



Maharashtra Airport Development Company Ltd.

(A Government of Maharashtra Undertaking)

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No. MADC/Shirdi/439

Date July 16, 2024

To

Shri Ram Krishan

Director (Tariff, Policy & Stat.)

Airports Economic Regulatory Authority of India (AERA),

3rd Floor, Udaan Bhawan,

Safdarjung Airport, New Delhi – 110003

Sub: Comments on the Consultation Paper No. 02/2024-25 in the matter of determination of Aeronautical Tariff for Shirdi International Airport, Shirdi (SAG) for the First Control Period (April 01, 2022 To March 31, 2027)

Dear Sir,

This is in response to the Consultation Paper No. 02/2024-25 in the matter of determination of Aeronautical Tariff for Shirdi International Airport, Shirdi (SAG) for the First Control Period (April 01, 2022 To March 31, 2027), we hereby submit our written comments on various proposals set forth by the Authority in this Consultation Paper.

We shall be pleased to provide any further information that the Authority may require in this regard.

Thanking you,

Yours Truly

Sanjay Kangne
Chief Financial Officer

Encl: As referred above.

CC: 1. OSD to VC & MD, MADC – for information please

2. Airport Director, MADC – Shirdi International Airport – for information please

Comments from MADC on Consultation Paper No. 02/2024-25 dated 18.06.2024

1. Authority's proposal vide para no. 3.3. on the treatment of Pre-Control Period losses from the date of becoming major airport instead of the date of commencement of the operations:

"3.3.1 The Authority notes that MoCA has declared Shirdi International Airport as major airport from 1st November 2021. During its initial submission dated 31st January 2022, MADC submitted the computation of shortfall for the period FY 2017-18 to FY 2020-21 along with the details of First Control period from 1st April 2021 until 31st March 2026. Post the submission by Shirdi International Airport, the Authority directed MADC to re-submit the MYTP with First Control Period beginning from 1st April 2022. Pursuant to this, MADC has submitted the revised MYTP with the computation for the First Control Period from 1st April 2022 to 31st March 2027 together with the shortfall for the period from FY 2017-18 to FY 2021-22.

3.3.2 The Authority notes that MADC, as part of its revised MYTP submission, has submitted the computation of shortfall for the period from FY 2017-18 to FY 2021-22. The Authority notes that MADC has considered the date of commencement of commercial operations (COD) as the beginning of the period from which the over-recovery / under-recovery is to be determined.

3.3.3 However, the Authority's tariff determination process commences only from the date the Airport is notified as a major airport and accordingly, the Authority proposes to consider the period from 1st November 2021 (i.e. the date the notification as major airport) for the purpose of its evaluation. Accordingly, the period from 1st November 2021 to 31st March 2022 proposed to be considered by the Authority for computation of excess/shortfall to be carried forward for the First Control Period."

Comments from the Shirdi International Airport:

Shirdi International Airport, is a first greenfield airport, managed & operated by Maharashtra Government Undertaking, Maharashtra Airport Development Company Ltd (MADC). The Directorate General of Civil Aviation (DGCA) issued a license for Shirdi International Airport on September 21, 2017, permitting it to operate under the public use category and under Visual Flight Rules (VFR) conditions. Shirdi International Airport commenced operations from October 1, 2017.

Shirdi International Airport was allowed to charge the rates for aeronautical services in accordance with the AIC Circular 04/2017 allowed/approved by the Airport Authority of India and Ministry of Civil Aviation.

At the outset, Shirdi International Airport is eligible to recover costs incurred by it from the various stakeholders from the inception of its operations but not the date of becoming a major airport.

We would like to bring to your notice, the legal rights of Shirdi International Airport to recover the costs:

a. Right to levy charges at various airports/aerodromes:

The right to levy charges at various airports/aerodromes in India, has been allowed through Rule 86 of Aircraft Rules, 1937. Below is the extract of the Rule 86 of the Aircraft Rules, 1937.

“86. Tariff charges. –

- 1) At every aerodrome referred to in rule 85, there shall be exhibited in a conspicuous place a single tariff of charges, including charges for landing and length of stay, and such tariff shall be applicable alike to all aircraft whether registered in India or in any other contracting State.*
- 2) In the case of aerodromes belonging to the Authority, the charges mentioned in sub-rule (1) shall be levied by the Authority in accordance with section 22 of the Airports Authority of India Act, 1994. (55 of 1994).*
- 3) In the case of licensed public aerodromes, other than the aerodromes belonging to the Authority, the charges mentioned in sub-rule (1) shall be determined by the licensee in accordance with the principle of cost recovery as specified by the International Civil Aviation Organisation and such charges shall be notified with the approval of the Central Government or any authority constituted in this behalf by such Government.*
- 4) Notwithstanding anything contained in sub-rules (2) and (3), in the case of a major airport, the tariff of charges referred to in sub-rule (1) shall be such as may be determined under clause 9A) of sub-section (1) of section 13 of the Airports Economic Regulatory Authority of India Act, 2008.*

Explanation. – For the purpose of this rule, “Authority” means the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994. (55 of 1994)”

Rule 86(3) of the Aircraft Rules, 1937, gives a right to any airport/aerodrome operator other than the Airports Authority of India, to determine its charges in accordance with the principles of cost recovery as specified in the ICAO for such charges.

The Shirdi International Airport which is being operated by the MADC is not an entity owned by the Airports Authority of India and from the date of its commencement of operations till the date of the notification as major airport was eligible to recover the charges in accordance with the Rule 86(3). However, due to the AIC circulars issued by the Ministry of Civil Aviation for non-major airports which are owned by the Airport Authority of India or any other operators, we were restricted to charge the airport users based on AIC at the respective cluster rates due

to this there is under recovery of cost. The MADC has also approached MoCA for revision of the rates on 12.03.2021 and we were made major airport on 01.11.2021.

b. Functions/duties of the Authority to allow the pre-control period losses while determining the tariff:

The Authority has to consider the pre-control period losses while determining the tariff for the Shirdi International Airport, which is in consistent with the orders of the Authority and the Judgement of Hon'ble Telecom Dispute Settlement Authority of India. The relevant extracts of decisions of the Authority and the Judgement of Hon'ble TDSAT are as follows:

Extracts of Para 67 of the Hon'ble TDSAT Judgement dated April 23, 2018 in the matter of Delhi International Airport Limited first control period tariff:

The aforesaid technical plea has been raised by learned counsels appearing for different respondents as well. In view of a clear and categorical reply that it has no direct bearing with the substance of a tariff formulation exercise, this plea is rejected outrightly for the simple reason that none of the parties are adversely affected on this account. Even if the rightful authority, the Central Government had initiated the exercise of tariff formulation for the period of 5 years beginning from 01.04.2009, it would have remained inclusive and liable to be criticized as an action by an interested party and not an independent statutory authority. Once AERA was legally constituted from September 2009, the unfinished exercise could have been finished only by AERA. Clearly, the Central Government had the authority to consult independent expert body for the period between 01.04.2009 and 01.09.2009 when AERA came into existence. The exercise by AERA for that period has been within the knowledge of Central Government which has issued communications relating to tariff formulation. In absence of any objection from any quarters including Central Government, it would be futile to direct the Central Government to go through the formality of fixing tariffs for the 5 months between April 2009 and August 2009 when Central Government cannot complete that exercise in a meaningful and proper manner so as to avoid retrospectivity and delay. Further, the Central Government can always adopt and approve the studied view of AERA which it appears to have done by not raising any objections at any stage. Nothing has been pointed out in the OMDA and SSA against such action and Section 13 of the Act gives sufficient latitude in selecting an appropriate beginning of the first regulatory term of 5 years subject to rules of transparency and fairness.

The Hon'ble TDSAT has adjudicated that the Authority has jurisdiction and responsibility to consider the period before its formation/its under jurisdiction. It is the responsibility of the Authority to complete the unfinished work of the MoCA and consider such period for determining the tariff for the control period.

This, has been further reiterated by the Hon'ble TDSAT in the matter of tariff determination of the Bengaluru International Airport vide its Judgement dated December 16, 2020:

"Para 46 - The contention advanced on behalf of BIAL appears to have merit, especially in view of decision of this Tribunal in the case of DIAL wherein facts and figures of earlier period were considered by the AERA for tariff determination and the same was approved by taking a pragmatic view that even if the matter was to be remitted back to MoCA, the exercise of tariff determination by an expert body like AERA would be more reliable and useful. On a careful perusal of discussions made in various subparagraphs of Para 5 of the tariff order for the First Control Period, it is evident that the Authority was aware that MoCA had granted only ad hoc UDF charges but has further noted that since it was fixing tariff for the period from 01.04.2011, it would consider the loss, if any, only from 01.09.2009 to March 2011 when factually there was no loss. In Paras 5.29 and 5.30 it decided against the claim for a review of financial results of BIAL for the period since commencement of operations to 31.03.2011. It has declined to consider the claim for the pre-control period mainly for the two reasons which have been highlighted and challenged on behalf of BIAL.

Para 47 - In the considered opinion of this Tribunal, it will not be proper to hold that in the exercise of its statutory powers to provide for a purposeful and good tariff order, the AERA should depend upon a direction from MoCA to look into facts relating to ad hoc rates and resultant loss, if any. Similarly, for the lapses of MoCA, if any, it will not be proper now to refer the task of looking into deficiencies in tariff formulation for the period prior to First Control Period to MoCA. The relevant facts, figures and accounts for the earlier period should have been gone into by AERA to find out whether there was any merit in the claim of BIAL. Since that has not been done, the claim for pre-control period losses as determined in various parts of Para 5 of the tariff order for the First Control Period and virtually reiterated in the next tariff order are set aside for the purpose of remitting the claim back to AERA for fresh consideration on its own merits and in accordance with law and this order.

The above Judgement was considered by the AERA in the tariff determination of the Bengaluru International Airport Limited (Order No. 11/2021-22) for the third control period vide its decision no. 2.5.1. Extract as follows:

To consider the pre-control period from airport opening date (24 May 2008) till the start of the First Control Period (31 March 2011)

This has been further applied in the case of tariff determination of the GMR Hyderabad International Airport Limited for the purpose of its third control period tariff determination.

As submitted in our MYTP Submission, and further submissions referred in the extracts above, the circumstances of the GHIAL and BIAL are similar in the nature of Shirdi International Airport. It was the responsibility of the MoCA to determine the charges for Aeronautical Services and the same was being charged at adhoc rates. The

movement the Authority has taken over the responsibility of the determination of the charges for these airports, it has considered the pre-control period losses as well.

We further submit that we are not comparable to the non-major airports of the AAI as far as the determination of the tariff and we are eligible to recover the cost in accordance with the Rule 86(3) of the Aircraft Rules, 1937.

In view of our submission above, we request the Authority to consider the pre-control period losses from the date of commencement of the operations in consistent with its decisions in the case of BIAL and GHIAL.

2. Authority proposal on FRoR vide para no. 7.2.3 and 7.2.4 FRoR

Authority vide para no. 7.2.3 and 7.2.4 proposed as follows:

"The Authority notes the following with respect to evaluation of FRoR for Shirdi International Airport:

- i. Shirdi International Airport was a Non-Major Airport up to October 2021 and has been notified as a Major Airport by MoCA through notification in Gazette No. S.O. 4596 (E).*
- ii. The traffic volume at Shirdi International Airport is much lower as compared to other Major Airports. Traffic for the recent year - FY 2023-24 is only 7.24 lakh passengers and during the First control period, the traffic is expected to reach a maximum of only upto 1.79 Mn. Passengers by the end of the control period 2026-27, still significantly below the threshold of 3.50 Mn passengers which is the minimum passenger volume for considering an Airport as a Major Airport (based on actual annual passenger throughput). It is important for the Airports having very low traffic base to ensure that the operations at the airport are viable by considering charges which are reasonable and optimum so as to attract more traffic.*
- iii. Financing of Shirdi International Airport is largely through the funding / Grants issued by the Government of Maharashtra, which is considered as Shareholder funds. In order to ensure balanced approach in funding of Airport Projects, the Authority always encourages optimum leverage of debt being considered by Airports. The Authority has, in various earlier tariff determinations, underscored the importance of having efficient funding plan for Airport Capital Expenditure requirements, which will also help in optimizing the Aeronautical charges. Funding the entire project through funds from Shareholders does not result in optimization of funding sources and in turn, leads to additional charges being levied on the users of the Airport, as the resultant Aggregate Revenue Requirement computed in this scenario is higher.*

The Authority, in the recent Tariff Orders for similar AAI Airports, has generally considered FRoR @ 14% (Cost of Equity @14% and actual Cost of Debt/ Gearing Ratio, wherever applicable). Shirdi International Airport, like AAI Airports, is also owned & operated by the Govt. Undertaking (MADC). However, considering the

factors as explained above, particularly the low traffic base, the Authority, proposes to consider 9% as a Fair Rate of Return for the First Control Period. The Authority invites specific comments from the stakeholders in this regard, on evaluation of which, a final decision will be taken by the Authority.”

Comments from the Shirdi International Airport:

The FRoR for the Airports are determined by the Authority using Cost of Equity, Cost of Debt and Debt Equity Ratio. Terms and Conditions for Determination of Tariff for Airport Operators Guidelines, 2011 clearly details the mechanism for the determination of the FRoR vide para 5.1.

The cost of equity is determined using the CAPM model (Para 5.1.3). As mentioned by the Authority, it has already determined the Cost of Equity @ 14% for Airports Authority of India which is owned by Government of India. MADC is owned by the State Government of Maharashtra, where the equity pattern is similar to that of AAI.

Thus, it is requested to the Authority to consider the Cost of Equity Using the CAPM model or at least cost of equity @14% similar to AAI Airports.

3. Authority’s proposal for non-consideration of ANS cost vide para no. 2.6.2:

Authority vide para no. 2.6.2 proposed as follows:

“As present policy of AAI relating to provision of CNS/ATM Facilities & Services, at the non-AAI airports on the Cost Recovery Basis is under review, in consultation with AAI. At this stage, this Consultation Paper has not considered the CNS/ATM Costs payable by the MADC to AAI. However, AERA will review the present treatment of CNS/ATM Charges (payable by Airport Operator to AAI), once final view in the matter is taken.”

Comments from the Shirdi International Airport:

Shirdi International Airport has currently incurred the following cost and revenue with respect to ANS costs:

Related Financial Year	to	Income (Completely in FY 23-24)	accounted	Amount in INR
				CNS ATM Expenses
FY 2017-18				1,86,15,577
FY 2018-19		1,04,50,972		8,46,44,425
FY 2019-20		2,10,41,015		12,20,67,907
FY 2020-21		48,79,196		-4,42,87,748
FY 2021-22		58,34,199		3,80,34,760
FY 2022-23		1,90,80,727		3,53,42,192
FY 2023-24		1,92,03,761		6,76,50,662
Grand Total		8,04,89,870		32,20,67,775

Since CNS/ATM services is sovereign function of AAI, MADC has to incur cost as levied by AAI. Vide para 3.8.21, The Authority analyzed the CNS/ ATM expenses from FY 2017-18 till FY 2021-22. Over the period, CNS/ATM services account for approximately 57% of the Airport Operating Expenses. The Authority notes that these CNS/ATM charges are of the nature of charges levied by AAI on MADC for the services rendered by AAI – over and above the TNLC collected by it as per the agreement between AAI and MADC.

Since the Shirdi International Airport has already incurred the deficit of INR 24 Crores from commencement of its operations till FY 23-24. We request the Authority to consider this as part of the Aggregate Revenue Requirement and Tariff Determination to support the cash deficit for the Shirdi International Airport.

4. Authority's proposal for 1% penalty on the uncapitalised project costs vide proposal no. 5.6.3:

Authority vide para no. 5.6.3 proposed as follows:

To reduce (adjust) 1% of the uncapitalized project cost from the ARR in case any particular capital project is not completed /capitalized as per the approved capitalization schedule, as mentioned in para 5.3.78. The same will be trued up during the true up of the First control period at the time of determination of tariff for the next control period.

Comments from the Shirdi International Airport:

The Authority has proposed to disincentivize the Airport Operator by reducing 1% of the project cost in case of delay in implementation of the project. Such a proposal puts Shirdi International Airport in double jeopardy because any delay in completion of project implies denial of return on such asset and depreciation and added to it will be this reduction in cost. It is abundantly clear that it is in the interest of Shirdi International Airport to complete the project as per schedule, however there could be delays due to various uncertainties. The Shirdi International Airport, at its best keep efforts to complete these projects on time.

Further to the submissions above, the Hon'ble TDSAT in the case of MIAL third control period tariff order has adjudged as follows:

“308. Moreover, in absence of any provision for penalty under OMDA or SSA or AERA Act, 2008, no such penalty can be imposed, otherwise highly discriminatory position will prevail because today 1% of project cost penalty is imposed and subsequently it may be increased to 1.5%. If 1% penalty is allowed then 1.5% penalty would also have to be allowed then in forth coming years, as there are unguided powers, the penalty might be 3% also and, thereafter it can be 5% or more also. There will be no end to penalty in absence of any provision under OMDA, SSA and AERA Act, 2008. It ought to be kept in mind that unguided and uncontrolled power always leads to discrimination. In case of one airport operator penalty imposed will be 1% and in case of another airport operator it can be 2% because there is no law, there is no contract, there is no provision and there are no guidelines. The balance has already been created

under OMDA and SSA in the methodology of true up in next control period and as stated hereinabove, as per the said methodology, excess amount recovered shall be trueed up with carrying cost in next control period. Therefore, in the aforesaid example, if Rs.83 Crores has been recovered, the true up amount in the next control period, if the project is not commenced or completed within the time bound schedule, would be at Rs.121 Crores which is in fact more than sufficient revenue clawed back from the airport operator and perhaps for this very reason no powers have been given to AERA for imposing penalty. **Hence, we hereby quash and set aside the decision of AERA of carrying out 1% of readjustment to project cost and applicable carrying cost in the target revenue at the time of determination of tariff for next control period.**

309. Here in the facts of the present case, AERA has failed to appreciate the prevailing pandemic situation of COVID-19 and its aftermath. Curfew type situation or lockdown type situation was prevailing. Labourers were not available and hence, there is bound to be delay in execution of the project work. Such a big factor ought to have been appreciated by AERA. The genuine difficulty of airport operator ought to have been appreciated.

310. Thus, Issue No. XVII is answered in negative i.e. the decision of AERA of carrying out 1% re-adjustment to Project Cost and applicable carrying cost in the Target Revenue at the time of determination of Tariff for 4th Control Period is incorrect, improper and not justified.

In view of the above submissions, it is requested to the Authority not to levy any penalty in case of delay in the project.