

AIRPORTS ECONOMIC REGULATORY AUTHORITY APPELLATE TRIBUNAL
NEW DELHI

APPEAL No. 01 of 2014

[Under Section 18(2) of the Airports Economic Regulatory Authority of India Act, 2008 against the Order dated 10.06.2014 passed by the Airports Economic Regulatory Authority of India in Order No. 8/2014-15]

CORAM

Hon'ble Mr. Justice V.S. Sirpurkar
Chairman

Hon'ble Mr. Rahul Sarin
Member

In the matter of :

Federation of Indian Airlines (FIA)

...Appellant

Versus

**Airports Economic Regulatory Authority
of India & Ors.**

.... Respondents

**Appearances : Shri U.U. Lalit, Senior Advocate with Ms. Poonam Verma and
Shri Jibram Tak, Advocates for the Appellant.**

ORDER
1st July, 2014

This matter is not on Board today and is being taken up upon mentioning.

We have heard Shri Lalit, learned senior counsel appearing on behalf of the appellant, Federation of Indian Airlines (FIA). His main concern is the charges which are to be recovered with effect from 01.07.2014. The main contention of Shri Lalit is that the FIA whom he is representing and who are immensely interested in the Common User Terminal Equipment (CUTE) charges, Common User Self Service (CUSS) charges and Baggage Reconciliation System (BRS) charges among other things which are now held as aeronautical services, would be affecting the interests of all the airlines operating as also the passengers.

...2/-

The mainstay of the contention of the learned senior counsel for the appellant, Shri Lalit, is that there has hardly been any opportunity given by the Regulatory Authority i.e. AERA, in respect of the findings of the Regulatory Authority, firstly about that these are aeronautical services and, secondly, about the justification of the quantum of charges as decided by the Regulatory Authority. According to Shri Lalit, there has been no opportunity to the FIA to consider the justification and the quantum of the charges, firstly, as represented by the BIAL and as approved by the AERA. The main contention is that all this was proposed on 3rd of June, 2014 when the AERA uploaded this proposal for the first time on their website and hardly within a week therefrom i.e. on 10th June, 2014, the impugned order came to be passed which has made all the difference to the airlines. We, therefore, issue Notice to the respondents and in view of there being no opportunity to the appellant, we order *status quo* in respect of these charges. As the charges would begin to be recovered from today, we order *status quo* as on 10th June, 2014 when the impugned order was passed.

Learned senior counsel for the appellant promises to effect the *Dasti* service of Notice on the respondents within a week from today. In that view, put up this matter for hearing on **18th July, 2014** for further orders.

[Justice V.S. Sirpurkar]
Chairman

[Rahul Sarin]
Member

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 4338/2014 & CM 8692/2014

BANGALORE INTERNATIONAL AIRPORT
LIMITED

..... Petitioner

Through Ms Pallavi Langar, Advocate.

versus

MINISTRY OF CIVIL AVIATION AND ORS Respondents

Through Ms Poonam Verma, Mr Gaurav
Saini and Mr Shantanu Singh,
Advocates for R2.

Mr Atul Nanda, Sr. Advocate with
Mr Rameeza Hakcem, Mr Priyadarshi
Gopal, Advocates for R3 (AERA).
Mr Digvijay Raj, Advocate for R6
(AAI).

Ms Anjana Gosain, Advocate for
UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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23.12.2014

The petitioner impugns an order dated 01.07.2014 passed by the Airport Economic Regulatory Authority Appellate Tribunal, New Delhi (hereafter the Tribunal) whereby the Tribunal had directed that *status quo* as on 10.06.2014 be maintained with respect to the tariff charges for Common User Terminal Equipment (CUTE); Common User Self Service (CUSS); and Baggage Reconciliation System (BRS), collectively referred to as Information Communication Technology Charges. The Airport Economic


24/12/2014
Court Master
High Court of Delhi
New Delhi

Regulatory Authority of India (AERA) had fixed the said charges at US\$ 1.25 per departing passenger. The said charges were impugned by respondent No.2 before the Tribunal.

The parties submit that the petitioner and respondent No.2 have now arrived at a settlement whereby it is agreed that the charges at the rate of US\$ 1.25 be scaled down to US\$ 1.0 for each departing passenger for CUSS, CUTE and BRS respectively.

In the circumstances the petition is disposed of with a direction that AERA shall consider the aforesaid settlement and pass an appropriate order within a period of two weeks from today. It is clarified that the impugned order dated 01.07.2014 shall not come in the way of AERA in fixing the charges as agreed between the parties.

Dasti under the signature of Court Master.

The Registry is directed to send the records back to the Tribunal.

sd/-

VIBHU BAKHURU, J

DECEMBER 23, 2014

pkv

pkv
24/12/2014
Court Master
High Court of Delhi
New Delhi

Bangalore International Airport Limited
Alpha 2, Kempegowda International Airport Bengaluru,
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Ref: AERA/Finance/2014-15/06

December 25th, 2014

The Secretary
Airports Economic Regulatory Authority of India
AERA Building, Administrative Complex,
Safdarjung Airport,
New Delhi - 110 003

Dear Sir,

Subject: Order dtd.23.12.2014 of the Hon'ble High Court of Delhi in Writ Petition (Civil) No.4338/2014 reg.

Ref: Order No.8/2014-15 determining aeronautical tariffs for Bangalore International Airport Limited and Your letter 24th December 2014

As you are aware, Federation of Indian Airlines had challenged the captioned Order No.8/2014-15 before the Airports Economic Regulatory Authority Appellate Tribunal ("AERAAT") and the same was numbered as Appeal No.1/2014. On 1st July, 2014, the AERAAT passed an order staying the levy of CIC (CUSS/CUTE/BRS) Charges. The said order of AERAAT was challenged by BIAL before the Hon'ble Delhi High Court in Writ Petition (Civil) No.4338/2014.

Due to the order of stay, BIAL was placed in an extremely incongruous situation where, while services were being continuously provided, BIAL was receiving no remuneration for the same. Therefore, in order to overcome this anomaly forthwith, after discussions, FIA had indicated that its members are willing to pay a sum of \$1 (one USD) towards CIC services. To settle the matter amicably and also to upgrade the system BIAL has agreed to charge towards CUTE, CUSS and BRS, \$1 for both domestic as well as international passengers. BIAL understands that, under the current tariff mechanism, this shortfall can only be augmented by the Authority by way of the truing up mechanism in the next control period.

The above settlement was recorded by the Hon'ble High Court and as requested by Sr. Counsel for AERA, the Court further ordered BIAL to place the terms of settlement before AERA for its consideration and necessary order within two weeks. We have applied for a certified copy of the order and will provide you with a copy on its receipt.

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Bangalore- 560 300. India.
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BIAL wishes to place the terms of settlement on the record of AERA and therefore, a copy of the draft settlement terms as agreed with Federation of Indian Airlines are enclosed.

Placed for consideration and necessary orders.

For Bangalore International Airport Limited

A handwritten signature in black ink, appearing to be "Shree" or similar, written over a horizontal line.

Authorized Signatory

Encl: a/a

Subject: FW: CIC charges_ Settlement terms_Scan Copy-BIAL
From: Anand Kumar P (AnandKumar@BIALAIRPORT.COM)
To: radhi_khan@yahoo.co.in; radhika.r@aera.gov.in; alokshekhar@hotmail.com;
Cc: bhaskar.bodapati@BIALAIRPORT.COM; ujjwalkdey@gmail.com;
Date: Friday, 26 December 2014 11:34 AM

Dear Madam & Sir,

Kindly find enclosed scanned copy of the settlement terms as agreed & signed between BIAL & FIA for needful consideration at your end. Please revert for further requirements, if any.

Thank you & best regards,
Anand

-----Original Message-----

From: ujjwal dey [mailto:ujjwalkdey@gmail.com]

Sent: Friday, December 26, 2014 11:22 AM

To: Anand Kumar P

Cc: Jagdish Prasad; Jyoti.Lakhotia@sita.aero; Abraham Kuruvilla; Maneesh.Jaikrishna@sita.aero; Bhaskar Bodapati; Poonam JSA; Anoop Khatry (GBP,Legal); Neena Gupta; Rahul Kumar (GBP, Legal); Gaurav Sarin; chandan.sand@spicejet.com; Gaurang Shetty; Kamal Kikani

Subject: Re: CIC charges_ Settlement terms_Scan Copy-BIAL

Dear Mr. Anand,

Enclosed is the signed joint statement.

Thanks and regards
Ujjwal Dey

SETTLEMENT TERMS AGREED BETWEEN THE FEDERATION OF INDIAN AIRLINES,
FOR AND ON BEHALF OF EACH OF ITS MEMBER AIRLINES AND BANGALORE
INTERNATIONAL AIRPORT LIMITED WITH REGARD TO COMMON
INFRASTRUCTURE CHARGES TO BE LEVIED AT THE KEMPEGOWDA
INTERNATIONAL AIRPORT, BENGALURU

1. Airports Economic Regulatory Authority of India ("AERA") issued Order No.8/2014-15 dated 10th June, 2014 ("Order No.8") and determined tariff for aeronautical services provided at the Bangalore International Airport Limited ("BIAL"). In Order No.8, AERA had *inter alia* agreed with BIAL's submission for levy of an amount of \$1.25 per departing passenger towards CUSS/CUTE/BRS CHARGES ("CIC charges").
2. Federation of Indian Airlines ("FIA") challenged Order No.8 by way of Appeal No.1/2014 filed before the Hon'ble Airports Economic Regulatory Authority Appellate Tribunal ("AERAAT").
3. In Appeal No.1/2014, FIA *inter alia* challenged the quantum of CIC charges. FIA had *inter alia* prayed for interim stay of operation of Order No.8 generally and CIC Charges in particular. Considering the interlocutory prayers in Appeal No.1/2014 for *ex parte* orders, AERAAT was pleased to pass an order of status quo with respect to CIC Charges by order dated 1st July, 2014. The said order was challenged by BIAL before the Hon'ble High Court of Delhi by way of Writ Petition (Civil) No.4338/2014.

4. The Hon'ble High of Delhi, by order dated 28th July, 2014, was pleased to modify the order of status quo and permit BIAL to levy CIC charges on those airlines that are not members of FIA.
5. BIAL and FIA, after mutual discussions, have resolved the impasse in relation to CIC charges whereunder CIC charge has been agreed to be reduced to \$1 (instead of \$1.25 as per AERA order dated 10 June 2014) per departing passenger (both national as well as International) will now be leviable for and on behalf of BIAL.
6. It is also agreed between the parties that, by this settlement, the parties are resolving their dispute only with regard to quantum of CIC Charges and this settlement shall have no bearing or effect on other issues, if any.
7. AS per directions of the Hon'ble High Court of Delhi in WP No. (Civil) No.4338/2014 on 23.12.2014, the terms of this settlement shall be placed by BIAL before AERA for its consideration and necessary order.

For Federation of Indian Airlines



Authorized Representative

For Bangalore International
Airport Limited



Authorized Representative