

MIAL/Reg./2024-25/01

03rd March 2025

To,
Director (P&S, Tariff)
Airports Economic Regulatory Authority of India (AERA)
Udaan Bhawan, 3rd Floor, D Block, Rajiv Gandhi Bhawan
Safdarjung Airport
New Delhi – 110003.

Subject: Response to written comments sought from stakeholders for DIAL Fourth Control Period CP.

Dear Sir,

This is in reference to the Consultation Paper No: 07/2024-25 dated 31st January 2025 issued by AERA in the matter of determination of aeronautical tariff for Indira Gandhi International Airport, Delhi (DEL) for the forth control period (01.04.2024 – 31.03.2029) wherein written comments were sought from stakeholders.

Please find below the submission of MIAL for the kind consideration of AERA:

1. Remove capping on Cost of Debt:

Para 7.2.12 "The Authority has reworked the weighted average cost of capital considering the efficient cost of debt of 10.15%. The Authority proposes to also true up the cost of debt based on actuals or the cost of debt considering the spread of 150 bps plus SBI 1-year MCLR (whichever is lower) at the time of tariff determination for the Fifth Control Period."

- DIAL has proposed cost of debt of 10.24%, while Authority has capped the cost of debt of DIAL to 10.15% considering 8.65% MCLR rate and spread of 1.5%. Authority has not given any reason for considering spread of 1.5% above the benchmark rate. It is to be noted that each airport is unique and has varying level of risks related to Contracts and Concession Agreement, operational and financing risks, proximity and competition of other airports in the same catchment area. Lenders will weigh all these risk factors while assessing the spread on the project loan. Hence it is requested that cost of debt as approved by the lender to the airport operator should be used for calculation of WACC
- As per TDSAT Judgement dated 6th October 2023 on Second and Third Control Period Tariff Order of MIAL and TDSAT Judgement dated 13th September 2024 on Development Fees matter, actual cost of debt shall be allowed by AERA.
- We request AERA not to cap the cost of debt to 10.15% and allow the same on actual basis.



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2. Legal Expenses:

Para 9.2.41 "The above legal charges paid by DIAL are not at all critical or necessary for the Aeronautical Operations of the Airport and are by nature paid towards legal cases with other stakeholders. As these don't have any value addition to the services offered to the airport users, the Authority proposes to disallow these expenses as part of Professional and Consultancy expenses for the Fourth Control Period."

- As per the AERA Act, one of the key functions of the AERA is to ensure the economic and viable operation of major airports. Not allowing legal expenses as part of Target Revenue is against the spirit of the Act. There are many litigations related to airport operations in which airport operator has to file litigations with various airport stakeholders. These litigations if not dealt with properly will comprise the safety and security of the airport users. For e.g. if the height of the building in the immediate vicinity of the airport exceeds the threshold set by AAI and airport operator does not take any action against such defaulting builders, same will compromise the safety of aircraft and passengers.
- The concession agreements entered into by recently privatized Airports Authority of India (AAI) are not applicable to DIAL. DIAL operates under the Operation, Management, and Development Agreement (OMDA), which governs its regulatory and operational framework. Unlike the other concession agreements, OMDA does not contain any explicit provision that excludes legal expenses from operational expenditure. Consequently, legal expenses should be considered as pass-through expenses and allowed accordingly.
- Authority has allowed legal expenses while determining the tariff of previous control periods. It is requested that principles of tariff fixation are uniformly applied to all control periods to ensure consistency in tariff regulatory framework.

3. Impact of TDSAT Judgements of Second and Third Control Period Tariff Order not considered:

*1.8.4the issues raised in the Civil Appeal filed by the Authority are not finally settled and the Hon'ble Supreme Court is seized up of the matter. Therefore, the Authority notes that under such circumstances if it decides to implement the Hon'ble TDSAT order without finally settling the issues before the Hon'ble Supreme Court and increase in tariff is effected considering DIAL's submissions on the basis of Hon'ble TDSAT judgments for the Fourth Control Period, **then it shall lead to a significant increase in Aeronautical tariff which will have to be borne by the Airport users as DIAL will start recovery of increased tariff from the Airport users. If at a later stage, the Civil Appeals filed by the Authority are upheld or decided in its favour, then it will not be possible to refund excess charges collected from the Airport users during this period on account of increase in tariff.** Thus, there will be substantial over recovery by the Airport Operator and there is a possibility that if on account of over recovery future tariff gets reduced then again the Airport Operator may claim that over recovery can't be clawed back on account of levy of minimum charges i.e. BAC + 10%.*

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Due to all these factors, DIAL would have unjust enrichment at the cost of Airport users. All these factors clearly establish that considering DIAL submissions of giving effects to Hon'ble TDSAT judgements without finally settling the issues before Hon'ble Supreme Court, is not in public interest, more so when the Hon'ble Supreme Court is seized up of all these issues and is hearing these Civil Appeals. On the contrary, public interest would be better served if Authority takes decisions on the basis of final decision of Hon'ble Supreme Court of India on these issues.

1.8.5 Considering the above and in public interest, the Authority proposes to continue the tariff determination exercise consistent with the decisions taken in the Tariff Order for the Third Control Period. The final decision with regard to the issues raised by the Authority in the Civil Appeal will be taken once the matter attains finality in the proceedings before the Hon'ble Supreme Court.

- AERA has not considered the impact of above TDSAT judgement with the view that matter is sub-judice. However, in the absence of stay order from the Supreme Court on the judgement, Authority should have implemented the Judgement
- As per the AERA Act, one of the key functions of the AERA is to ensure the economic and viable operation of major airports. Failure to consider the above judgment will render the operations of the airport unviable considering DIAL has recently completed the Phase 3A expansion project incurring huge capex in excess of Rs. 12,500 Crs, considerable portion of which is from borrowings.
- We request AERA to incorporate the impact of above TDSAT Judgement in the TR of Fourth Control Period.

Thanking You,

For Mumbai International Airport Limited

Ashu Madan
Authorized Signatory

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