr. P.K. Agarwal, Managing Director and Sh. Sudhir Kumar, Director of P.K. Hospitality Services Pvt. Limited, which was an erstwhile concessionaire at IGI Airport and who was an unsuccessful bidder for food and beverage tender at the IGI Airport. Agarwal family through persons under their control and influence use ROAR for their vested business interests. Though ROAR has given its registered office as 803, Vanrai Nisarga Cooperative Housing Society, Western Express Highway, Goregaon (E), Mumbai, but there is no such office at this address. Instead this property is used to house some of the cooks/staff of Hotel Golden Chariot. The Hotel Golden Chariot is reportedly owned by M/s P K Hospitality Services Pvt Ltd.

3.5.c. The objects of the society, as set out in its MOA, are bereft of any aim of the Society to espouse the cause of air passengers.

3.5.d. The rules of ROAR restrict its jurisdiction within state of Maharashtra and therefore ROAR is debarred from being a stakeholder for IGI Airport, Delhi.

3.5.e. The Authority has a public consultation mechanism and issues consultation papers inviting views of the public and the petitioner need not be formally recognized as stakeholder in order to give their views and suggestions.

3.5.f. In the present case of determination of ADF, this Authority has already issued a consultation paper inviting suggestions and views of the general public and ROAR did not submit any suggestions or objections within the time prescribed.

3.5.g. Up to now three Associations of Individuals have already been considered by the AERA as "Stakeholder" after being satisfied that they represent the passengers, except for some bald and unsubstantiated averments and in any case the list cannot stretch to include each and every organisation of passengers which would make the whole consultation process cumbersome and fraught with delays.

3.5.h. ROAR has not provided any material to AERA, whether in their representation or otherwise, showing that it represents the passengers so as



to enable AERA to form an opinion as required under Section 2 (o) of the Act.

3.5.i. The bonafide of ROAR is suspected. It has been formed for the purpose of chocking/blocking funds and blackmailing Airport Operators and does not truly espouse the cause of air passengers. It stated that:

3.5.i.i Numerous members of ROAR are in fact in the employment of PK Hospitality Services Pvt Limited – which is company where Sh PK Agarwal and his brother Sh Sudhir Agarwal are both Directors.

3.5.i.ii The bank account of roar is jointly operated by Sh PK Agarwal and Sh Raj Kumar Mehrotra (who is in employment of PK Hospitality)

3.5.i.iii Even in the statement of income and expenses, the only major expenditure head is "legal expenses". In fact the expenses towards salary for staff in ROAR are meagre as compared to the legal expenses.

3.5.i.iv Though earlier it claimed to have 4000 members, but it has submitted a list of only 894 contributory and 924 ordinary members. This in itself is a major discrepancy.

3.5.j. It cited the following case laws:

3.5.j.i CA no 994 of 1972 SP Changalavaraya Naidu Vs Jagannath and others.

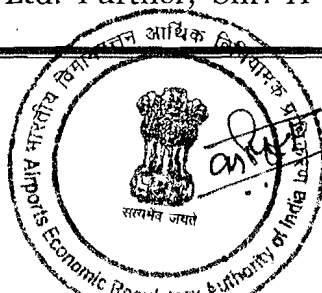
3.5.j.ii CA No 6527/200 decided on 12.07.2006 Kushum Lata Vs UoI.

3.6. It was also stated that ROAR has withheld necessary and crucial information before the High Court and before AERA as well as AERAAT.

4. Personal Hearing:

4.1. Both ROAR & DIAL were called for a personal hearing before the Authority at 3 PM on 26.8.2011 vide letter no AERA/30010/HC-WP/2011 dated 19.08.2011. DIAL attended the personal hearing. However, the letter addressed to ROAR was returned by postal authorities as undelivered. The same was faxed to the telephone number mentioned on its letter head. However, ROAR expressed its inability to attend the hearing vide its Letter No. Nil dated 25.08.2011.

4.2. Sh. Atul Sharma, Advocate who appeared for DIAL reiterated the averments made in DIAL's letter dated 26.8.2011. The Authority observed that, in their written submission, DIAL has made averments to the effect that ROAR is a busy body which has been formed as a front by Sh. P.K. Agarwal, Managing Director and Shri Sudhir Agarwal, Director of M/s P.K. Hospitality Service Private Limited which was an erstwhile concessionaire at the IGI Airport, New Delhi and who had also unsuccessfully bid for a F & B Tender at the IGI Airport, New Delhi. In support of this contention they made various statements like that the premises shown as the Registered office of ROAR actually has no office and is being use to house cooks/staff of hotel Golden Chariot which is reportedly owned by M/s PK Hospitality Services Pvt. Ltd. Shri Alok Ganesh Chatterji, Sh. Mahesh Pathak and Sh. Raj Kumar Mehrotra, who are founding members of ROAR are, actually employees of M/s PK Hospitality Services Pvt. Ltd. Further, Shri A Vishwanath working as GM



Corporate Services of M/s PK Hospitality Services Pvt. Ltd. is also a member of ROAR and has signed the statement of Income and Expenditure of ROAR in the capacity of Hony Secretary. Upon being asked, Sh. Sharma stated that though these statements of facts are not supported by any documentary evidence, in his view unless ROAR rebuts and effectively denies the same, the Authority should presume that DIAL's averments are true and correct. Sh. Sharma also clarified that the averments regarding alleged perjury committed by ROAR is a matter relevant to Hon'ble Appellate Tribunal and was not pressed for consideration of the Authority. As regards to the jurisdiction, he clarified that the issue of jurisdiction being confined to Maharashtra was raised as a circumstantial evidence to indicate that ROAR had never contemplated to play a role outside the State of Maharashtra. Therefore, even though there was no bar in law on ROAR from acting outside the state of Maharashtra, it admittedly did not contemplate to do so which is a relevant factor for consideration of the Authority.

4.3. ROAR vide its letter dated 26.8.2011 had communicated its convenience for personal hearing 29.8.2011 at 4 PM. The Authority decided to give one more opportunity of personal hearing to ROAR on 29.08.2011 at 4 PM. On request of DIAL to remain present during the personal hearing on 29.8.2011, the Authority allowed the same in the interest of justice.

4.4. Sh. R.K. Mchrotra Member and Sh. Rakesh Sinha, Advocate appeared for ROAR on 29.8.2011 and reiterated their written submissions already made before the Authority. Sh. Sinha highlighted that in view of the Hon'ble Supreme Court's judgment dated 26.4.2011, in the PIL filed by ROAR against levy of the DF by DIAL/MIAL, it was not open to DIAL to challenge their bonafide. The representatives from DIAL were also present. ROAR was given opportunity to submit its comments on the submissions of DIAL made in its letter dated 26.8.2011. ROAR submitted its comments on the submissions of DIAL vide its letter dated 1.9.2011 in which it has mentioned that:

4.4.a. The objection of the DIAL for not including ROAR and consideration of such objection by the Authority is not comprehensible.

4.4.b. Provisions of Section 2(o) require AERA to determine stake holders as being representatives of operators or passenger bodies. The intention of legislature was very clearly to create a system of checks and measures by participation of both the operators as well as the travelling public or the end users so that monopolistic practices pertaining to revenue or finance or charging of exorbitant fees could be curbed under overall supervision of AERA.

4.4.c. AERA, as of date, has no active representation of stakeholders except representatives of Airlines and/or private airport operators, who have monopolistic control of the diverse operations. The consumer bodies, which have been included as stakeholder, do not represent the air travelling passengers. The Authority has no active representation or means of knowing the view of the everyday passengers and while ROAR is seeking to infuse those views and initiate steps to correct the wrongs committed by such private operators as well as AAI and AERA instead of throwing out such objections as being contrary to public interest and even the mandate of the legislature behind the said section 2(o), is rather to the contrary being



swayed by the said objections and is also seemingly resisting the inclusion of ROAR as a stake holder.

4.4.d. Referring to the observations of the Hon'ble Delhi High Court as contained in order dated 19.7.2011 in Writ Petition No. 5007/2011, it has mentioned that Delhi High Court was never informed as to how the above referred stakeholders, already on the list of the Authority were appointed and that these stakeholders have never participated/contributed in any consultation process initiated by the Authority till date.

4.4.e. AERA has on its panel stakeholders such as "Association of Private Airport Operators" who have vide their written submissions dated 13.5.2011, supported the levy of ADF as proposed by the DIAL without any modification. It also mentioned that AERA does not wish to have any serious objections or inputs from the passenger bodies, which it would be mandatorily liable to consider. It stated that it is indicative of the fact that AERA decides the inclusion of stake holders on the basis of the recommendation or objections of existing stake holders which was not the legislative intent.

4.4.f. DIAL had also made the same objections on the question of consideration of inclusion of ROAR as a stakeholder before Delhi High court and despite, the said objections, the Hon'ble High court considering public interest, permitted ROAR to submit their representation on consultation paper and directed the Authority to consider the same as if the representation was made by stakeholder within meaning of Section 2(o).

4.4.g. DIAL in proceedings before various courts, has labelled ROAR as busybody and as a front of Mr. P.K. Agarwal and that the Authority has also deemed it fit to consider such a objection, despite the fact that bonafide of the ROAR has been accepted by Supreme Court, Delhi/Mumbai High Court.

4.4.h. ROAR took the matter of Air Congestion in Mumbai Airport in a PIL before Supreme Court and as a result there was drastic reduction in air congestion at CSI Airport.

4.4.i. ROAR has not confined its activity to DIAL and MIAL but has taken up various issues with AAI and other Authorities against misuse of public fund and public property. ROAR attached a list of some of the issues, reportedly taken up by it with AAI and other Authorities, e.g. , high car parking rates at CSI Mumbai, revenue sharing between AAI and MIAL/DIAL, revenue loss to AAI because of JVs between MIAL/DIAL and sub-contractors, allotment of Airport land to hotel Leela, revenue loss due to accounts manipulation by MIAL/DIAL, use of Airport land for slum rehabilitation against aviation related works, depriving of its share to AAI in revenue by hotel Leela Venture, development of commercial areas to earn more revenue and neglected the improvements in air side, complaints to CIC against private operators for not divulging details under RTI etc.

4.4.j. DIAL, while alleging that ROAR is a front for PK Agarwal, many members of ROAR are employees of PK Hospitality etc, has not mentioned the collection of nearly Rs 2000 Crores by them between 09.02.2009 and 26.04.2011 – based on illegal and ultra vires letter issued by the central Government, which were struck down by the Hon'ble Supreme Court. Thus a sum of Rs 2000 Crores of public money has been illegally pocketed by



DIAL, which was prevented only due to initiative by ROAR and thus it does not lie in the mouth of DIAL to question ROAR's bona fide.

4.4.k. So far DIAL has failed to highlight even a single objection raised thus far by ROAR was either wrong or disallowed by the Courts or would result in a contract being awarded to PK Hospitality and group companies.

4.4.l. DIAL has not pointed out as to how involvement of Mr. P.K. Agarwal or his top employees in a public body was contrary to law or be construed as malafide.

4.4.m. ROAR counter alleged that DIAL has mentioned that the latter has tried to the break the resistance from ROAR by means of bribes and coercion. ROAR has also mentioned that it has reason to believe that DIAL was instrumental in roping in police authorities from Andhra Pradesh for issuing threats to back out when case pertaining to levy of ADF was pending before Hon'ble Supreme Court.

4.4.n. Notwithstanding the alleged knowledge on part of DIAL that ROAR was a front of Mr. P.K. Agarwal and that the organisation was only a means of securing contract for P.K. hospitality and group companies, DIAL had as recently as on 12.3.2010, of their own volition issued the RFQ documents to the said P.K. Hospitality Service Ltd and called upon them to submit their bids for the contract of Staff Canteen at IGI Airport. This demonstrates the false and baseless nature of allegations levelled against Mr. Agarwal and particularly of ROAR being means of securing contracts.

4.4.o. DIAL has failed to point out as to how the ADF at other airports could have been challenged when the same is being managed by the AAI and levy is collected by AAI as per Section 22A of the AAI Act.

4.5. In reply to the points raised during the personal hearing held on 29.08. 2011 following has been submitted:

4.5.a. On the question of not participating in other consultation process, it mentioned that it is a voluntary organisation and not managed by vast staff strength. Therefore, it was not possible for them to keep tab on each and every activity in aviation industry. Further, it is taking up the issues which come to their knowledge through media report or on the basis of personal experience of its members. Further, the Act does not contemplate that any person could participate in any consultation process and it is only a 'stakeholder' whose objections can be considered by the Authority, as per Act.

4.5.b. The Act obliges the Authority to consider objections only through "stakeholders" and as such the question as to why ROAR have not participated in other consultation paper is purely rhetorical.

4.5.c. As regards the objection from a member of public to any consultation paper, it has mentioned that the same is not at par with the objection raised by a stakeholder and the same weightage to the both are not expected. Further, ROAR has written several letters, as a general public to the Authority about the illegal levy of DF by DIAL in pursuant to the orders of MOCA, despite that Authority did not take any action to stop the levy of the DF.



4.5.d. On the question of limitation to the area of operation in their MOA, it has been submitted that this is a purely technical issue and steps have been initiated to modify the relevant clause.

4.6. In response to the submissions made by the ROAR during the personal hearing dated 29.8.2011, DIAL further submitted additional comments partly reiterating its averments as made in its letter dated 26.8.2011. In addition to the averments made earlier, DIAL has mentioned in its letter dated 2.9.2011 that:

4.6.a. No additional material or data is provided to a stakeholder other than which is made available to general public on the website of the Authority. Therefore, having failed to submit its objections to Consultation Paper No. 2/2011-12, in time as a member of general public, ROAR, is now trying to raise the same as 'stakeholder' on the plea that stakeholders have access to some additional documents which are not accessible to general public.

4.6.b. The objection with regard to the bonafide of ROAR were not taken by the DIAL before supreme Court as it was not aware of the fact that ROAR was front to achieve business objectives of Mr. P.K. Agarwal and its family. Further issue of whether ROAR truly represents the bonafide interest of flyers/consumers was not adjudicated by the Hon'ble Supreme Court.

4.6.c. The Supreme Court decided four Civil Appeals (No. 3611-3614) with a common order and ROAR was Appellant in CA No. 3612. Hence it was wrong on part of ROAR to claim that judgment was the sole outcome of its Civil Appeal, specifically, when Supreme Court treated the CA No. 3611 filed by Consumer Online Foundation, as the lead appeal.

4.6.d. ROAR, having failed to submit any explanation or proof of such Petitions/issues, as claimed to be filed/taken up by it, the same are deserved to be ignored.

4.6.e. The claim of the ROAR that its name suggests that it has been set up to promote the interest of members of the public who travel through air, though, the objects do not contain any reference to the same, is wrong. Any action of society which is beyond its objects, amounts to breach of trust and make it liable to be proceeded against under the law by any of its members.

4.7. Supporting its contentions, DIAL has also enclosed following case laws:

S No	Particulars
1.	M. Venkatarammana Hebbar Vs. M. Rajagopal Hebbar and others
2.	Lohia Properties P Limited Vs. Atma Ram Kumar
3.	Mintu Bhakta Vs. State of West Bengal

5. Observations of the Authority

5.1. The Authority has carefully gone through and considered the various submissions made in the matter. Its observations are given below:



5.2. ROAR is a society registered under the Societies Registration Act with Assistant Registrar of Societies, Greater Bombay Region, Mumbai. Society Registration Act does not contemplate that the Society should restrict its jurisdiction to any particular state.

5.3. Its Memorandum of Association does not include any specific objective related to the aviation sector. Although ROAR has mentioned that action to change object clause has been initiated by them.

5.4. ROAR has claimed to have 4,000 members in its representation but while submitting list of its members, it gave a list of only 924 ordinary and 849 contributory members. However, ROAR stated that the original figure of 4,000 was a typographical mistake.

5.5. Also ROAR has not rebutted the averments by DIAL that:

5.5.a. *Many members of ROAR are employees of M/s PK Hospitality.*

5.5.b. *PK Hospitality is a company wherein PK Agarwal and Sh Sudhir Agarwal are directors, both of whom are also members of ROAR.*

5.5.c. *PK Hospitality was a concessionaire at IGI Airport Delhi and was also an unsuccessful bidder for F&B contracts thereat.*

5.5.d. *ROAR's account is being operated by Sh PK Agarwal along with another member thereof and not by the authorised officers.*

5.6. Upon perusal of list of various issues/matters/cases taken up/filed by ROAR, though no supporting documents in this respect has been furnish by them except for the judgments in the matter of Writ Petition (c) 5007/2011 and CM No 10157/2011 ROAR V/s AERA and Writ Petition (C) No 3889/2011 ROAR V/s UoI and Ors.

5.7. It is seen that most of the matters taken up by the ROAR pertain either to CSI Airport, Mumbai or IGI Airport, Delhi, though this by itself may not be taken as the sole ground for consideration of ROAR's claim to be included in the stakeholder's guidelines.

5.8. ROAR has raised concerns over the members of the current stake holder list of the Authority. ROAR in its submission has stated that *"as of date the list of stake-holders are filled with the representatives of Airlines and/or private airport operators such as DIAL, MIAL and/or or operators who have monopolistic control of the diverse operation"*. In this regard, as per Section 2(o) of the Act, stake holder is defined as

"stake-holder" includes a licensee of an airport, airlines operating thereat, a person who provides aeronautical services, and any association of individuals, which in the opinion of the Authority, represents the passenger or cargo facility users;"

5.9. Thus, in conformity with the legislative provisions, all the licences of the major airports – whether a Government body or a private operator, all such persons are stake holders as per the Act. Hence, no one can object to their inclusion as stake holder. Similarly, no one can object to any representative body of such operators being included in the stake holder list.



5.10. In line with the provisions of Section 2(o) representative bodies of Airlines have also been included in the stake holder list. Further, the representation of passengers was also done through a transparent and open process which has initiated vide Consultation Paper No 02/2009-10 dated 08.10.2009 and finalized vide clearly documented Guidelines on Stake Holder Consultation issued on 14.12.2009. Hence to allege, that the process of identification of stake holders was not transparent is incorrect. In fact it is observed that despite being in existence at relevant time and allegedly working in the interest of air travelling public, ROAR chose not to comment on Consultation Paper No 02/2009-10 – which dealt with the identification of relevant stakeholders, nor did it ask the Authority to include it as a stake holder to represent the leisure/individual traveller at that stage.

5.11. Thereafter, the Authority issued Consultation Paper No. 15/2010-11 dated 01.03.2011 proposing therein that “..... as regards the interests of the passengers, three voluntary consumer organizations have been part of the stakeholder consultation process and the Authority has been benefitted by their inputs. The Authority has observed that the Air Passenger Association of India has been recognized and associated by the Ministry of Civil Aviation in the Civil Aviation Economic Advisory Council constituted by it vide Order F. No. 13011/06/2010-DT dated 9.12.2010 and the Working Group on regulatory framework to protect consumer interest constituted vide Order F. No. AV.13011/07/2010-DT dated 20.12.2010. This association has air passengers as its focus and hence could be particularly germane to the consultation process of the Authority. Keeping in view the above the Authority proposes to include the following organizations in the stakeholder consultation process on a regular basis:

- (i) Express Industry Council of India (EICI).....
- (ii) Air Passengers Association of India (APAI).....”

5.12. However, it is observed that even at the stage when the Authority was proposing to expand the stakeholders list in March, 2011 and had noted that to address the concerns of air travelling passengers, inclusion of APAI as a stakeholder could be germane to the consultation process, yet ROAR did not participate even at this juncture. Thus, it is incorrect on part of ROAR to either allege that the process of identification of stakeholder is not transparent or that “.....except for some general consumer bodies, who do not represent the air travelling passengers, there are no other serious or dedicated bodies to respect the side of passengers.....”.

5.13. ROAR has stated that the submissions made by a member of general public would not be given the same weightage by AERA as is given in the case of a stakeholder included in the list. This apprehension is entirely misplaced and unfounded. Furthermore any such conclusion has also no warrant inasmuch as the Guidelines on Stake Holder Consultation dated 14.12.2009 specifically mention that

“issues coming up for decision of the Authority would be decided through an open consultative process viz uploading on the website. It would be open for the Organisations/persons, other than those listed in para 7 above, also to comment.”



5.14. Thus, Authority itself has made the consultative process completely open and transparent wherein ANY organisation or Person- whether it is listed as stake holder or not, is free to submit its comments. Also, the various orders issued by the Authority would show that comments received from all quarters (**and not only those from the stakeholders mentioned in its stakeholders' guidelines**) are duly considered by the Authority while arriving at a decision on the issue under consideration.

5.15. Further, it is seen that the Authority has issued one White Paper and Thirty Nine (i.e. 39) Consultation Papers till date. While it is true that no one is required to necessarily opine on any particular consultation paper, it is to be noted that ROAR has never submitted even a single comment on any of the issues in the said Consultation Papers. Even in case of Consultation Paper no 02/2011-12 in the matter of review of DF at Delhi Airport – comments were admittedly submitted by ROAR only in pursuance of directions of the Hon'ble High Court (in its Order dated 19.07.2011).

5.16. The Authority has followed the provisions of Section 13(4) of the Act in its letter and spirit and has duly considered submissions made by stakeholders, independent organisations as well as by individuals in various consultation processes. Hence, this averment by ROAR is incorrect and founded on mere apprehensions.

5.17. DIAL has relied upon the following case laws:

5.17.a. *CA no 994 of 1972 SP Changalavaraya Naidu Vs Jagannath & others, and CA No 6527/200 decided on 12.07.2006 Kushum Lata Vs UoI:*

5.17.b. Authority notes that *these cases deal with frivolous litigation. However, in the instant case, DIAL has not pointed out any untrue or false or frivolous averment by ROAR, except the statement regarding number of members of ROAR – which ROAR has explained that it was a typographical error. DIAL has averred that ROAR is a front for and is controlled by M/s PK Hospitality – which is an erstwhile concessionaire at IGI Airport Delhi; that ROAR has few members who are also employees of M/s PK Hospitality; that Directors of M/s PK Hospitality are also members of ROAR; that the account of ROAR is operated by Sh P K Aggarwal (as joint operator) – who is also a director of M/s PK Hospitality. All these facts are not denied by ROAR. However, it has been stated by ROAR that the mere fact that some of the members of ROAR are employees of M/s PK Hospitality does not make ROAR ineligible to be considered for inclusion in the stake holder's list of the Authority. It has not been substantiated by DIAL as to how mere inclusion of ROAR in the Authority's list of stakeholders, would enable ROAR or even PK Hospitality any undue advantage or benefits. Hence, this case law is also not applicable in the instant matter.*

5.17.c. *M. Venkatarammana Hebbar Vs. M. Rajagopal Hebbar and others; Lohia Properties P Limited Vs Alnu Ram Kumur; Mintu Bhakta Vs. State of West Bengal:*

5.17.d. *Upon consideration of these case laws, it is seen that all these case laws have been quoted in respect of denial of facts – stating that whatever is not specifically denied is deemed to have been accepted.*



5.17.e. The Authority is already sensitive to this fact and various averments and counter averments have been considered accordingly. Also, these decisions have been made in respect of frivolous petitions filed in various courts and it has been held by the courts that frivolous petitions should not be entertained. However, the facts in the matter under consideration are very different from the matters dealt with in the relied upon case laws. Hence in view of the Authority, these case laws may not give guidance to the instant matter under consideration.

5.18. Further, although Dial has stated that ROAR is a busy body formed by some vested interests, with the ulterior purpose/objective of chocking/blocking funds and blackmailing Airport Operators for contracts and concessions at these airport and does not truly espouse the cause of air passengers, the Authority feels that merely saying that some of the employees and/or directors of PK hospitality are also members of ROAR and that PK Hospitality was an unsuccessful bidder for some contracts to some airports does not colour ROAR as a busy body or a blackmailer for contracts. These are serious allegations and need to be duly substantiated. In the opinion of the Authority, DIAL has not been able to substantiate these allegations.

5.19. DIAL has also commented upon the veracity of the registered office of ROAR. However, having an office at 803, Vanrai Nisarga Cooperative Housing Society, Western Express Highway, Goregaon (E), Mumbai, which, even if, is used to house some of the cooks/staff of Hotel Golden Chariot, which in turn is owned by M/s P K Hospitality Services Pvt Ltd, does not impede claim of anybody from participating in the consultation process of the Authority.

5.20. DIAL has further mentioned that the bank account of ROAR is jointly operated by Sh PK Agarwal and Sh Raj Kumar Mehrotra (who is in employment of PK Hospitality). However, it is felt that it is more of an internal matter for ROAR and its members and not for the Authority to take into account in the case before it.

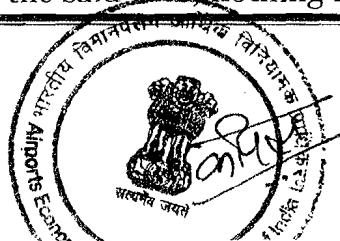
5.21. DIAL has stated that in the statement of income and expense, the only major expenditure head is "legal expenses" and that the expenses towards salary for staff in ROAR are meager as compared to the legal expenses. Authority observed that ROAR has itself accepted that it is a very small organisation. Authority is also of the opinion that percentage of legal expenses is not a relevant consideration to conclude that ROAR is a frivolous litigant.

6. Conclusions of the Authority:

6.1. Having considered the rival submissions as above, the Authority concludes that:

6.2. There is no indication in the objects of ROAR (as evident from their MOA) that it has been constituted to represent the interest of air passengers.

6.3. It is true that ROAR has successfully challenged the levy of DF by DIAL & MIAL in the Hon'ble Supreme Court. However, the Hon'ble Supreme Court has decided a batch of appeals in the matter including that of ROAR. Further, other than the said case, nothing has been placed on record

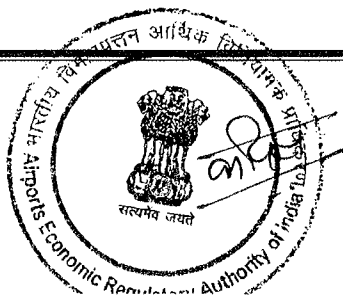


to show that ROAR has been successfully representing the interests of air passengers in other cases that as has claimed to have been agitated by ROAR with any success.

6.4. Authority has decided the list of stakeholders, after extensive stakeholder consultation, in December 2009. The list was expanded in December 2009 and March 2011. At both the stages, ROAR did not stake a claim to be included therein. ROAR has also, at no stage before the present proceedings, ever claimed that the entities recognised by the Authority to represent the interest of passengers are incapable of doing so. In fact these entities such as VOICE, CUTS, CERC, APAI, FICCI, ASSOCHAM and CII etc, have been regularly participating in various consultation processes initiated by the Authority. On the other hand, ROAR has, in its comments, on the Consultation Paper No. 02/2011-12 dated 21.04.2011 - even in pursuance of the directions of Hon'ble Delhi High Court, has adopted the comments of another stakeholder namely FIA on merits.

6.5. ROAR made its request for inclusion vide letter dated 07.05.2011, which was received on 09.05.2011. ROAR chose to follow up on this letter within a short period of five days, i.e., by letter dated 12.05.2011, which was received only on 18.05.2011. This reminder dated 12.05.2011, received on 18.05.2011, was immediately followed on the very next day i.e. 19.05.2011, by a legal notice issued on behalf of ROAR wherein the following was alleged in respect of the Authority - "...the persistent request of my client to be included as a stakeholder is being completely ignored.....". When the Authority took up the matter for decision by way of present proceedings and afforded opportunity to ROAR to submit its contentions, Secretary, ROAR has again alleged "the objection from a member of public to any consultation papers not at par with the objection raised by a stakeholder and the same weightage to the both are not expected...". However, simultaneously, ROAR has elsewhere claimed that it had raised the issue of JVs formed by DIAL which was taken up by this Authority further. Thus, on one hand ROAR has repeatedly expressed reservations about the impartiality of the Authority and on the other hand admitting that the Authority has taken further an issue raised by ROAR. The Authority is constrained to observe these contradictions in the averments of ROAR and is not persuaded to conclude that ROAR has made a case for inclusion as a stakeholder on behalf of the passengers.

6.6. It is admitted by ROAR that it has not been able to participate in the consultation processes initiated by this Authority in the past due to limitation of resources. There is no averment that ROAR has since augmented its resources in an effective manner. For the Authority's view, the ROAR's inability in this regard is further underlined by the fact that even in case of Consultation Paper No. 02/2011-12 dated 21.04.2011; it has been unable to come up with any new or original submissions on merits and has only chosen to adopt the submissions of another stakeholder (viz. FIA).



7. ORDER

7.1. Keeping in view the above observations and conclusions, the Authority is not persuaded to accept ROAR's contention that it should be included to represent the interests of passengers as a stakeholder within the meaning of Section 2(o) of the AERA Act 2008. The representations dated 07.05.2011, 12.05.2011, 19.05.2011 are accordingly rejected.

By the order of and in the
Name of the Authority



(Capt. Kapil Chaudhary)
Secretary

To,



1. **Resources for Aviation Redressal Association**
662/8, Kanyakumari Centre, Sir MV Road
Andheri (East), Mumbai – 400 069.
(Through: Shri Alok Chatterjee, President)
2. **Delhi International Airport Pvt. Ltd.**
New Udaan Bhawan,
Terminal 3, Opp. ATS Complex,
International Terminal, IGI Airport,
New Delhi – 110 037.
(Through: Shri Kiran Kumar Grandhi, Managing Director)

