

APAO/AERA/ 2024-25

Date: 3rd March 2025

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Airports Economic Regulatory Authority of India (AERA),
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Subject: APAO's response to Consultation Paper No.07/2024-25 dated 31st January 2025 in the matter of determination of Aeronautical Tariff for Indira Gandhi International Airport, Delhi (DEL) for the Fourth Control Period (01.04.2024 to 31.03.2029)

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 fourth control period (01.04.2024 – 31.03.2029) wherein written comments were sought from stakeholders.

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

1. Non – Implementation of Hon'ble TDSAT Judgement:

*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%. 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.*

APAO Comments: The Authority has considered for non-implementation of the Hon'ble TDSAT Order, solely based on the assumption that it would be in public interest as the increase in the tariffs may impact the public adversely. It is pertinent to note that the majority of these issues were proposed by DIAL in 2nd & 3rd Control period which were not considered by the Authority for implementation on various grounds. From July 08, 2017, the biggest airport by capacity & passengers handled in India i.e., IGI Airport has charged average aeronautical revenue per passenger of less than ~ INR 150 per passenger. This is by far the lowest tariff when compared to any other airport globally irrespective of the scale & size. DIAL has got into this situation, merely due to the non-consideration of the concession agreement entered into between DIAL & the Government of India by the Authority in its previous tariff orders

We humbly submit it is the responsibility of the Authority to ensure economic viability of the airport operators, which is actually in public interest and also in the interest for all the other stakeholders operating at the airport. However, the Authority has seldom given due weightage on the Economic viability of airport operators.

This has resulted into a situation, where the average aeronautical revenue per passenger of INR 450 also seems like an increase of 200% whereas the actual fact is that the base itself is nominal compared to other airports in India and globally.

In addition to the above, we humbly submit that considering the legal grounds, it is the responsibility of the Authority to implement the Hon'ble TDSAT Judgement (being a Appellate Tribunal) unless there is a stay ordered on the judgement by Hon'ble Supreme Court. In the current scenario, there is neither a stay nor an injunction by the Hon'ble Supreme Court, and hence the Authority cannot consider it 100% towards the public interest. It is earnestly requested to the Authority to fund DIAL at least to the extent of the loan repayment obligations of DIAL for the current control period and the rest can be provided once the finality of the order is made by Hon'ble Supreme Court.

2. **Legal Expenses:** Legal Expenses are necessary for the public infrastructure organization due to the involvement of large number of the stake holders, and there are many litigations where DIAL would be mandatorily a party even though it is not having a direct relationship with the stakeholder. Furthermore, there are many inconsistencies in the philosophies of the regulator for each control period which were appealed by the DIAL to the respective Appellate Tribunals & Hon'ble Supreme Court, only to protect its integrity & economic viability.

Thus, the costs are very much required for DIAL in order to efficiently operate the IGI Airport and ensure its economic viability. Moreover, the concession provided by the Government of India to DIAL doesn't have any restrictions towards legal expenses unlike the concessions referred to by the Authority. The actions of the Authority would mean to re-write the concession provided by the Government of India on its own without any sound reasoning.

We therefore humbly request the Authority, to verify the legal expenses incurred in the 4th Control Period for the requisite tests required to be performed by it on the legal expenses and true-up these amounts.

3. **Cost of Debt:** The Authority has to consider the fact that the loans obtained by DIAL during the covid period where the entire travel & leisure industry was adversely impacted. Thus, the cost of debts as proposed by the Authority in its Third Control Period order are clearly unachievable. The Authority has not provided any reasoning with regard to this matter in the consultation paper for not considering the covid related impacts and resultant adverse credit ratings.

We humbly request the Authority, to consider the actual cost of debt.

4. **Other Income:** The Authority in the First Control Period of DIAL had not considered the revenues realised by DIAL on account of Interest Income, income from sale of investment, income from delayed payment, etc. as non-aeronautical revenue. Authority's stand for the first control period was clearly stated in the Order no. 40/2015-16 for the second control period, the relevant extract from para 6.43 is reproduced below

The Authority, during the determination of tariff for the first Control Period, had not considered the revenues realised by DIAL from "Other Income" (typically including Interest Received Deposit with Banks, Income from Current Investments, Income from Non-Current Investments, Interest received - Delayed payment, Sale of Others material/Scrap others, Profit on Sale of Depreciable Assets, Dividend income, Realized Foreign Exchange Gain/Loss, Misc. income Others, Liquidated Damages received, Management Fee, Tender cost recovery) as non-aeronautical revenue.

However, in the same order Authority itself had changed its stance and opined that the interest income will be treated as non-aeronautical revenue at the time of true up.

Following is the extract of para 19.15 of the order:

"The Authority, for the time being, had projected this sub-head at 'nil' value for the second Control Period. However the Authority proposed to true up the "Other Incomes" based on the actual values realized by DIAL during the second Control Period at the time of tariff determination for the third Control Period."

The Authority, in the 4th control period has continued its inconsistency, by going a step further into projecting the other income as well. It is pertinent to note that DIAL would not have any amount for repayment of the loans, and there is no sound reasoning given by the Authority on the projecting the other income also for the 4th control period.

In addition to the above, as proposed by the Authority & considering the public interest the Authority has not considered the implementation of Hon'ble TDSAT Judgement till the final judgment of the Hon'ble Supreme Court order on the same. When the matter is under sub judice in view of the Authority, it is not justified to have these other incomes being projected and leading to further inconsistencies on the approaches taken by the Authority without providing any sound reasoning and biased only towards public interest and not giving any weightage to economic viability & legal positions.

We therefore earnestly request the Authority to be consistent with the approach in determination of tariff and consider the other income as was considered in the first control period order for DIAL.

5. **Interest During Construction:** The Authority has re-calculated the interest during the construction on notional basis considering the various submissions made by DIAL as requested by the Authority. The entire amount invested by the DIAL in the Phase 3A capex is around ~ INR 12,500 crores. If these amounts are availed by DIAL in Rupee Term Loan (where the payments can be made as and when requested), the Authority's philosophy would be 100% justified.

However, when the loans are obtained in the form of bonds, then the amounts are required to be withdrawn immediately. There are various factors, which would impact the timing, quantum, credit rating & prevailing market conditions. With the situation of DIAL, where the charges collected by it were BAC + 10% and due to regulatory uncertainties (as referred in point 1 above), it would be difficult for DIAL to avail the RTL loans and thus compelled to look out for bonds to have flexibility in terms of the repayment.

We request the Authority, that it should consider the above reasoning to allow DIAL actual interest incurred by it, rather than notional calculation.

6. **Lease Equipment Charges:** Authority has considered the artificial cap on the lease equipment charges liable to paid by the DIAL towards the Lease Equipment Financier. The lease equipment financing has certain peculiar mechanism which are not similar to loans. The Authority themselves provided the return on RAB equivalent to WACC on any asset procured by DIAL which is 12.89% in the fourth control period. In the current scenario, the Lease Equipment charges are recalculated considering the cost of debt which is incorrect.

Thus, it is apparent that the Authority has reduced the eligibility of DIAL in terms of the lease equipment charges and the Authority shall allow at the actual amounts.

7. **Tariff Card:** We support the tariff card provided by the DIAL with regard to the balance four years of the 4th Control Period and request the Authority to approve the rate card as proposed by DIAL to protect its financial viability and credit rating for the re-financing of the loans at least. APAO supports dynamic pricing and upfront loading in first two years with corresponding reduction in last two years based on merits as DIAL request within permitted target revenue.

We earnestly request the Authority to give a serious consideration to the points raised by us in the above response, before issue of the final order determining the aeronautical tariff for Indira Gandhi International Airport, Delhi (DEL) for the Fourth Control Period.



In case any other information/ clarification is required in this connection, please inform the undersigned.

Thanking you,

Yours Sincerely

For The Association of Private Airport Operators (APAO)

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Secretary General

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