File No. AERA/20010/MIAL-DF/2009-10/Vol.V

Order No. 29/2012-13

Airports Economic Regulatory Authority of India

In the matter of Determination of Development Fee in respect of Chhatrapati Shivaji International Airport, Mumbai

New Delhi: 21st December 2012

AERA Building
Administrative Complex
Safdarjung Airport
New Delhi - 110003

INDEX

Airports Economic Regulatory Authority

List of Tables

Airports Economic Regulatory Authority of India

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AERA Building,
Administrative Complex,
Safdarjung Airport,
New Delhi – 110 003

Dated the 21st December, 2012

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1. Brief facts

1.1. In the year 2003, the Airports Authority of India Act, 1994, was amended to enable setting up of private airports and leasing of existing airports to private operators. The Amendment Act 43 of 2003 was brought into effect on 01.07.2004. In pursuance thereof, the Government of India (GoI), had approved the modernisation, up-gradation and development of the Delhi and Mumbai Airports through private sector participation. Airports Authority of India (AAI) initiated the process of selecting a lead partner for executing the modernisation projects and undertook a competitive bidding.

1.2. Insofar as Chhatrapati Shivaji International (CSI) Airport at Mumbai is concerned, a consortium led by the GVK Group was awarded the bid for operating, maintaining, developing, designing, constructing, upgrading, modernising, financing and managing CSI Airport, Mumbai. Post selection of the private consortium a special purpose vehicle, namely Mumbai International Airport Private Limited (MIAL), was incorporated on 2nd March 2006, with AAI retaining 26% equity stake and balance 74% of equity capital acquired by members of the consortia. The GVK consortia comprised GVK Airport Holding Pvt Ltd, ACSA Global Limited and Bid Services Division (Mauritius) Ltd. On 4th April 2006, MIAL signed the Operation, Management and Development Agreement (OMDA) with AAI, whereby AAI granted to MIAL, the exclusive right and authority during the term of the OMDA to undertake some of the functions of AAI being the functions of operations, maintenance, development, design, construction, upgradation, modernising, finance and management of the CSI Airport, Mumbai and to perform services and activities constituting aeronautical services and non-aeronautical services (but excluding Reserved activities) at the airport.

MIAL took over the operations of CSI Airport on 3rd May 2006 (Effective Date). The OMDA has a term of 30 years, with MIAL having a right to extend the agreement for a further period of 30 years, subject to its satisfactory performance under the various provisions governing the arrangement between MIAL and AAI.

Issue of Project Cost and Determination of Development Fee

1.3. As per requirements of OMDA, MIAL had submitted a Master Plan to the MoCA, for upgradation and modernisation of the CSI Airport in October, 2006. The Original plan was revised in November, 2007 to provide for a new integrated terminal, relocation of existing international terminal and other existing structures to provide for more space on the airside and consolidation of terminals 2B and 2C to pave way for development of integrated terminal. The Project Cost as per the revised Master Plan was estimated at Rs. 9,802 crores.

1.4. Subsequently, MIAL revised the Project Cost to Rs. 10,453 crores in October 2010 on account of certain mandated projects. Further, MIAL submitted that due to delay in handing over of certain areas for construction, the schedule of project got extended by 17 months and with addition of certain new works, the Project Cost was further revised to Rs. 12,380 crores as submitted by MIAL as part of the MYT proposal.

1.5. Pursuant to MIAL's request for levy of development fee vide letters dated 26.12.2008, 05.02.2009, 11.02.2009 and 16.02.2009, the Central Government had determined, on an ad-hoc basis, the rate of Development Fee (DF), leviable at CSI Airport, Mumbai by MIAL, vide its letter No.AV.24011/001/2009-AD dated 27 February 2009, @ Rs. 100/- per embarking domestic passenger and @ Rs. 600/- per embarking international passenger for a period of 48 months w.e.f. 01.04.2009. This ad-hoc determination by the Government was subject to various conditions, some of them are given below:

- 1.5.1. At the stage of final determination, Regulator/Central Government would ensure adequate consultation with the users.
- 1.5.2. The amount collected through DF would under no circumstances exceed the ceiling of Rs. 1,543 crores and in case of any cost escalation beyond Rs. 9,802 crores, the amount representing the escalation would have to be brought in by MIAL through other sources. The ceiling amount would be exclusive of taxes, if any.

1.5.3. An independent auditor appointed by AAI would audit the receipts/accruals of MIAL on periodical basis. Periodicity of the audit would be decided by AAI in consultation with MIAL. AAI would report the results of audit to Government/Regulator for necessary directions.

1.6. After establishment of this Authority (September 01, 2009 when the Government notified, inter alia, Chapter III, namely, the powers and the functions of the Authority, which included the power of determination of DF), Ministry of Civil Aviation (MoCA), vide its letter dated 24.11.2009, forwarded MIAL's request for bridging the funding gap of Rs. 2,350 crores, as against that of Rs. 1,543 crores (as permitted by MoCA), through levy of a DF. MIAL made a number of other submissions to the Authority on the issue of determination of DF. The Authority proceeded to examine the request of MIAL on this issue and finally issued its Consultation Paper No – 33/2011-12 dated 06.01.2012.

1.7. In the Consultation Paper No – 33/2011-12 dated 06.01.2012, the Authority had specifically referred to the letter of MoCA dated 27.02.2009, which was also annexed.

1.8. The Authority, in the Consultation Paper No – 33/2011-12 dated 06.01.2012, had noted that MIAL had indicated revised project cost of Rs 12,380 crores. However, in para 16.2 of Consultation Paper No.33/2011-12 dated 06.01.2012, it had indicated that

> *"The issue of escalation in project cost to Rs 12,380 crores will be considered by the Authority after the audit commissioned by it is completed. The Authority would thereafter make further orders regarding rate and tenure of DF, as may be required."*

1.9. After considering the comments of various stakeholders on the Consultation Paper No – 33/2011-12 dated 06.01.2012, the Authority had issued its Order 02/12-13 dated 18.04.2012 for determining the quantum of DF at that point of time. In this Order the Authority had also stated that

> *"the issue of escalation in project cost to Rs. 12,380 crores will be considered by the Authority after the audit commissioned by it is completed, after which the Authority - may make further orders regarding rate and tenure of DF, as may be required."*

1.10. The Authority notes that in response to the Consultation Paper No – 33/2011-12 dated 06.01.2012, MoCA had not indicated that the Authority should not take into account any escalation in the project cost beyond Rs 9,802 crores while finally determining the DF amount. Thereafter, the Authority had issued the Consultation Paper – 22/2012-13 dated 11.10.2012, wherein the Authority had proposed to take into account the project cost of Rs

12,380 crores, subtracting disallowances (including costs not considered in current control period) of Rs 732.54 crores, to arrive at the allowable project cost of Rs 11,647.46 crores for the current control period. The Authority, in the Consultation Paper – 22/2012-13 dated 11.10.2012, had calculated the funding gap of Rs 4,219.05 crores. This was based on allowable project cost of Rs 11,647.46 crores. MoCA has not given any comments on this proposal. Furthermore, in its Press Release 88444 dated 16.10.2012, MoCA has referred to the funding gap of Rs 4,200 crores in respect of MIAL.

1.11. However, the levy of DF at CSI Airport, Mumbai was challenged before various appellate fora, including before the Hon'ble Supreme Court. The levy of DF, per-se, was upheld by the Hon'ble Supreme Court in the judgment and Order dated 26.04.2011 in civil appeal Nos. 3611 of 2011, 3612 of 2011, 3613 of 2011 and 3614 of 2011. In this Order, the Apex Court has, inter-alia, held the letter dated 09.02.2009 of the Central Government (vide which the approval of the Government was conveyed for levy of DF by MIAL), as ultra-vires the Airports Authority of India Act, 1994 (AAI Act, 1994). The Hon'ble Supreme Court has also held that w.e.f. 01.01.2009, no DF can be levied or collected from the embarking passengers at major airports under Section 22A of the AAI Act, 1994, unless this Authority determines the rate of such DF.

1.12. The Hon'ble Supreme Court has also, inter alia, directed that:

> *"(ii) It is declared that with effect from 01.01.2009, no development fee could be levied or collected from the embarking passengers at major airports u/s. 22A of the 1994 Act, unless the Airports Economic Regulatory Authority determines the rates of such development fee*
>
> *(iii) We direct that MIAL will henceforth not levy and collect any development fee at the major airport at Mumbai until an appropriate order is passed by the Airports Economic Regulatory Authority under Section 22A of the 1994 Act as amended by the 2008 Act........*
>
> *(v).....any development fees that may be levied and collected by DIAL and MIAL under the authority of the orders passed by the Airports Economic Regulatory Authority under section 22A of the 1994 Act as amended by the 2008 Act shall be credited to the Airports Authority and will be utilized for the purposes mentioned in clauses (a), (b) or (c) of Section 22A of the 1994 Act in the manner to be prescribed by the rules which may be made as early as possible".*

1.13. Pursuant to the aforesaid judgment, MIAL informed the Authority that the levy and collection of DF at CSI Airport, Mumbai had been stopped pursuant to the Hon'ble Supreme

Court's order dated 26.04.2011. They also requested the Authority to determine DF in respect of CSI Airport, Mumbai and stated that any delay in collection of DF would jeopardise project completion due to shortage of funds.

1.14. With respect to MIAL's submissions to the Authority for determination of Development Fee, the Authority noted the inter-linkage of DF with the Multi-Year Tariff Proposal and determination of tariffs and the Authority, vide letter No. AERA/20011/MIAL-DF/2009-10/Vol-II/648 dated 25.7.2011, directed MIAL as follows:

> *"Internal accruals are one of the means of finance for the project. Any revision in Aeronautical tariff would directly impact the internal accruals of MIAL and consequently the funding gap to be bridged through DF. Therefore, MIAL is advised to expedite the tariff filling."*

1.15. Further, in the matter of determination of DF in respect of CSI Airport, Mumbai, the Authority issued Order No. 02/2012-13 dated 18.04.2012. In this Order, the Authority, inter alia, noted:

> *"The issue of escalation in project cost to Rs. 12,380 crores will be considered by the Authority after the audit commissioned by it is complete, after which the Authority may make further orders regarding rate and tenure of DF, as may be required."*

1.16. Vide its Order No 02/2012-13 dated 18.04.2012, the Authority had determined DF of Rs. 100/- per embarking domestic passenger and Rs. 600/- per embarking international passenger pending, inter alia, audit and further examination of the project cost. The Authority had ordered that the DF be billed for a period of 23 months commencing 01.05.2012 (i.e. upto March 2014). At that point of time, the DF determination was on current basis (not NPV) inasmuch as the issue of securitization of DF by MIAL had not arisen.

1.17. Thereafter, upon completion of the audit of the project cost for CSI Airport, Mumbai, the Authority issued a Consultation Paper No. 22/2012-13 dated 11.10.2012 in respect of Determination of Aeronautical Tariff and Development Fee in respect of Chhatrapati Shivaji International Airport, Mumbai for the 1st Regulatory Period 01.04.2009 – 31.03.2014.

1.18. The Authority has carefully considered the comments of the stakeholders on the Consultation Paper – 22/2012-13 dated 11.10.2012. These comments as well as Authority's examination and its decisions regarding determination of the quantum and rate of DF are given in the following pages.

1.18.1. The next three chapters deal with the issues of project cost, means of finance as well as the developments that have occurred after the issue of the Consultation Paper – 22/2012-13 dated 11.10.2012.

1.18.2. Thereafter the stakeholder's comments on the Consultation Paper – 22/2012-13 dated 11.10.2012 and the Authority's examination of the issues raised by the stakeholders are discussed.

2. Project Cost

2.1. In the Consultation Paper – 22/2012-13 dated 11.10.2012, the Authority had indicated that the initial project cost estimated by MIAL, and approved by its Board, was Rs. 9,802 Crores. The Central Government, vide letter no. AV 24011/001/2009-AD dated 27.02.2009 granted approval for levy of Development Fee (DF) by MIAL at CSI Airport Mumbai with respect to such project cost of Rs. 9,802 Crores. Subsequently MoCA asked MIAL to bear the cost of ATC tower and technical Block to the extent of Rs 150 crores vide its letter No AV.24011/002/2009-AD dated 19.11.2009.

2.2. Vide their letter dated 06.04.2010, MoCA intimated the Authority that costs for shifting of ATC tower and its associated facilities, (Rs. 150 crores) and cost of parallel taxi track will also be considered in the project cost in respect of CSI Airport, Mumbai and captured in Regulatory Asset Base for purpose of determination of DF. These were to be capitalised by MIAL. The letter from MoCA stated as under,

> *"..... the competent authority has decided that the cost of relocating the ATC Tower and its associated facilities is to be borne by MIAL, as the said relocation is due to alteration / modification of the airport.*
>
> *Further on the issue regarding the cost of Rs 150 crores (approx.) towards shifting of ATC Tower and its associated facilities, has also been examined in consultation with AAI and observed the following:*
>
> *The relocation of ATC Tower and its associated facilities fall under the obligations of the JVC i.e. MIAL under Clause 3.3.18 of the CNS / ATM Agreement entered into between AAI and MIAL as the shifting of ATC Tower has become essential in order to carry out the modernization work by MIAL, namely the construction of parallel taxi track on the North-eastern side of R/W 14/32.*
>
> ....

In view of the above facts, the investment made by MIAL on relocation of ATC Tower and its associated facilities has to be treated as part of main project cost and to be capitalized by MIAL along with cost of parallel taxi track. Further, this cost has to be captured in the Regulatory Asset Base of MIAL for the purposes of determining DF.

......."

2.3. Thereafter, vide its letter dated 31.01.2011, MIAL submitted that the project cost had escalated from Rs. 9,802 crores to Rs. 10,453 crores owing to the mandated costs of Rs 651 crores. The mandated costs of Rs 651 crores included the following:

- Cost of ATC Tower Equipment and Technical Block – Rs 310 Crores
- Contribution to MMRDA for Sahar Elevated Access Road – Rs 166 Crores
- Cost of Mithi river Widening within airport premises – Rs 150 crores
- Cost of Shivaji Maharaj memorial – Rs 25 Crores

2.4. MIAL had in their Multi-year tariff Proposal (MYTP) submitted the following on the issue of Project Cost:

> *"The initial project cost approved by MIAL's Board was Rs.9802 Cr. Additionally, there were mandated projects of Rs. 651 Cr. viz. ATC Tower, Equipment and Technical Block (Rs. 310 Cr. increase over Rs. 80 Crores considered earlier in the project cost), Mithi river widening (Rs. 150 Cr.), Contribution to MMRDA for dedicated elevated access road for airport (Rs. 166 Cr.) and memorial of Shivaji Maharaj (Rs. 25 Cr.). Accordingly, the project cost was estimated as Rs. 10,453 Cr.*
>
> *The details of these costs were submitted to Hon'ble Authority in MIAL's application for DF vide its letter No. MIAL/PR/15 dated 02.05.2011.*
>
> *However, due to various reasons which are either beyond the control of MIAL or which have necessitated change in scope, the project cost has been revised to Rs. 12,380 Cr. The increased project cost along with the reasons for the increase was placed before a Committee of Directors appointed by the Board of Directors of MIAL to examine the same and make suitable recommendations to the Board. The Committee, having examined the same, recommended the increased cost to the Board for approval. The Board in its 30th meeting held on 1st October 2011 approved the increased cost of Rs 12,380 Cr."*

2.5. In order to consider the issue of Project Cost for CSI Airport, the Authority requested AAI to appoint independent auditors to audit the process/approach, cost estimates and expenditure incurred till date etc., as per the scope of work approved by the Authority and to submit the audit report(s) for further consideration of the Authority.

2.6. In pursuance thereof, AAI appointed financial and technical auditors (M/s Engineers India Limited, EIL as Technical Auditor and M/s Ved Jain and Associates, VJA as Financial Auditor).

2.7. Both, the Technical Auditor and the Financial Auditor conducted their respective audits and submitted their observations for the consideration of the Authority.

2.8. The Authority held discussions with MIAL on the observations presented by the Technical Auditor and the Financial Auditor on the project cost. MIAL's responses to these observations were subsequently discussed with both the Technical Auditor and the Financial Auditor.

2.9. The Authority also held discussions with AAI on the observations from the auditors on the project cost.

2.10. Subsequently, the Financial Auditor submitted their report vide their submission dated 05.09.2012 and the Technical Auditor submitted their report vide letter EIL/INFRA/AAI-AERA/MIAL-AUDIT/12 dated 07.09.2012, which were annexed to the Consultation Paper – 22/2012-13 dated 11.10.2012.

2.11. Further, AAI submitted their views on the observations of the independent auditors.

2.12. MoCA had not made any comments on the audit reports of the Financial and Technical Auditors.

Audit Report of the Technical Auditor

2.13. The Technical Auditor noted that the project cost submitted by MIAL had undergone revisions at various instances. The project cost estimated as per the MDP was Rs 6,817.40 crores (break-up provided in the 2nd column of the Table 1). According to estimation of project cost undertaken in January 2009, the project cost was estimated to be Rs 9,802 crores (break-up provided in the 3rd column of the Table 1).

2.14. The Authority had noted, in the Consultation Paper – 22/2012-13 dated 11.10.2012, from the "Technical Audit for Midterm Review of MIAL's Project Cost Estimates" report of the Technical Auditor that since the Multi-Level Car Park and International Cargo expansion projects had been shifted to BOT basis, the initial project cost should have been Rs. 9,327 crores (break-up provided in the 4th column of the Table 1) instead of Rs. 9,802 crores.

2.15. The Authority had also noted that the initial Project cost got revised from Rs. 9,327 Crores to Rs. 10,453 Crores (break-up provided in the 5th column of the Table 1) due to some additional scope such as AGL works, T1C hotel & miscellaneous works (relocation of NACIL, yellow fever hospital, BMC drainage works, police station & boundary wall (new acquired lands)) and revision of cost which was Rs 475 Crores and also additional new projects of Rs 651 Crores.

2.16. The revision in MIAL's project cost at various points of time, as indicated by the Technical Auditor, in Table 2 of the Consultation Paper – 22/2012-13 dated 11.10.2012 is reproduced below:

Table 1: Revision in MIAL's project cost at various points of time

Description (Figure in Rs crores)	Project Cost as per MDP	Initial Cost (Jan 2009)	Cost after deduction of BOT projects	Revised Cost-I (Oct 2010)	Revised Cost- II (Oct 2011)
T1 Projects	362.0	397	397	423	453
T2 Projects	5,137.0	4,337	4,067	4,569	5,083
Runway, Taxiway & Apron	Nil	1,164	1,164	1,418	1,545
Landside projects	Nil	41	41	41	41
Miscellaneous projects	Nil	471	266	579	562
AAI works taken over (5.4 of OMDA)	Nil	24	24	24	24
Technical services & Consultancies	286.1	733	733	743	834
Capital expenditure for Operations	Nil	118	118	118	118
Pre-operative Expenses	596.3	415	415	479	684
Capitalized Interest		1,632	1,632	1,069	1,410
Upfront Fee paid to AAI	150.0	150	150	154	154
ATC Equipment's cost & Technical block in NAD colony	Nil	-	-	310	310
Contribution to MMRDA for sahar elevated road	Nil	-	-	166	166
WHSS-Shivaji Smarak / Memorial	-	-	-	25	25
Mithi River realignment	-	-	-	150	150
RET N5 & E2	-	-	-	-	51
Enabling cost for taking over of carved out assets (NAD colony)	-	-	-	-	110
Cost of settlement of land	Nil	-	-	-	30
Project Cost	6,531.4	9,482	9,007	10,268	11,750
Escalation & Claims	286.0	320	320	185	450
Contingency					180
Total Project Cost	6,817.4	9,802	9,327	10,453	12,380

2.17. The general issues highlighted in the audit report of the Technical Auditor which were brought out in the Consultation Paper – 22/2012-13 dated 11.10.2012 are reproduced hereunder:

a) *"The project was scheduled to complete by March 2012 for International operations and March 2013 for Domestic operations. But the project got rescheduled due to the delayed handing over of related areas, the scheduled date for completion of Common Processor Terminal by 31st March 2012 is likely to be delayed to August 2013 for International Operation and August 2014 for Domestic Operations.*

b) *After completion of SW Pier & Common Processor Terminal, the existing T2B & T2C would be demolished. The work on the balance 3 Piers (SE, NE & NW) would commence after completion of Common Processor Terminal and is expected to be completed within one year (Domestic operations are forecasted as August''2014).*

c) *The major issues which have delayed the project are given below:*

- *__Shifting of Shivaji Statue__: The Shivaji statue was falling in the footprint of the new common user terminal and the statue area was scheduled to be handed over by 31st March 2010. However, the approval from government for relocating the statue got delayed by 17 months which affected area of 50000 sq.ft (approx.) works including the structural works, concreting works, underground works and mega column erection of head house roof works thus impacting the overall testing & commissioning, which lead to delay in project completion. On 27th August 2011, statue got relocated and the area was handed over for construction.*
- *The existing NACIL facilities including hanger, centralized kitchen, office, sewage utility & sump etc. are hindering the start of work for North-West Pier along with its related contact apron of the Integral Terminal."*

2.18. The Technical Auditor had found certain variations from Master Plan 2007 and Major Development Plan (MDP). The Technical Auditor had observed that the cost of the Project was within the cost benchmarked by M/s Jacobs Consultancy, but it was on the upper side for some works when compared with best industrial practices prevailing in India and that there was a slippage on the part of MIAL regarding non-approval of various changes made during execution stage.

2.19. The Technical Auditor had further observed that due to high risk involved in the Project, the percentage of risk premium considered by Principal contractor and sub-contractor were also high which were totally borne by MIAL resulting into further increase in Project Cost.

2.20. The summary of project cost recommended by the Technical Auditor (Rs. 11,747.31 crores) as indicated in Consultation Paper – 22/2012-13 dated 11.01.2012 is reproduced below:

Table 2: Summary of project cost recommended by the Technical Auditor

Description	Revised Cost- II (Oct 2011) proposed by MIAL in the MYTP (in Rs crore)	Allowable cost as per the Technical Auditor (in Rs crore)	Difference (in Rs crore)
T1 Projects	453	399	54.00
T2 Projects	5,083	5,082.40	0.60
Runway, Taxiway & Apron	1,545	1512.66	32.34
Landside projects	41	40	1.00
Miscellaneous projects	562	512	50.00
AAI works taken over (5.4 of OMDA)	24	24	-
Technical services & Consultancies	834	834	-
Capital expenditure for Operations	118	118	-
Pre-operative Expenses	684	684	-
Capitalized Interest	1,410	1,410	-
Upfront Fee paid to AAI	154	-	154
ATC Equipments cost & Technical block in NAD colony	310	110	200.00
Contribution to MMRDA for sahar elevated road	166	166	-
WHSS-Shivaji Smarak / Memorial	25	25	-
Mithi River realignment	150	150	-
RET N5 & E2	51	50.25	0.75
Enabling cost for taking over of carved out assets (NAD colony)	110	-	110.00
Cost of settlement of land	30	-	30.00
Project Cost	11,750	11,117.31	632.69
Escalation & Claims	450	450	-
Contingency	180	180	-
Total Project Cost	12,380	11,747.31	632.69

2.21. The Authority noted in the Consultation Paper – 22/2012-13 dated 11.01.2012 that the difference in the project cost proposed by MIAL and project cost assessed by the Technical Auditor was Rs 632.69 crores, which comprised of two elements:

2.21.1. Costs, which were disallowed and would not be included in the project cost

2.21.2. Costs, which might be included in the project cost, but were not being included presently. The inclusion of these costs into the project cost would be dependent upon completion of underlying activity and / or further submission of documentary evidences for inclusion of the same in the project cost.

2.22. The summary of cost elements recommended for disallowance / non-inclusion, by the Technical Auditor that was indicated in the Consultation Paper – 22/2012-13 dated 11.01.2012 is reproduced hereunder:

Table 3: Summary of cost elements recommended for disallowance / non-inclusion by Technical Auditor

Sl. No.	Item	Proposed Disallowance * (Rs crore)	Proposed non-inclusion** (Rs crore)	Rationale
1.	Airside Projects		32.34	Taxiway cost for the taxiway N43B – II including cost of drain work, enabling work, excavation, duct bank, miscellaneous work, contractor profit, site overheads and VAT. This work can't be commenced before demolition of ATC Tower. As this expense has not been incurred yet, it should not be included in the project cost at this point of time.
2.	T1 Projects	54.00		MIAL is planning to handover the T1C hotel to the concessionaire, hence would start getting concession fee once it starts operating. This hotel has access from both landside and the terminal. Hence cost of T1C hotel should not be included in the project cost.
3.	T2 Projects	0.60		Rs 0.6 crore has to be deducted from project cost since it has been paid as penalty for the delay in getting clearance from MMRDA.
4.	Landside Projects	1.00		The projects involved in the landside are Realignment of Domestic Terminal Access Road (S-005) and New Domestic Terminal Car Park (S-012). MIAL proposed cost for these works is Rs 41 Crores while a reasonable value seems to be Rs 40 crores.
5.	Cargo Terminal at Sahar	50.00		As per RFP for Cargo Terminal at Sahar, the cost incurred in this project will be refunded by the BOT concessionaire. Hence, the cost of 50 crs should not be included in the project cost.
6.	Slum Rehabilitation and NAD Colony development		110.00	The Technical Auditor has not expressed its views on the matter of security deposit paid to MMRDA towards slum rehabilitation. As regards NAD colony, the Technical Auditor have said that the schedule for construction of NAD colony & associated works are not finalised till date, the cost of 110 Crores should not be included in Project cost at this point of time.
7.	Realignment of drain below the forecourt road			The Technical Auditor has found the cost proposed by MIAL as reasonable.

Sl. No.	Item	Proposed Disallowance * (Rs crore)	Proposed non-inclusion** (Rs crore)	Rationale
8.	Program Manager cost			The Technical Auditor has not taken a view on this issue stating that, "The financial impact of the above work may be worked out by Financial Auditor."
9.	Upfront Fees to AAI	154		As per state support agreement- clause no 3.1.1, it is clearly stated that "the upfront fee payable by JVC to AAI under OMDA shall not be included as part of costs for provision of Aeronautical Services and no pass-through would be available in relation to same".
10.	ATC Equipment & Technical Block		200.00	Since the schedule for construction of Technical block & associated works are not finalised till date, the cost of 200 Crores should not be included in Project cost at this point of time.
11.	Cost of relocation of Shivaji Memorial			The Technical Auditor has stated that, "Authority may take appropriate decision on construction cost of memorial include or exclude from project cost".
12.	Airside Projects due to NATS	0.75		In estimation sheets for the construction of RET from N5 (Taxiways) 10% of has been taken for AGL, but at the same time for RET E2 is also in progress & 15% has been kept for AGL. The difference of 0.75 crores is overestimated. Hence, it should be excluded from project cost.
13.	Settlement of disputes related to Land		30.00	The settlement of land has not been finalised, which is under discussion with the owners. It may be considered after the settlement of land is finalised.
14.	Estimates without final design / Escalations & Contingencies			The Technical Auditor has found the cost proposed by MIAL as reasonable.
	Total	260.35	372.34	

* - Refer para 2.21.1

** - Refer para 2.21.2

2.23. The Authority had also noted in Consultation Paper – 22/2012-13 dated 11.01.2012, the process related observations made by the Technical Auditor in their review of the project management techniques used by MIAL which included the following:

2.23.1. <u>Detailed estimation has not been prepared by MIAL:</u> Tendering for all the Sub-contract work Packages (SWP's) done by L&T along with MIAL team. However, no estimation has been done either by MIAL or L&T. Further, negotiations had been done with all the techno-commercially successful bidders on random basis and MIAL did not have their own cost estimates to compare the quotes given by Sub-contractors.

2.23.2. <u>No regular monitoring of cost by Program Management Consultants (PMC):</u> No regular monitoring of cost by PMC, though the PMC agreement required PMC to monitor actual cost and report forecast cost.

2.24. In their conclusion, the Technical Auditor had stated as under:

"The development of the airport has been done by a consortium, which has members who have proven technologies in their respective fields of Project implementation and has accordingly contributed towards project implementation till date. The cost incurred on the Project is somehow high but is in limit when benchmarked with other similar projects. However there are few instances in the Project execution where the cost is high.

The major cost increase is due to increase in enabling project cost, new additional projects & increase in prices of the material due to delay by 17 months in handing over the related area for Project execution.

The construction is being undertaken in the operational airport area, which resulted in constraint in land availability. Hence the material to be brought to the site had to be taken with utmost care so that there is nominal disturbance in operation of airport and discomfort of the passengers. It may also be noted that due to cross runways, the Upgradation of the runway, taxiway, RETs & apron has been done in phased manner to have nominal disturbance in operation towards the airside.

The risk premium of all major contributors in the Project implementation is remarkably high which has been shared by MIAL in totality. It seems that the Main Contractor, sub-contractors/vendors seem to have worked out their rates by considering a substantial risk premium.

The major variations during execution of any similar Projects should be got approved from MoCA/AAI before actually implementing it on ground. Cost estimates should also be ready with the developer before floating NIT or calling quotations from competitive bidders."

Audit report of the Financial Auditor

2.25. The scope of audit of the Financial Auditor covered the review of project cost estimation process including estimation of contingencies which were brought out in detail in the Consultation Paper – 22/2012-13 dated 11.01.2012. The Financial Auditor had undertaken the following tasks:

i. Review of initial estimates

ii. Review of Contract Process

iii. Project Implementation and Monitoring

iv. Revised Project Estimates

v. Project Funding

2.26. The Financial Auditor had clubbed all the audit observations, generated out of the above five activities, in three broad categories as under:

i. Financial observations

ii. Process observations

iii. Remedial suggestions

2.27. The difference in the project cost proposed by MIAL and project cost assessed by the Financial Auditor was Rs 645.35 crores which comprises of two elements:

2.27.1. Costs, which were disallowed and would not be included in the project cost

2.27.2. Costs, which were not being considered in the project cost presently. The acceptance of these costs into the project cost would be dependent upon completion of underlying activity and / or further submission of documentary evidences for inclusion of the same in the project cost.

2.28. Summary of Project Cost elements recommended for disallowance / non-inclusion, by the Financial Auditor, in its final audit report as indicated in the Consultation Paper – 22/2012-13 dated 11.01.2012 is reproduced below:

Table 4: Summary of cost elements recommended for disallowance / non-inclusion by Financial Auditor

Sl. No.	Item	Proposed Disallowance (Rs crore)	Proposed non-inclusion (Rs crore)	Rationale
1.	Airside Projects			The Financial Auditor has not expressed its views on this issue.
2.	T1 Projects			The Financial Auditor has not expressed its views on this issue.
3.	T2 Projects	0.60		Rs 0.6 crore as penalty for the delay in getting clearance from MMRDA
4.	Landside Projects			The Financial Auditor has not expressed its views on this issue.
5.	Cargo Terminal at Sahar	50.00		As per RFP for Cargo Terminal at Sahar, the cost incurred in this project will be refunded by the BOT concessionaire. Hence, the cost of 50 crs should not be included in the project cost.

Sl. No.	Item	Proposed Disallowance (Rs crore)	Proposed non-inclusion (Rs crore)	Rationale
6.	Slum Rehabilitation and NAD Colony development		135.00	Rs 25 crores deposited with MMRDA for slum rehabilitation is refundable and hence not considered in project cost. As the cost of Rs 110 crores budgeted by MIAL towards development of NAD colony is recoverable amount from HDIL, this should not be included in Project cost at this point of time.
7.	Realignment of drain below the forecourt road	2.00		Rs 2 crores deducted for realignment of drain
8.	Program Manager Cost	48.00		Program manager fee
9.	Upfront Fees to AAI	154		As per state support agreement- clause no 3.1.1, it is clearly stated that "the upfront fee payable by JVC to AAI under OMDA shall not be included as part of costs for provision of Aeronautical Services and no pass-through would be available in relation to same".
10.	ATC Equipment & Technical Block		200.00	Since the schedule for construction of Technical block & associated works are not finalised till date, the cost of 200 Crores should not be included in Project cost at this point of time.
11.	Cost of Relocation of Shivaji Memorial		25.00	In absence of any mandate from relevant Authorities, cost of relocation of Shivaji Memorial should not be considered in the project cost at this point of time.
12.	Airside Projects due to NATS	0.75		In estimation sheets for the construction of RET from N5 (Taxiways) 10% of has been taken for AGL, but at the same time for RET E2 is also in progress & 15% has been kept for AGL. The difference of 0.75 crores is overestimated. Hence, it should be excluded from project cost.
13.	Settlement of disputes related to Land		30.00	The settlement of land has not been finalised, which is under discussion with the owners. It may be considered after the settlement of land is finalised.
14.	Estimates without final design / Escalations & Contingencies			The Financial Auditor has not expressed its views on this issue.
	Total	255.35	390.00	

2.29. The Authority had, in Consultation Paper – 22/2012-13 dated 11.01.2012, also noted the process related observations made by the Financial Auditor. Presenting its review of the processes followed by MIAL with respect to estimation of Project Cost, the Financial Auditor highlighted certain issues in terms of process deficiencies noted by them. These covered:

2.29.1. Definitive costs not included in Initial Estimates: While MIAL entered into agreement with the Mumbai Metropolitan Region Development Authority

(MMRDA) on May 07, 2008 for bearing cost of widening of elevated road which would be the access road to the airport, the cost was not included in the initial project cost estimate of Rs 9,802 crores, presented in the Board Meeting of January 2009. The Financial Auditor noted that MIAL had failed to communicate this cost and its assumption to its Board, AAI and MoCA, although the same was known to the MIAL management at the time of submission of its initial project cost estimates of Rs. 9,802 Crores.

2.29.2. L&T – Inadequate estimation of project cost: Based on documents for selection of the EPC contractor submitted by the bidders, Larsen & Toubro (L&T) and Italian Thai Development (ITD) bids were finally shortlisted based on technical qualifications. For financial bids, both the bidders submitted their estimate of the project cost (non-contractual) and the fee chargeable by them for such project. However, since the fee charged by both the bidders was in proportion to the total cost of the contract and both the bidders had estimated different project costs, the Company compared the two bids using a project cost of Rs 5,000 crores. L&T was finally selected as the total fee payable to the bidder at a contract cost of Rs 5,000 crores was lesser by Rs 37 crores.

Table 5: Comparison of L&T and ITD Bids

Particulars	L&T	ITD	Difference
Probable Project cost (Approx.), in Rs crore	5,800	4,500	1,300
Estimated project cost for selection, in Rs crore	5,000	5,000	-
Fixed Fee, in Rs crore	285	479	(194)
Percentage Fee	17.14%	14%	-
Percentage Fee Amount, in Rs crore	857	700	157
Total Fee payable, in Rs crore	1,142	1,179	(37)

2.29.3. The Financial Auditor had noted that although the lowest bid was selected, the following points were observed in the process of selection of the EPC Contractor:

"The estimated contract cost of Rs 5000 crores was a rough average of the costs submitted by the bidders. The company did not compute its own estimate of the EPC portion during the bidding process. As such, the

comparison of the fee percentages proposed by the two bidders could not be made in an objective manner.

Further, ITD had submitted a lower cost of the total contract. In the absence of any internal estimate of the contract cost, an objective assessment of the same is not possible.

No caps were set on the upper limit of the contract cost and/or the fee percentage, e.g. if the contract cost exceeded specified limit (say 110% of the submitted contract cost), reduced percentage fee to become applicable. This led to the contract remaining open ended and provided no incentive to the contractor to control costs."

At the total EPC cost of Rs 6,180 Crores (including free issue material), the fee payable to both the bidders will be equal. If the EPC cost goes beyond Rs 6,180 Crores, ITD would be the cheaper alternative, As informed by MIAL, the total cost estimated for the EPC portion of the project is approximately Rs 5,759 Crores (as at July, 2011)."

2.29.4. L&T – Change in approach leading to indefinite cost of project: On the issue of approach on fixing the contract amount, the Financial Auditor had noted as follows:

L&T was to fix the contract sum within 14 months from the contract date. This included complete schedule of design, procurement strategy and milestone to be achieved for each individual project and program as a whole. As per the contract, same should have been completed by December 31, 2008, i.e., 14 months from the date of contract with L&T.

However, as informed to us, based on nature of the site, MIAL and L&T adopted the approach of breaking down the whole project into small activities and awarding separate contracts for each individual activity after the completion of the design for respective package instead of program as a whole.

Change in the approach after awarding the contract has led the contract cost to be open ended however same cannot be quantified.

Since the contract with L&T is a cost plus contract, this approach makes cost control difficult. However, on reference, the technical auditors were of the view that the revised methodology is an appropriate approach as this was a Brown field project with various operational constraints.

2.29.5. L&T – Site overheads payable to L&T not finalised: The Financial Auditor had also noted that as per the EPC agreement, L&T was to recover site overhead charges on actual. The Financial Auditor observed that the procurement certificates issued by the company to L&T for CWP & SWP did not include the site overhead charges. In November 2008, L&T submitted an initial estimate of site overheads at Rs 323 crores. The Financial Auditor recommended that the overheads be finalised at the earliest.

2.29.6. <u>L&T – Inadequate Basis for providing the structure cost @ Rs. 1,100 per sq ft</u>: The Financial Auditor noted that the contract with L&T provides for the maximum cost for structure work at Rs. 1,100 per sq ft with any escalation on any component except steel and cement to be finalised at the time of awarding procurement certificates. The Financial Auditor had observed that no rates were requested in the RFQ or afterwards and detailed designs were not available at the time of contracting. The Financial Auditor also noted that on reference, the Technical Auditor had found the price decided to be reasonable.

Comparison of project cost considerations by the Technical Auditor and the Financial Auditor

2.30. The Authority had, in the Consultation Paper – 22/2012-13 dated 11.01.2012, noted from the reports of the Technical Auditor and the Financial Auditor that there were differences in the disallowances and non-inclusions proposed by them. The table below presents the value of disallowances and non-inclusions as were proposed by the auditors.

Table 6: Summary of cost elements recommended for disallowance / non-inclusion by Technical Auditor

(in Rs crore)	MIAL	Technical Auditor	Financial Auditor
Project cost proposed	12,380.00	11,747.31	11,734.65
Difference from MIAL	-	632.69	645.35
• Disallowances	-	260.35	255.35
• Non-inclusions	-	372.34	390.00

Authority's examination of the audit reports by the Technical Auditor and the Financial Auditor and disallowances / non-inclusions to Project Cost

2.31. The Authority had, in the Consultation Paper – 22/2012-13 dated 11.01.2012, examined the submissions of the Financial Auditor and Technical Auditor on the project cost proposed by MIAL & MIAL's contentions on the observations of the auditors and had held discussions with AAI. After perusal of documents, papers, specifically the audit reports, views submitted by AAI, and responses and submissions by MIAL, the Authority, in the

Consultation Paper – 22/2012-13 dated 11.01.2012, had arrived at the following tentative views in respect of MIAL's project cost.

2.31.1. **Airside Projects:** MIAL had included Airfield projects pertaining to Runways, Taxiways, etc. and Apron under this head.

2.31.1.a. The Financial Auditor had not expressed any views on this head.

2.31.1.b. The Technical Auditor had reviewed the Apron area proposed the rates based on detailed BOQ provided by MIAL, MoRTH guidelines and prevailing rates of material in the market and reported that they found the cost estimate to be reasonable. They had further reviewed the major works for both the runways and found the costs of Rehabilitation & Upgradation of the runways reasonable.

2.31.1.c. On the Taxiway works, the technical auditor reported that the cost of Rs. 32.34 crores on taxiway N43B-II works had not been incurred and should not presently be included in the Project Cost. They had further stated that the same can be considered after commissioning of the works related to taxiway N43B-II.

2.31.1.d. On this issue, AAI had stated that the Authority may take an appropriate decision based on the Technical Auditor's report in this regard.

2.31.1.e. The report of the Technical Auditor recommended non-inclusion of the above cost of Rs 32.34 crores on account of the works not having been incurred presently.

2.31.1.f. The Authority, in the Consultation Paper – 22/2012-13 dated 11.01.2012, had noted that since the Technical Auditor had not objected to the above cost on technical grounds, the same could be included as part of the Project Cost subject to the condition that such cost may actually be incurred. Accordingly, the Authority had felt that the cost of Rs 32.34 crores should presently not be included in the Project Cost.

2.31.2. **T1 Projects:** T1 Projects included New Domestic Terminal T1C, Renovation & Upgradation of T1A Terminal, and T1C Hotel. The Technical Auditor had expressed certain observations on cost pertaining to T1C hotel, while noting that the costs of other components seemed reasonable.

2.31.2.a. The Authority in its Order No. 02/2012-13 dated 18.04.2012 had deducted Rs. 26 crores i.e. the cost of the T1C Hotel from the funding gap then being considered for bridging through levy of DF as the Hotel was indicated by AAI as a Non-Aeronautical Asset (transfer asset as indicated by MIAL).

2.31.2.b. The Financial Auditor had not expressed any views in this regard.

2.31.2.c. The Technical Auditor had indicated in their final audit report that the cost of the Hotel had got revised to Rs. 54 Crores and that MIAL was planning to handover the Hotel to a concessionaire to complete the furnishing, and to operate the same and MIAL will be receiving revenue from concessionaire once it starts operating. The Hotel was reported to have access from landside and from the terminal and, as such, a non-aeronautical asset. The Technical Auditor had recommended that the same should not be included in the project cost. However, they have added that *"the same can be considered by Competent Authority for levy of DF."*

2.31.2.d. On the issue of cost of T1C hotel, AAI had stated that the Authority may take an appropriate decision based on the Technical Auditor report in this regard.

2.31.2.e. MIAL had stated that T1C hotel was envisaged in the Master Plan and during review of Master Plan by MOCA / AAI, no adverse comment had been made for the same. The operating model was similar to other commercial projects such as duty free retail, car park, etc. in which MIAL had incurred the cost to develop the asset for the convenience of the passengers, but had concessioned the operations and management to specialised agencies to allow MIAL to focus on airport operations. MIAL had submitted that thirty percent (30%) of the revenues received by MIAL from such concession would be utilised for subsidising aeronautical tariffs.

2.31.2.f. MIAL had also stated that if the Technical Auditor's view was given credence to, it could lead to an "inappropriate" conclusion that all capital cost, which generates revenue, needs to be excluded from Project Cost for the purpose of DF as it can be easily established that there is a funding from other sources also.

2.31.2.g. MIAL had further stated that the hotel will predominantly service passengers travelling to and from domestic terminal. According to MIAL, as per definition of Transfer Asset under OMDA, T1C Hotel is a Transfer Asset and should be included in the project cost. They had also brought up an issue that if the same is excluded from the project cost it would "tantamount" to AAI treating the asset as Non-Transfer Asset.

2.31.2.h. The Authority had, in the Consultation Paper – 22/2012-13 dated 11.01.2012, noted that the assets of MIAL, as per SSA and OMDA, can be classified into the following categories:

- Aeronautical Assets
- Non-aeronautical Assets
- Non-transfer Assets

The definition of non-aeronautical asset, as provided in OMDA, is reproduced below,

"..........

2. all assets required or necessary for the performance of Non-Aeronautical Services at the Airport as listed in Part II of Schedule 6 hereof as located at the Airport (irrespective of whether they are owned by the JVC or any third Entity), to the extent such assets (a) are located within or form part of any terminal building; (b) are conjoined to any other Aeronautical Assets, asset included in paragraph (i) above and such assets are incapable of independent access and independent existence; or (c) are predominantly servicing/ catering any terminal complex/cargo complex"

Further the definition of non-transfer asset, as provided in OMDA, is reproduced below,

""Non-Transfer Assets" shall mean all assets required or necessary for the performance of Non-Aeronautical Services as listed in Part II of Schedule 6 hereof as located at the Airport Site (irrespective of whether they are owned by the JVC or any third Entity), provided the same are not Non-Aeronautical Assets."

2.31.2.i. Considering the definitions above, as T1C hotel has access from both landside and from terminal, it had not appeared to the Authority to fall under the definition of non-aeronautical assets. Further from the definitions above, it appeared that T1C hotel is a non-transfer asset. Accordingly the Authority, in the Consultation Paper – 22/2012-13 dated 11.01.2012, had formed the tentative view to treat T1C hotel as a non-transfer asset and amount of Rs 54 crores in respect of the same was proposed to be disallowed / excluded from the project cost.

2.31.2.j. Since these definitions are provided in SSA / OMDA, the Authority felt that the views of AAI / Government on proper categorisation of this asset would be important. If it is concluded that T1C hotel is a non-transfer asset, it will not form part of project cost and the revenue generated from this asset will not be considered towards determination of tariff. On the other hand, if it is concluded that T1C hotel is a non-aeronautical asset, it will form part of project cost, but not of RAB (Aeronautical), and the revenue from this asset will be considered towards cross-subsidisation and determination of aeronautical tariff under Shared Till.

2.31.3. **T2 Projects:** T2 Projects included amalgamation of terminals T2 B and C, new common user terminal, new Sahar terminal access road, enabling works of T2, police station, etc.

2.31.3.a. The Technical Auditor had noted that as per MDP, the area of new Terminal Building T2 was 420,897 sqm (total area of 450,897 sqm including area of arrival plaza of 30,000 sqm) to cater to 40 million passengers per annum. The Technical Auditor had further noted that the total area, as per drawings provided by MIAL to the Technical Auditor, was 4,53,357 sqm. However, the actual area to be constructed by MIAL is 4,39,512 sqm in Phase I, II & III. This area had been verified and accepted by the Technical Auditor. The balance area of approximately 13,845 sqm which is part of South-East pier was not planned to be constructed at that point of time. Cost pertaining to development of this area of 13,845 sqm was not included in the project cost of Rs 12,380 crores as proposed by MIAL. The Technical Auditor had not provided any further comments on this issue.

2.31.3.b. Both the auditors had indicated that a sum of Rs. 0.60 crores, paid as penalty charges for delay in getting clearance from MMRDA, for the construction of police station should be reduced from the total project cost.

2.31.3.c. AAI in their observations had indicated that the Authority may agree with the observations of the auditors.

2.31.3.d. MIAL had contended that relocation of the police station from Sahar was an enabling project for New Common User Terminal and that delay in construction of terminal would have essentially resulted in cost escalation including interest during construction.

2.31.3.e. MIAL had applied for permission of MMRDA and got permission up to plinth level. The permission beyond plinth level was delayed because of certain site constraints coming in the way of approval. MIAL contended that as permission to relocate police station from relevant authorities was already delayed by more than 8 months, MIAL considered it essential to complete this project in anticipation of approval from MMRDA to facilitate timely completion of terminal. MIAL had requested that based on the above, the penalty paid should be considered as part of the Project Cost as it was paid to avoid potentially larger cost overrun.

2.31.3.f. The Authority, in the Consultation Paper – 22/2012-13 dated 11.01.2012, had formed opinion that it may not accept any penalty as legitimate part of the Project Cost.

2.31.4. **Landside Projects:** The projects under this head were mandatory capital projects of OMDA pertaining to realignment of Domestic Terminal Access Road and New Domestic Terminal Car Park. MIAL had estimated the cost of such works at Rs 41 crores.

2.31.4.a. The Financial Auditor had not expressed their views in this regard.

2.31.4.b. The Technical Auditor had found the total costs of landside works at Rs. 40 crores as reasonable.

2.31.4.c. AAI in their observations had indicated that the Authority may agree with the observations of the auditors.

2.31.4.d. MIAL did not provide any specific views in this regard.

2.31.4.e. The Authority, in the Consultation Paper – 22/2012-13 dated 11.01.2012, had formed opinion that the difference in project cost of Rs. 1 crore (cost shown by MIAL being higher than that found reasonable by the Technical Auditor) should be excluded from the Project Cost.

2.31.5. **Cargo Terminal at Sahar:** MIAL had commenced works for development of cargo terminal at Sahar. However, it later decided to outsource the cargo operations to concessionaire(s).

2.31.5.a. The Financial Auditor had observed that an expenditure of Rs. 60 crores was earmarked for Cargo Terminal before the same could be transferred for development on concession and recovered from the concessionaire as per the RFQ. Based on MIAL's clarification that it intends to recover only Rs 50 crores and not the initial capital cost of Rs 10 crores, the Financial Auditor opined that Rs. 50 crores should accordingly not form part of the project cost.

2.31.5.b. The Technical Auditor's observations on this issue were as under:

"... cost of Cargo terminal of 255 crs was included in the initial cost estimates of 9802 crores and later the project has been planned to shift to BOT basis. However, provision of 50 crs as enabling cost is included in 12,380 crs. As per RFP, the cost incurred in this project will be refunded by the BOT concessionaire. Hence, the cost of 50 crs should not be included in the project cost.

The Cost incurred for MCP work (International Cargo Terminal S-002,) was 10 Crs which has to be part of project cost (completed on March 2008) ..."

2.31.5.c. MIAL had further supplemented this distinction and stated that the MCP involved extension of storage shed and the amount was not recoverable from prospective concessionaire and there was no reason to exclude the cost of Rs. 10 crores from the project.

2.31.5.d. AAI had stated that the Authority may include such cost in the project cost to the extent of Rs. 10 crores.

2.31.5.e. The Authority had, in the Consultation Paper – 22/2012-13 dated 11.01.2012, formed the tentative view that the cost recoverable from the cargo concessionaire of Rs. 50 crores could be excluded from the project cost.

2.31.6. **Slum Rehabilitation & NAD Colony Development:** MIAL had to undertake the rehabilitation of slum and development of NAD colony.MIAL had deposited a security amount of Rs 25 crores with MMRDA and budgeted an amount of Rs 110 crores as cost of resettlement of NAD colony.

2.31.6.a. The Financial Auditor in their audit report had noted that MIAL paid Rs. 25 crores to MMRDA in 2006, which was supposed to be recovered from HDIL – an entity with which MIAL had entered into an arrangement in October 2007 for rehabilitation of slums and other residential colonies. The Financial Auditor had recommended that cost, to the extent of Rs. 25 crores (recoverable expenditure), not be included in the project cost.

2.31.6.b. The Financial Auditor had also noted that MIAL had estimated Rs. 110 crores as cost of resettlement of NAD colony in the current project cost of Rs. 12,380 crores. However, use of the land was not finalised. Further, the Financial Auditor had noted that that while MIAL had opted to undertake the activity themselves, as per contract, MIAL could transfer the activity to HDIL during the execution as well and if HDIL accepted, it had to reimburse the expense incurred by MIAL.

2.31.6.c. The Financial Auditor had further noted that prior to finalisation of their report, MIAL submitted that MIAL's Board had decided to cancel the contract with HDIL and proceed with legal action. The Financial Auditor was awaiting copy of the minutes of the meeting at the time of finalisation of its report. The Financial Auditor had submitted that the Authority may review the disallowance based on such submission from MIAL.

2.31.6.d. The Technical Auditor had noted that since the schedule for construction of NAD colony & associated works had not been finalised till the submission of their report and recommendation, the cost of 110 Crores should not be included in Project cost at that point of time. However, Technical Auditor had also noted that the same can be considered by Competent Authority for levy of DF only after commissioning of NAD colony development.

2.31.6.e. AAI had opined that the Authority may agree with the observations of the auditor subject to furnishing of documents by MIAL.

2.31.6.f. Apart from the submission noted above, MIAL had stated that NAD colony development plans were in final stages. Technical Block and Meteorological facilities are to be relocated to NAD Colony, which cannot be done unless densification of NAD Colony is done first. The cost of Rs. 110 crores estimated was towards densification and was considered essential to be included in the project cost.

2.31.6.g. The Authority, in the Consultation Paper – 22/2012-13 dated 11.01.2012, had formed the tentative view that both these sums – Rs. 25 crores and Rs. 110 crores should presently not be included in the project cost till further substantiation/ action is observed from MIAL with respect to work/ action on ground.

2.31.7. **Realignment of drain below the forecourt road**: A proposal for realignment of an open drain passing through the airport land had been finalised by the Municipal Corporation of Greater Mumbai (MCGM).

2.31.7.a. The Financial Auditor in its audit report noted

Company had entered into arrangement with government authority at Rs. 33 crores for the realignment of an open drain diagonally passing through the land between the elevated forecourt road. Part of the realignment is being done to free up the area between the elevated forecourt roads and to ensure hassle free usage during the city side development

Considering the nature and objective of expense, we believe that such realignment was not necessitated for development of the airport and as such additional cost incurred to free the land surrounded by elevated road should be excluded from the project cost.

2.31.7.b. According to the Financial Auditor, the additional cost incurred to free the land mentioned above should be excluded. According to them,

"The issue was referred to the technical auditors, who estimated the additional cost incurred at Rs 2 crore. In our opinion, the same should not be included in the project cost."

The Authority also took note of the observations of the Technical Auditor in this matter (Para – 5.10 of Technical Auditor's report). The Technical Auditor had observed:

"The estimation for the realignment of Drain was 106.15 Crores (including covers of drains) against the original cost of 76.69 Crores and there was a difference of cost of 29.46 Crores from the original estimate of MCGM. Hence, an agreement (Refer Annexure-VII) was signed between MCGM & MIAL to bear the increase in cost plus 10% contingency of the same by MIAL.

The total estimated cost for the cover section is 35.29crs which has to be constructed for the purposes explained in the above table. While, MIAL has to bear only a cost of 33 Crores as per the agreement signed. As per the Auditor, the cost to be paid by MIAL to MCGM seems to be reasonable."

The Authority, in the Consultation Paper – 22/2012-13 dated 11.01.2012, had noted that the Technical Auditor had indicated the additional cost to be borne by MIAL at Rs 29.46 crores plus 10% contingency, amounting to Rs 32.406 crores. It appeared to the Authority that the Technical Auditor had rounded off this figures to Rs 33 crores. The Technical Auditor had opined that this cost to be paid by MIAL to Municipal Corporation of Greater Mumbai (MCGM) seemed to be reasonable. Though the Technical Auditor had not stated so specifically, the Authority had inferred that, according to Technical Auditor, Rs 2 crores additional cost, should be reasonably included in the project cost, and not disallowed.

2.31.7.c. Airports Authority of India had given their comments on the issue of cost of realignment stating that, *"AERA may take appropriate decision based on Auditor's observation."*

2.31.7.d. MIAL had submitted that rerouting of drain along carriage way C1 was essential for construction of proposed at-grade road portion as part of the Elevated Road System and covering of the drain C1 was part of existing road crossing the proposed drain layout. Further, they had stated that covering of drains C2 & C3 were required for movements of construction vehicles. MIAL had further submitted that it is executing the works with restricted areas available for construction vehicles movement and covering drains C2 & C3 was required for facilitating construction activities. MIAL had requested the Authority to include the above cost in total project cost.

2.31.7.e. The Authority, in the Consultation Paper – 22/2012-13 dated 11.01.2012, had noted the different observations as above and felt that the cost of Rs 2 crores should be excluded from the project cost.

2.31.8. **Program Manager cost:** The Financial Auditor in their audit report had noted that MIAL awarded the contract to CH2M Hills as Program Management Consultants to review the design and schedules given by EPC contractor from the proprietary angle of MIAL.

2.31.8.a. The observations of the Financial Auditor were detailed in the Consultation Paper – 22/2012-13 dated 11.01.2012. The same is reproduced hereunder:

- *"Out of the bids received, the 4 parties were shortlisted as technically qualified and were invited for financial bidding.*
- *Coteba and Maunsell (L1 and L2) had initially qualified the technical rounds but were rejected on technical grounds after opening of financial bids. In case, the two parties were not technically qualified, they should have been rejected in the technical round and the financial bid should not have been opened.*
- *Dar was invited for bidding after the opening of the financial bids. This is not a preferred practice for vendor selection procedure.*
- *CH2M Hill originally quoted at Rs. 62.99 crores and was negotiated at a price of Rs. 46.50 crores. However, no negotiations were opted for other bidders.*

- *The company opted to pay an amount which was 25% more per annum than the lowest bidder leading to additional cost of approximate Rs. 48 Crore over the estimated project timeline."*

2.31.8.b. The Financial Auditor had submitted that the additional cost of Rs. 48 Crores should not be included in the total project cost for DF.

2.31.8.c. The Financial Auditor had also referred this issue to the Technical Auditor. The Technical Auditor had felt that the ground for rejection of L1 and L2 bidders were justified. They had agreed that the two parties should have been rejected in the technical round itself. In their view only DAR and CH2M Hill were technically qualified and the difference between the quotations of Dar & CH2M Hills of Rs. 2.07 crores should only be excluded.

2.31.8.d. AAI had submitted that the Authority may agree with the views of the Financial Auditor on the matter (that is to say, exclude Rs 48 crore).

2.31.8.e. MIAL had submitted that it ran a competitive bid process for identification of the preferred program management consultant. They had agreed there was no need to open financial bids of the two non-responsive bidders. However, in order to broad base bidders, bid was invited from one more bidder viz. Dar Al Handasah (DAH). MIAL decided to proceed with CH2M Hill considering it was already associated with MIAL and had a team working at CSI Airport, Mumbai. It was thought appropriate that selection of CH2M Hill would result in significant benefits by way of time saved in mobilisation and other benefits which come from familiarity with the project. MIAL had submitted that the Financial Auditor had erred in comparing the price of a technically non competent vendor as the base to arrive at the disallowance of Rs 48 crores.

2.31.8.f. The Authority, in the Consultation Paper – 22/2012-13 dated 11.01.2012, had noted the observations brought out by the Financial Auditor on an important aspect of contracting process and had also noted the views of AAI on the matter. Given the background on this issue, the Authority in the

Consultation Paper – 22/2012-13 dated 11.01.2012 had formed the tentative view that Rs. 48 Crores should be excluded from the project cost.

2.31.9. **Upfront Fee to AAI:** At the stage of privatisation of the CSI Airport, Mumbai, MIAL had paid an Upfront Fee of Rs. 150 crores to the AAI as per the provisions of the OMDA. MIAL had further paid an amount equivalent to Rs 3.85 crores to AAI towards carving out of additional land of 48.15 acres. MIAL had considered Rs 153.85 crores (=150+3.85 crores) to be a pre-operative expense and had included the same in the project cost.

2.31.9.a. Both the auditors had recommended the Upfront Fee to be disallowed from the Project Cost. The auditors had given the rationale for such disallowance that as per state support agreement- clause no 3.1.1, wherein it is clearly stated that *"the upfront fee payable by JVC to AAI under OMDA shall not be included as part of costs for provision of Aeronautical Services and no pass-through would be available in relation to same"*.

2.31.9.b. AAI in their observations had indicated that the Authority may agree for not inclusion of Upfront Fee in the Project Cost.

2.31.9.c. The Authority had discussed the treatment of Upfront Fee in detail in Order No. 28/2011-12, dated 14.11.2011 in the matter of levy of Development Fee by Delhi International Airport (P) Ltd. (DIAL) at IGI Airport, New Delhi. The Authority had recognised that if the Upfront Fee, which is not to be made part of the cost for provision of aeronautical services and thereby is not supposed to be recovered through aeronautical charges, is recovered through DF such recovery may not be entirely in line with, at least the spirit, of the contractual provisions and had excluded the Upfront Fee from the project cost of DIAL.

2.31.9.d. Further, the Authority, in the Consultation Paper - 22/2012-13 dated 11.10.2012, had also noted the following:

i) Clause 11.1.1 of the OMDA provides as under:

"The JVC shall pay to the AAI an upfront fee (the "Upfront Fee") of Rs 150 Crores (Rupees one hundred and fifty Crores only) on or before the Effective Date."

Therefore, the Upfront Fee was to be paid by MIAL either before or on the date of taking over the project from the amounts that would have been available with them.

ii) Further, as already brought out above, in terms of article 3.1.1. of the SSA, the upfront fee is not to *"be included as part of costs for provision of Aeronautical Services and no pass-through would be available in relation to the same"*.

iii) It would appear from records that while considering the request of MIAL for approval of DF in respect of CSI Airport, Mumbai, MoCA had not taken into account the upfront fee of (Rs.150 crores) paid for calculation of DF.

2.31.9.e. In view of the above, the Authority had proposed, in the Consultation Paper – 22/2012-13 dated 11.10.2012, that the Upfront Fee of Rs. 153.85 crores should not be included in the total project cost.

2.31.10. **ATC Equipment & Technical Block:** The Auditors had noted in their reports that ATC Tower & Technical Block were to be relocated for construction of Code 'F' compliant taxiway parallel to Runway 14-32. The structure cost of ATC Tower was estimated at Rs 80 crores and a provision of Rs 110 crores made for procuring and installing equipment in the ATC Tower. The cost for construction of the Technical Block and associated works was estimated at Rs 200 Crores.

2.31.10.a. The Financial Auditor had observed that while the estimated cost for the Technical Block was Rs 200 crores, the timeline for relocation was yet to be decided and hence this amount should not be included in the project cost. Further, that out of projected Rs 80 crores as the cost of construction of new ATC Tower, only Rs 40 crores had been approved by AAI.

2.31.10.b. On the same issue, the Technical Auditor had expressed its opinion that since the schedule for construction of Technical block & associated works were not finalised, the cost of Rs. 200 Crores should not be included in Project cost at this point of time. The Technical Auditor had further said that the same can be considered by Competent Authority for levy of DF only after commissioning of Technical block & associated works.

2.31.10.c. AAI had expressed that the Authority may agree with the auditor's observation and the cost may be deferred at this stage.

2.31.10.d. MIAL had stated that relocation of ATC Tower and Technical Block was a necessity, primarily for compliance with the Obstacle Limitation Surface (OLS) and taxiway clearance standards specified by DGCA and ICAO. The relocation project was to commence in 2012 after approval from AAI and was expected to be completed in 18 months from the date of approval.

2.31.10.e. MIAL had further stated that the ATC Tower and Technical Block are mandated infrastructure with a specified timeline for implementation. MIAL had submitted that the project cost may be trued up in future based on actual expenditure incurred and used as the basis for review of DF.

2.31.10.f. MIAL had also submitted that the levy of DF is a pre-funding mechanism for development of airport assets. A capital intensive project such as an airport may require DF as one of the funding source and if without DF the technical block could be constructed, then DF was not required. They had therefore contested the observation of the Technical Auditor that levy of DF should be considered by the Authority after commissioning of technical block and associated works.

2.31.10.g. The Authority, in the Consultation Paper – 22/2012-13, dated 11.01.2012 had formed opinion that since costs towards relocation of the Technical Block had not yet been incurred, the same may not be included in the project cost at this stage. In case the Authority received documentation / substantiation from MIAL confirming execution of the works before the issue of the Multi Year Tariff / DF Order, the amount of Rs 200 crores or part thereof may be included in the project cost as relevant for the present control period.

2.31.11. **Relocation of Shivaji Statue:** The Financial Auditor had noted in their audit report that MIAL had budgeted for the following expenditure as part of project cost towards relocation of Shivaji Statue from its initial position in front of the existing Terminal 2 building to a new prominent location and construction of new Shivaji Memorial.

Table 7: Expenditure towards relocation of Shivaji Statue

Sl. No	Activity	Budgeted Amount (in Rs. crore)	Commitment Made (in Rs. crore)	Balance Commitment (in Rs. crore)	Status of Activity
1	Shivaji Memorial	25	-	25	Yet to be incurred
2	Relocation of Shivaji Statue	4	3	1	Completed
3	Works (Shivaji Statue related)	6	4	2	Yet to be incurred
	Total	35	7	28	

2.31.11.a. The relocation was necessitated by the fact that the initial position of the Shivaji Statue was in the middle of the footprint of the new planned Terminal building. Without moving the same, it would not have been possible to construct and develop the airport.

2.31.11.b. The Financial Auditor had indicated that, based on their review, the relocation cost of Rs. 4 crores seemed necessary as the statue was in the footprint of the new terminal building.

2.31.11.c. The Financial Auditor had also indicated that while MIAL considers the activity pertaining to Shivaji Memorial as Mandated Project, no communication from either Government of Maharashtra or Ministry of Civil Aviation, or any other statutory authority was available. The Financial Auditor had stated that accordingly they cannot comment on whether the same was mandated to MIAL or not and suggested that the same not be included in the project cost. The Technical Auditor had indicated that the preliminary estimate for the same seemed reasonable.

2.31.11.d. AAI had submitted that the Authority may take an appropriate decision based on Auditor's observation.

2.31.11.e. MIAL had submitted that copy of its communications with the Government of Maharashtra (GoM) had been provided to the Auditors. The letter from GVK to Secretary, GAD, Government of Maharashtra states as under,

"....... Accordingly in the meeting held with Hon'ble Chief Minister on 9th May, 2011, a concept plan of proposed memorial was presented by MIAL

alongwith statue of Chhatrapati Shivaji Maharaj on a pedestal, with fountains, lighting, landscape area and parking.

As mentioned above, the memorial is proposed to be set up at proposed entrance to elevated road on WEH leading to new Integrated Terminal at CSIA. We seek your approval for setting up such memorial. Cost of setting up such memorial is estimated to be Rs 25 crores.

Though, in the past, during various discussions, it was mandated that MIAL had to bear the cost of this memorial, which is estimated to be Rs. 25 crores, we need a line of confirmation from State Government that cost is to borne by MIAL."

2.31.11.f. Response from the Government of Maharashtra was as under,

"..........Please note that any proposal for erecting a Statue of a historical/national personality, is processed as per the guidelines issued vide G.R. No. Smarak / 3102/884/ CR. 122/2002/29 dated 2.2.2005. A copy of the same is forwarded herewith for further necessary action, You may formulate necessary proposal and submit the same to the Government, through Collector, Mumbai Suburban District, so as to enable us to take appropriate decision in this regard.

As regards to expenditure involved in erecting the Memorial/ Statute, kindly note that the same will have to be borne by MIAL."

2.31.11.g. The Authority in the Consultation Paper – 22/2012-13 dated 11.01.2012, had noted that while reference to the meeting(s) being indicated by MIAL have been made explicit in the letters provided to the Authority, the Government of Maharashtra has not specifically required / specified the amount of Rs. 25 crores towards the Shivaji Memorial. It was also not clear to the Authority that MIAL's estimated cost towards this work was on account of adherence to the guidelines forwarded by Government of Maharashtra as per the above correspondence. The Authority had thus tentatively opined that such cost would not be included as part of the project cost at present. The Authority had also stated that it could further consider this aspect based on any inputs from Government of Maharashtra / Government of India on the said requirements.

2.31.12. **Airside project due to NATS recommendation:** MIAL had made an estimate towards Airport Ground Lighting (NATS recommended project) to improve the airside capacity.

2.31.12.a. The Financial Auditor had observed that provision estimated under the project was overestimated by Rs 0.75 crore based on the inconsistency between two AGL estimated under same project.

2.31.12.b. The Technical Auditor had noted that RET E2 and N5 are new projects added in the project cost estimates. They had observed that while cost of airport ground lighting was estimated at 10% of cost for RET N5, cost of airport ground lighting was estimated at 15% of cost for RET E2. The Technical Auditor found this difference to be an overestimation and recommended the same for exclusion from the project cost.

2.31.12.c. AAI had observed that the Authority may agree with the observations of the Technical Auditor.

2.31.12.d. MIAL had stated that the provision for AGL is project specific and could vary from project to project depending on the nature, scope and requirement of the project. Provision for AGL in the estimate was made based on the specific requirement of respective projects and therefore cannot be compared with other project.

2.31.12.e. After consideration of the opinions expressed by the Auditors, response from MIAL and perusal of submissions, the Authority in the Consultation Paper – 22/2012-13 dated 11.10.2012 had formed opinion that this amount of Rs 0.75 crore will be excluded from the project cost.

2.31.13. **Removal of encroachment of airport land:** The Financial Auditor in its report had termed this as cost of settlement of land. The Financial Auditor had stated that MIAL had estimated a sum of Rs. 30 crores to settle disputes pertaining to the land encroached at CSI Airport. The Auditors had stated that they were informed that MIAL is in talks in this regard. However, documents in this respect were not made available to the Auditor for review.

2.31.13.a. The Financial Auditor opined that until the final settlement of the disputes or actual expenditure and the determination of the final utility of the land pocket is ascertained, this cost should not be included as a part of project cost.

2.31.13.b. On this issue, the Technical Auditor had noted that the settlement of land had not been finalised which was under discussion with owners. The Technical Auditor also recommended that this amount may be considered after the settlement of land is finalised.

2.31.13.c. AAI had said that the Authority may take appropriate decision in this regard.

2.31.13.d. MIAL had submitted that discussions were at an advanced stage to settle the matter and therefore the amount should be included in the project cost. MIAL had also stated that otherwise, MIAL would not be in a position to make the payment on settlement which could adversely affect implementation of the project. MIAL further stated that this had also been approved by the Board of Directors of MIAL after discussions and considering all the facts of this matter.

2.31.13.e. The Authority, in the Consultation Paper – 22/2012-13 dated 11.01.2012, had proposed that this amount of Rs 30 crores should presently not be included in the project cost for the current control period.

2.31.14. **Escalations & Contingencies:** MIAL had estimated escalations and contingencies including claims at Rs 630 crores as part of the project cost of Rs 12,380 crores.

2.31.14.a. The Technical Auditor had indicated in its report that MIAL estimated Rs 250 crores towards escalation including delay in T2 CWP works, elevated road, grade road, airside works & other miscellaneous works and Rs 200 crores as claims for T2 cost (anticipated claims), design service cost and EPC contractor overhead cost due to time extension of 17 months. They had noted that while T2 anticipated claims for idling of labour, machinery & equipment were 102 crs; claims already raised by various vendors other than

L&T were Rs 122 crores. They had submitted that claims at Rs 102 crores could be considered as part of project cost. They had also noted that escalation cost estimated seemed reasonable.

2.31.14.b. The Technical Auditor had noted that contingency worth Rs 180 crores had been estimated by MIAL towards power charges, water charges, house-keeping works and change orders, which they found to be reasonable.

2.31.14.c. However, the Technical Auditor had opined that the Escalations, Claims & Contingencies have to capped at its presently estimated value of Rs 630 crores to avoid overrun of project cost.

2.31.14.d. MIAL had submitted that considering extended timelines and uncertainties involved, actual Escalation, Claims & Contingencies may be considered and not cap imposed on this head.

2.31.14.e. Authority, in the Consultation Paper – 22/2012-13 dated 11.01.2012, had noted that MIAL had already received claims of Rs. 122 Crores which does not include claims from L&T. In view of the Auditor's recommendations, the Authority in the Consultation Paper – 22/2012-13 dated 11.01.2012 had formed the tentative view that the Technical Auditor's suggestion of capping the Escalation, Claims & Contingencies at Rs. 630 crores to avoid overrun of project cost should be accepted.

Authority's views on Process-related observations of the Auditors

2.32. The Authority had, in the Consultation Paper - 22/2012-13 dated 11.10.2012, also noted the observations presented by the Technical and Financial Auditors on issues related to process. These observations were related to certain processes followed by MIAL in award of contracts or other areas, which had not been found to be an acceptable practice by the Financial Auditor.

2.33. The Authority had also noted in the Consultation Paper - 22/2012-13 dated 11.10.2012 that both the Auditors had stated that these process issues led to increase in the project cost. However, they had not ascribed any additional cost specifically to these items. They have stated that it is difficult and subjective to assess the impact of the process related issues in quantitative terms. The Authority had considered these issues along with submissions from MIAL essentially presenting certain contentions on these aspects.

2.34. It had been noted that MIAL is a Board-managed company with representations from AAI and MoCA at sufficiently senior levels. It was also noted that the most of the contracts in this project were already awarded and that project was under advanced stage of implementation. Therefore, any corrections or remedial measures did not appear to be feasible at this stage of the project. In view of the inability of the auditors to further quantify or identify losses in monetary terms due to process issues, the Authority had found itself unable to take any further action in the matter. As noted in 2.31.8 above, on the process related observation where financial impact could be ascertained, viz payment to Program Manager, the Authority had considered the issue and formed a tentative view of the financial treatment on the matter.

2.35. On the specific process issue of site overheads not having been finalised as highlighted by the Financial Auditor, the Authority had noted MIAL's submission that it had finalised site overheads for the period upto August 2013 when the International Terminal is envisaged to be ready and its commitment that it shall endeavour to ensure that the total cost of site overheads are within the budgeted amount in the Project Cost. Further, the Authority had proposed to cap the overall project cost at Rs 11,647.46 crores as mentioned in Tentative Decision No.1 of Consultation Paper - 22/2012-13 dated 11.10.2012 including the issue of site overheads.

Summary of discussions on Project Cost

2.36. Based on the above, the summary of project cost that the Authority had considered in the Consultation Paper - 22/2012-13 dated 11.10.2012 (Rs crore) is reproduced as under:

Table 8: Project Cost summary, considered for Tariff Determination

Description	Revised Cost-II (Oct 2011), in Rs crore	Cost disallowed, in Rs crore	Cost not presently included, in Rs crore	Project Cost being considered, in Rs crore
T1 Projects	453	54.00		399.00
T2 Projects	5,083	0.60		5,082.40
Runway, Taxiway & Apron	1,545		32.34	1,512.66
Landside projects	41	1.00		40.00
Miscellaneous projects	562	52*	25**	485.00
AAI works taken over (5.4 of OMDA)	24			24.00

Description	Revised Cost-II (Oct 2011), in Rs crore	Cost disallowed, in Rs crore	Cost not presently included, in Rs crore	Project Cost being considered, in Rs crore
Technical services & Consultancies	834	48.00		786.00
Capital expenditure for Operations	118			118.00
Pre-operative Expenses	684			684.00
Capitalised Interest	1,410			1,410.00
Upfront Fee paid to AAI***	154	153.85		-
ATC Equipments cost & Technical block in NAD colony	310		200.00	110.00
Contribution to MMRDA for sahar elevated road	166			166.00
WHSS-Shivaji Smarak / Memorial	25		25.00	-
Mithi River realignment	150			150.00
RET N5 & E2	51	0.75		50.25
Enabling cost for taking over of carved out assets (NAD colony)	110		110.00	-
Cost of settlement of land	30		30.00	-
Project Cost	11,750			11,017.46
Escalation & Claims	450			450.00
Contingency	180			180.00
Total Project Cost	12,380	310.20	422.34	11,647.46

* - Disallowance including disallowance of Rs 50 crores discussed in para 2.31.5 above on the issue of cargo terminal at Sahar and Rs 2 crores discussed in para 2.31.7 on the issue of realignment of drain

** - Disallowance of Rs 25 crores discussed in para 2.31.6 above on the issue of slum rehabilitation and NAD colony development

*** - It may be noted that the project cost of Rs 12,380 crores, submitted by MIAL in its MYTP, was based on value of Upfront Fee of Rs 153.85 crores. The same has been shown as Rs 154 crores after rounding-off. However, for the purpose of determination of total disallowances to be considered by the Authority, the full amount of Rs 153.85 crores has been considered.

2.37. The Authority had noted in the Consultation Paper - 22/2012-13 dated 11.10.2012 that the total project cost of Rs 11,647.46 crores considered by the Authority was capped for the current control period but could increase in the next control period by the quantum of non-inclusions (presented in the 3rd column in the table above) or parts thereof depending upon the completion of underlying activity / evidence-based submissions. Further, the Authority had also noted that cost corresponding to construction of the South-East pier of new Terminal Building T2 (of an area of 13,845 sqm) was not included in the project cost of Rs 12,380 crores as proposed by MIAL, as the same was not planned to be constructed presently.

2.38. **Metro connectivity to CSI Airport**: MIAL had submitted that Metro connectivity to CSI Airport, Mumbai has been on the agenda for MMRDA. It was first proposed to be provided with Metro Line – 1. However the same was postponed for Metro Line – 6, which was likely to be implemented by 2021. Later based on discussions with National Facilitation Committee and Ministry of Civil Aviation, MMRDA agreed to pre-pone the airport connectivity to Metro Line – 3.

2.38.1. MIAL, vide their submission dated 04.09.2012, had submitted that MIAL would be incurring the cost of Rs 518 crores towards development of 2 metro stations and provision of electro-mechanical system for this connectivity and MIAL had proposed that this amount should be included in RAB for the next control period.

2.38.2. Presenting the background for the same, MIAL had stated that,

"MMRDA asked MIAL to bear the costs of stations at CSIA along with provision of electro-mechanical facilities to the extent of 20% of the estimated project cost of Rs 20,000 crores. MIAL initially did not agree for bearing any cost, however, MMRDA was not agreeable to provide connectivity unless there was contribution from MIAL.

After series of discussions, MIAL agreed to bear the cost of three metro stations, one at Santacruz terminal forecourt, one at Sahar terminal forecourt and one in area where proposed Real Estate Development shall take place. Estimated amount to be spent by MIAL is Rs.200 crores per station and total Rs 177 crores towards electro-mechanical system.

Hence cost of two stations in forecourt of terminals at Santacruz and Sahar is estimated to be Rs. 400 crores along with proportionate cost of electro-mechanical system estimated to be Rs 118 crores, total cost for two stations would be Rs. 518 crores and estimated cost will form cost of the project.

The project is being implemented by MMRDA and construction of stations is to be undertaken by MIAL as per norms to be prescribed by MMRDA MIAL has to contribute Rs. 118 crores towards electro-mechanical system, as mentioned above, for these two stations to such contractor as may be finalised by MMRDA. Hence, Rs 518 crores will be part of the MIAL project cost i.e. excluding cost of station and proportionate cost of electro-mechanical system pertaining to the station for proposed real estate development site.

MIAL has brought this issue in knowledge of MoCA, which is a participant in NFC meetings also.

Work on project is likely to start within a year and it is anticipated that cost by MIAL will be incurred in next control period starting from F.Y. 2014-15. We wish to bring to notice of the Authority that, this amount needs to be included in Regulatory Assets Base (RAB) for the purpose of determination of tariff."

2.38.3. The Authority, in the Consultation Paper – 22/2012-13 dated 11.01.2012, had noted the above submission from MIAL. From the correspondence from MMRC to MIAL, the Authority had noted that, *"MIAL will be permitted to retain the commercial rights at the 3 stations (after providing areas required for metro operation and maintenance) for such period of time to recover Rs 777 crores or till the end of the concession period (not exceeding)."*

2.38.4. The above cost was not to be included in the project cost for the current control period. With respect to likely investment in the next Control Period, the Authority was of the tentative view that the inclusion of this asset in future should be subject to review of correspondences from Government of Maharashtra, MMRDA and Ministry of Civil Aviation to this effect and other relevant associated aspects.

3. Means of Finance including determination of DF

3.1. The project cost, considered by the Authority, in the Consultation Paper 22/2012-13 dated 11.10.2012, for the purpose of tariff determination and determination of DF in the current control period, is Rs 11,647.46 crores.

3.2. In view of MIAL's submissions on the issue of determination of DF, to tide over the shortfall in Means of Finance for the project, the Authority had considered various submissions & related aspects in this regard.

3.3. MIAL had submitted the means of finance approved by Board of Directors of MIAL as follows:

		Rs Crs
a.	*Approved Project Cost*	*12380*
b.	*Means of Finance*	
i.	*Equity Share Capital*	*1200*
ii.	*Debt*	*4231*
iii.	*Real Estate Deposit*	*1000*
iv.	*Development fee (Already Collected + Sanctioned)*	*1517*

Total b (i + ii + iii + iv)	*7948*
Gap to be met out of internal accruals, additional DF and any other probable means of finance (a + b)	*4432*

3.4. MIAL, vide their submission dated 07.09.2012, had submitted that they had continued to make serious efforts to bring additional means of finance by way of equity and debt. MIAL had submitted as under,

> *"This is with reference to MYTP for the period FY 09-10 to FY 13-14 filed by MIAL along with application for Development Fee (DF). Kindly note that MIAL continues to make serious efforts to bring additional means of finance by way of equity and debt.*
>
> *Recently we had a meeting with Deputy Managing Director of IDBI Bank, our lead lenders. A great concern was shown by IDBI due to gap in means of finance. He also enquired about determination of MYTP and sanction of DF. IDBI had reiterated its inability to sanction any further loan unless there is a clarity on finalization of MYTP and adequate DSCR.*
>
> *This matter of gap in means of finance was discussed in recent Board Meeting of MIAL held on 26th July, 2012, where Board was apprised of the discussion held with IDBI bank and concern was shown by all the Directors because of gap in means of finance. All the promoters including AAI reiterated the inability to bring in additional Equity........*
>
> *Looking into urgency of requirements of funds for implementation of the project, we request the Authority to kindly finalise our application for DF at the earliest."*

Authority's views on the means of finance

3.5. In the Consultation Paper – 22/2012-13 dated 11.10.2012, the Authority, in the Auditor's reports, had examined each component of the means of finance, as proposed by MIAL and had proceeded to consider their respective contributions with respect to the project cost of Rs 11,647.46 crores being considered by the Authority for the current control period.

Quantum of Debt

3.6. In the Consultation Paper – 22/2012-13 dated 11.10.2012, the Authority had noted that MIAL proposed a debt of Rs 4,231 crores as part of means of finance. MIAL, vide their submission dated 31.07.2012, had submitted that,

> *"Total of Term loan sanctioned to MIAL is Rs. 4231 crs. Out of these MIAL has already withdrawn Rs. 3747.6 crs till 31.03.2012. Therefore balance of Rs. 483.4 crs is envisaged to be withdrawn in FY 13 for Project requirements...."*

3.7. MIAL, vide their submission dated 07.09.2012, had submitted that their lead bankers IDBI expressed inability to sanction any further loan until a clarity on finalisation of MYTP was achieved as discussed in para 3.4 above.

3.8. Further MIAL had submitted the extract of its board meeting dated 26.07.2012, where IDBI's response had been noted. The extract is reproduced below,

> "………………….
>
> *CEO and CFO informed to the Board that a meeting was held with Deputy Managing Director and other senior officials of IDBI Bank on 23rd July 12 to explore possibility of additional debt. IDBI Bank categorically indicated that there was no possibility of any additional debt unless there is clarity on finalization of MYTP by the regulator, as then only, a clear picture will emerge whether there is possibility of additional debt………."*

3.9. In view of the above, the Authority in the Consultation Paper – 22/2012-13, dated 11.01.2012. had considered debt of Rs 4,231 crores as part of means of finance.

Quantum of Equity

3.10. In the Consultation Paper – 22/2012-13 dated 11.10.2012, the Authority had noted the amount of equity share capital proposed by MIAL at Rs 1,200 crores. The Authority has earlier discussed in para 2.31.9 above that the Upfront Fee paid to Airports Authority of India was to be paid by MIAL before or on the date of taking over the project from amounts that would have been available with them and thus the equity contribution of the promoters was proposed to have been reduced by Rs. 153.85 crores.

3.11. The Authority had further noted from MIAL's submission dated 07.09.2012 that shareholders of MIAL had expressed their inability for any further infusion of equity share capital as discussed in para 3.4 above.

3.12. Further MIAL had also submitted the extract of its board meeting dated 26.07.2012, where response from the shareholders has been noted. The extract is reproduced below,

> "………………….
>
> *After discussions, representatives of ACSA Global and Bid Services reiterated their inability to bring in any additional equity. Nominee Director of Airports Authority of India (AAI) also expressly indicated inability of AAI to bring in additional equity because of commitments of AAI for implementing various on-going and planned projects. GVK Group also reiterated its inability to bring in additional equity.*
>
> ……….."

3.13. In view of the above, the Authority in the Consultation Paper - 22/2012-13 dated 11.10.2012 had considered Rs 1,046.15 crores as equity capital as part of the means of finance.

Quantum of Refundable Security Deposits

3.14. In the Consultation Paper – 22/2012-13 dated 11.10.2012, the Authority had noted from MIAL's submissions that MIAL had initially planned to raise Rs 2,219 crores as deposits from the Real Estate. However it was subsequently revised to Rs 1,000 crores. MIAL, vide their submission dated 26.06.2012, had further submitted that there has not been any realisation of Real Estate security deposits in FY 12. Accordingly MIAL had submitted revised schedule of real estate security deposits, which envisages realisation of Rs 220.75 crs, Rs 435.09 crs and Rs 344.16 crs in FY 13, FY14 and FY15 respectively keeping the total amount same at Rs 1,000 crores.

3.15. In view of the above, the Authority had considered Rs 1,000 crores, to be raised from deposits from the Real Estate, as part of the means of finance.

Quantum of Internal Resource Generation and DF

3.16. The Authority, in the Consultation Paper – 22/2012-13 dated 11.10.2012, had stated that it was of the view that DF is a means of last resort and hence before considering the issue of levy of DF, the Authority had proposed to consider the issue of internal accruals of MIAL. The Authority in the Consultation Paper - 22/2012-13 dated 11.10.2012 had noted from MIAL's submission dated 23.11.2011 that MIAL had considered internal accruals of Rs 2,473 crores towards means of finance and that this amount of internal accruals was based on the assumption that the Authority would approve the tariff hike proposed by MIAL. The Authority had further noted from MIAL's submission that if the tariff hike was approved at a lower level, the amount of internal accruals will go down and MIAL had proposed to accordingly increase the amount of DF.

3.17. The Authority had noted in the Consultation Paper - 22/2012-13 dated 11.10.2012 that the term "internal accrual" is not as such defined in the academic literature and Accounting Standards issued by The Institute of Chartered Accountants of India. The Authority, in the Consultation Paper - 22/2012-13 dated 11.10.2012, had proposed to use the term "internal resource generation", in the present context to comprise (a)

Depreciation, (b) Deferred Liabilities (c) Profit after Tax – essentially monies that could be considered to be available to MIAL from its regular course of business operations.

3.18. The Authority had noted the observation of the Financial Auditor that the internal accrual considered by MIAL were the total retained earnings, i.e., Profit after tax, as on August 2014 and no adjustment had been made for any non-cash expenditure considered in the same. Non-cash expenditure includes items such as depreciation, deferred tax expense and any other provision for long term liability.

3.19. The Financial Auditor had opined that the cash fund available after payment of all operational expenses, should be utilised for the purposes of capital funding of the project and not just the profit as per profit and loss account. Thus, the retained earnings should be adjusted to include the amount of non-cash expenses, i.e., depreciation and deferred tax expense to determine the total cash fund generated by the company.

3.20. The Financial Auditor had submitted that adjusting the major non cash expenditure of Depreciation and Deferred Tax, the internal resource generation can be enhanced by Rs 1,557 crores from Rs 2,464 crores (as proposed by MIAL in the MYTP submitted to the Authority) to Rs 4,021 crores. As per calculations considered by the Financial Auditor, such consideration of means of finance would not impact the ability of MIAL in terms of repayment of loan, DSCR ratio and payment of deferred tax liability. Therefore, the Financial Auditor had proposed that Rs 4,021 crores should be considered towards funding the project cost.

3.21. The Authority had noted that internal resource generation as suggested by the Financial Auditor for consideration towards means of finance had considered an amount of Rs 2,464 crores projected as retained earnings by MIAL on the basis that the tariff hike proposed by MIAL will be approved by the Authority.

3.22. For the purpose of clarity, the Authority, in the Consultation Paper - 22/2012-13 dated 11.10.2012, had stated that realisation of retained earnings as projected by MIAL and internal resource generation as proposed by the Financial Auditor are dependent upon the acceptance of the hike proposed by MIAL in its MYTP submission. A lower hike in the tariff would reduce the extent of realisation of internal resource generation thus increasing the gap in the means of finance. The tariff increase proposed by MIAL is based, inter alia, on the following elements:

3.22.1. Cost of equity

3.22.2. Hypothetical RAB

3.22.3. Return on Real Estate Deposits (MIAL have proposed that this return should be the same as that on equity)

3.22.4. Treatment of certain sources of revenues as aero or non-aero

3.23. The Authority had noted that these elements would finally be determined as part of tariff determination and to the extent that the quantum of these elements was adjusted downwards as part of the tariff determination process, it would also impact the internal resource generation. Hence, the retained earnings as projected by MIAL and the internal resource generation proposed by the Financial Auditor might not materialize.

3.24. It was also stated that as far as depreciation is concerned, the Authority was in agreement with the Financial Auditor's observation that it is a non-cash expenditure and the monies would be available with the company for meeting investment requirements for the project. However the quantum of depreciation, in turn, would depend on the quantum of Capital Expenditure, Hypothetical RAB and Development Fee (DF) (RAB adjustment proposed to be considered to the extent of DF in turn impacting quantum of depreciation) determined by the Authority.

3.25. The Authority, in Consultation Paper - 22/2012-13 dated 11.10.2012, had observed that the assessment of gap in the means of finance had an element of circularity on account of inter-linkage between determination of DF and tariff determination (depreciation).

3.26. The Authority was also conscious of the fact that the Development Fee (DF) is a means of last resort. In the Consultation Paper - 22/2012-13 dated 11.10.2012, however, the Authority had proposed upfront fixing of DF, to address this inter-linkage and at the same time facilitating determination of internal resource generation.

3.27. The Authority had noted that it had an occasion to determine DF in respect of Delhi International Airport Ltd. (DIAL) at Rs. 3415 crores vide the Order no. 28 / 2011-12 dated 14.11.2011. The size of investment in CSI Airport, Mumbai proposed by MIAL is comparable to that undertaken by DIAL. Further the number of passengers and cargo traffic at both the airports are in similar range and the scope, nature and scale of projects being executed at both the airports are also similar. The Authority, therefore in the Consultation Paper -

22/2012-13 dated 11.10.2012, had proposed to have reference to the same and had proposed to fix the Development Fee amount at similar level at Rs. 3400 crores.

3.28. The Authority also stated that it had an occasion to discuss the determination of the Development Fee in the context of OMDA in its Order no. 28 / 2011-12 dated 14.11.2011.

3.29. The Authority had noted the observations of the Comptroller and Auditor General of India (CAG) made in its Report No. 5 of 2012-13 (Performance Audit of the Ministry of Civil Aviation) for the year ended March, 2012. The Auditor (CAG) had referred to Article 13.1 of OMDA which states that,

> *"It is expressly understood that the JVC shall arrange for financing and/or meeting all financing requirements through suitable debt and equity contributions in order to comply with its obligations hereunder including development of the airport pursuant to the Master Plan and the major development plans."*

3.30. CAG had further observed that Ministry has allowed Delhi International Airport Ltd. (DIAL) to levy and use the Development Fee (DF) which according to CAG violated one of the basic provisions of OMDA which was part of the bid documents. CAG had further observed that:

> *"Further, approval of AERA for levy of DF by DIAL in exercise of the powers conferred by Section 13(1)(b) of AERA Act 2008 read with Section 22A of AAI Act 1994 to bridge the funding gap was a post contractual benefit provided to DIAL which was neither envisaged in the Request for Proposal nor included under any provision of OMDA or in the SSA. This has led to undue benefit to DIAL of Rs. 3415.35 crore collected or to be collected from passengers using Indira Gandhi International Airport."*

3.31. The Authority had also noted the comments of the Ministry of Civil Aviation on CAG Report and more particularly, the Ministry's reply/comment on the issue of Development Fee. According to Ministry of Civil Aviation,

> *"The level of Development Fee is under Section 22(A) of AAI Act, 1994 and was in the knowledge of all the bidders prior to the bidding process. Hence, contrary to what the CAG has said, the levy of Development Fee by DIAL was not a post contractual benefit provided to DIAL at the cost of passengers. Further, the levy of the Development Fee has been upheld by the Supreme Court, which has already examined and disposed of all the issues now being raised by CAG in its report."*

3.32. In the Consultation Paper – 22/2012-13 dated 11.10.2012, the Authority had carefully considered the CAG Report as well as the response of the Ministry thereto. The

Authority had noted that under Section 13(1)(a), it is required to determine the tariff for the aeronautical services taking into consideration, inter alia,

3.32.1. The capital expenditure incurred and timely investment in improvement of airport facilities;

3.32.2. The service provided, its quality and other relevant factors;

3.32.3. The cost of improving efficiency

3.33. Further, the instrument of DF is inbuilt in the AERA Act itself. Also, the Authority in the Consultation Paper - 22/2012-13 dated 11.10.2012 had proposed to reduce the aeronautical component of the allowable project cost by the amount of DF to arrive at the Regulatory Asset Base. The tariff determination would be undertaken by the Authority with reference to RAB (with corresponding depreciation and applicable WACC). Hence, grant of DF had the effect of permanently reducing the RAB and consequently target revenue required.

3.34. It was observed that as far as Authority is concerned, it is required to discharge its mandate as required under the Act. During the consultation paper of Delhi Airport for determination of DF –Consultation Paper – 02/2011-12 dated 21.04.2011, the Ministry of Civil Aviation had not indicated any conflict between determination of Development Fee and OMDA. Hence, in Consultation Paper - 22/2012-13 dated 11.10.2012, the Authority had noted that on account of determination of Development Fee, MIAL would not be unjustly enriched on this account.

3.35. The Authority had also noted that the interpretation of the provisions of OMDA as well as AAI Act had been done by the Government according to which sanction of DF under a statute is consistent with OMDA. The Authority had also noted from the comments of the Government to the observation of CAG, that the Government regards determination of DF consistent with provisions of OMDA. In this regards, the Authority, in the Consultation Paper - 22/2012-13 dated 11.10.2012 had proposed to fix the quantum of Development Fee at Rs. 3400 crores as part of means of finance of the project as a measure of last resort for timely completion of this project. It was stated that this amount of Rs 3,400 crores had subsumed the amount of DF granted to MIAL by the Order no. 02/2012-13 dated 18.04.2012 i.e. Rs 1,517 crores (=Rs 640.73 crores + Rs 876.27 crore)

3.36. As far as the internal resource generation is concerned, the Authority, in the Consultation Paper - 22/2012-13 dated 11.10.2012 had proposed that the internal resource generation to be considered towards means of finance by MIAL should comprise the following:

3.36.1. Cash balance as on 31st March 2012 as per audited accounts: It is sum total of all factors including depreciation, deferred tax assets/liabilities and general reserves. The cash balance is deemed to have accrued from the operations of the company and deferred tax liability is already subsumed in the available cash balance with the company. The cash balance considered by the Authority towards internal resource generation in the Consultation Paper - 22/2012-13 dated 11.10.2012 also included the Short-term loans and advances as on 31st March 2012 as per audited accounts of MIAL.

3.36.2. Depreciation for financial years 2012-13 and 2013-14: In line with its mandate, the Authority stated that it would determine the allowable depreciation on aeronautical RAB. Thus, this amount was to be determined by the Authority and therefore ascertainable as part of the tariff determination exercise. The Authority had also noted that the repayment of loans commences from the last quarter of the first year of the next control period (namely, the quarter of January-March, 2015), for an amount of Rs. 200 crores. It had, therefore, felt that such depreciation amounts can be reckoned towards means of finance during the current control period.

3.37. The Authority had further considered the issue of returns on the Internal Resource Generation considered above. The Authority had felt that depreciation being considered as part of Internal Resource Generation would be generated on account of assets used in the operations of the airport, which in turn are financed by debt, equity and other means of finance. It was also stated that the return on the means of finance is finally considered by the Authority as part of WACC. Further, the cash balance is also generated from operations of the company, for which means of finance are remunerated in terms of WACC. Thus, the Authority, in the Consultation Paper - 22/2012-13 dated 11.10.2012, had proposed that return on the Internal Resource Generation can be considered at WACC.

3.38. Internal Resource Generation along with other sources including debt, equity and Refundable Security Deposits (RSD) forms part of the means of finance, which was considered for funding the allowable project cost in the Consultation Paper – 22/2012-13 dated 11.10.2012. As per SSA, aeronautical component of the allowable project cost (calculated as Regulatory Asset Base) is provided a return in the form of WACC and thus it was stated that the return being considered on Regulatory Asset Base correspondingly subsumed the return being considered on the Internal Resource Generation in para 3.37 above.

3.39. Based on the above analysis, the position of means of finance as per the Consultation Paper - 22/2012-13 dated 11.10.2012 was as follows:

Table 9: Gap in Means of Finance

Means of Finance	Rs in crores
Total Project Cost	11,647.46
Equity	1,046.15
Debt	4,231.00
Development Fee	3,400.00
Real Estate deposits allocated for the project	1,000.00
Internal Resource Generation	
Audited Cash Balance as on 31st March 2012*	645.26
Projected Depreciation on Aeronautical Assets for FY13 and FY14**	506.00
Total Internal Resource Generation	1,151.26
Gap in Means of Finance	819.05

* - Includes the short term loans and advances as on 31st March 2012

** - As explained in the para 16 of Consultation Paper - 22/2012-13 dated 11.10.2012

3.40. The Authority had noted that even after considering DF as above and the Internal Resource Generation, there would be a gap in the means of finance with respect to the project cost being considered. The Authority had proposed not to address this gap with a view that MIAL would arrange for additional means of finance including additional equity, additional debt, higher quantum of refundable security deposits (over and above Rs. 1000 crores already included in the means of finance), etc.

Rate of DF Levy

3.41. The Authority had noted that while calculating the 'CPI-X' factor of 875%, MIAL had assumed the DF rate at Rs. 200/- per embarking domestic passenger and had kept the DF rate for international embarking passenger as variable (Rs. 2,126/- per embarking international passenger as per the tariff model submitted considering the date of tariff revision w.e.f. 01.05.2012).

3.42. The Authority had felt that DF rate of Rs 2,126/- per embarking international passenger was high. The Authority had also observed that in a separate submission dated 02.05.2011 with respect to determination of DF, MIAL had requested for increase of DF to Rs. 200/- per embarking domestic passenger and Rs. 1300/- per embarking international passenger.

3.43. Vide its Order No 02/2012-13 dated 18.04.2012, the Authority had determined DF of Rs. 100/- per embarking domestic passenger and Rs. 600/- per embarking international passenger – at the same rate as that previously sanctioned by the Government, pending inter alia further examination of the project cost. It was observed that at these rates and considering the total DF quantum proposed to be determined (Rs. 3,400 crores) and the traffic forecast as considered in the Consultation Paper – 22/2012-13 dated 11.10.2012, the DF levy would need to continue beyond the completion of the project.

3.44. The Authority had observed that MIAL's project is likely to be completed by August, 2014. The passenger traffic growth at CSI Airport has slowed down over the past year. The Authority had also considered the forecast for passenger traffic growth as projected by MIAL. It was stated that the concept of determining development fee as a pre-financing measure would be to ideally make it co-terminus with the project completion, to the extent practicable.

3.45. With respect to the consideration mentioned in para 3.42 above and 3.44 above, the Authority had noted that at such DF rates, it was likely that the time period for DF levy and the carrying cost would also come down.

3.46. In view of the above considerations, on the issue of the rate of DF levy, the Authority had presented the following options for stakeholder consultation in the Consultation Paper - 22/2012-13 dated 11.10.2012:

3.46.1. To continue the present rate of DF namely Rs 100 per embarking domestic passenger and Rs 600 per embarking international passenger (excluding any taxes, levies, etc.).

3.46.2. To increase the rate of DF at Rs 200 per embarking domestic passenger and Rs 1300 per embarking international passenger with effect from 01.01.2013

3.47. It was also stated that the Authority had considered the DF rates of Rs 200 per embarking domestic passenger and Rs 1300 per embarking international passenger and had also considered the interest on the proposed DF securitization of Rs 780 crores as an expense for the purpose of determination of X-factor in the Consultation Paper - 22/2012-13 dated 11.10.2012.

3.48. Based on the considerations outlined above on the Project Cost and determination of Development Fee, the Authority had issued the Consultation Paper - 22/2012-13 dated 11.10.2012 and had invited comments from the Stakeholders on the same.

4. Recent Developments (Since the issue of Consultation Paper - 22/2012-13 dated 11.10.2012)

4.1. The Consultation Paper No. 22/2012-13 was issued on 11.10.2012. Thereafter MoCA vide its Press Release no ID 88444 dated 16.10.2012, directed the AAI to infuse more equity in MIAL and DIAL with the objective of abolishing ADF at Mumbai and Delhi Airports and accordingly submit its proposals to this Authority. As per the MoCA's Press Release this was to make the air travel affordable and to ensure that the passengers are not subjected to any extra burden. Further, as per the said Press Release the expected financing gap in case of MIAL, was expected to be approximately Rs. 4200 crore if the ADF is abolished at MIAL with effect from 01.01.2013.

4.2. In order to fill the balance in financing gap of approximately Rs. 4200 crore, the MoCA asked AAI to contribute additional equity of approximately Rs. 288 crore in MIAL. The Press Release also said that the balance in financing gap will have to be met by the Airport Operator / Promoter (MIAL) through infusion of their share of equity. It is noteworthy that when ADF was levied at Mumbai and Delhi Airports, AAI had informed that it was not in a position to contribute more equity in view of its critical financial condition. However, vide its letter dated 26.10.2012 (Annexure – I),, Airports Authority of India (AAI) has informed the Authority that AAI is now in a position to infuse the additional required equity.

4.3. Stakeholder meeting for consultation on the Consultation Paper - 22/2012-13 dated 11.10.2012 was held on 29.10.2012. During this meeting, the Stakeholders like IATA and APAI had informed that they would be in agreement with stoppage of DF. The stakeholders also submitted their written comments / observations on the Consultation Paper-22/2012-13 dated 11.10.2012.

4.4. To assess the impact of infusion of additional funds on the determination of DF as proposed in the Consultation Paper - 22/2012-13 dated 11.10.2012 , in the light of MoCA's Press Release mentioned above, the Authority wrote letter dated 01.11.2012 to AAI to indicate the amount of additional equity that AAI proposes to infuse into MIAL. The Authority also asked MIAL, vide letter dated 01.11.2012, to indicate the quantum of infusion of additional equity by other shareholders of MIAL as well as expected additional resources to fund the project through debt.

4.5. MIAL has informed the Authority, vide letter dated 19.11.2012, (Annexure – II), that after detailed deliberations by the Board of Directors of MIAL, it has been decided that there is no possibility of bringing any additional equity.

4.6. Vide its letter dated 05.12.2012 (Annexure – III), AAI has informed that

> *"AAI Board, in principle, approved to infuse equity of Rs. 293 Crore in MIAL, as and when cash call is made by the Company".*

4.7. For the present, however, the Authority notes that the MIAL has so far not made the cash call. The Authority would be reviewing the position in this regard periodically.

4.8. In view of the deliberations outlined above, it did not appear feasible to bridge the Capital Funding gap by the end of December, 2012 and hence discontinuance of DF w.e.f 01.01.2013 also did not appear feasible. The Authority brought the above position to the notice of MoCA. The Ministry indicated that it is in agreement with AERA on this issue.

4.9. The deliberations outlined above and the comments made by the stakeholders insofaras they pertain to the issues of project cost, determination of DF, its rate as well as the time period for billing have been examined below.

5. Stakeholder Comments on the Consultation Paper and the Authority's Examination on the issues raised:

5.1. In response to Consultation Paper No. 22/2012-13, the Authority received several responses from the stakeholders, which were uploaded on the website of the Authority vide Public Notice No. 08/2012-13 dated 30.11.2012. The list of stakeholders, who have commented upon the Consultation Paper No. 22/2012-13 dated 11.10.2012, is presented below.

Sl. No.	Stakeholder	Issues commented upon
1.	Association of Private Airport Operators (APAO)	• Cost of Equity • Non-Aeronautical revenue • Refundable Security Deposit • Cargo Revenue • Hypothetical RAB • DF Collection Charges • Retirement Compensation • Adjustment to RAB on account of DF • ~~Fuel~~ Throughput Charges and CUTE Counter Charges • AAI Upfront Fee • DF

Sl. No.	Stakeholder	Issues commented upon
		• UDF
2.	Airports Council International (ACI)	• Project Cost • Regulation • RAB Adjustment on account of DF • Hypothetical RAB • Refundable Security Deposit • Cost of Equity • Internal Resource Generation • Non-Aeronautical Revenue • Fuel Throughput
3.	Delhi International Airport Limited (DIAL)	• Determination of DF • Operational Capital Expenditure • Internal Resource Generation • Interest on DF Loan • Corporate Tax • Non-Aeronautical Revenue • Fuel Throughput
4.	Mumbai International Airport Limited (MIAL)	• Project Cost • DF • Adjustment of RAB on account of DF • Hypothetical RAB • Retirement Compensation • Cost of Debt • RSD • Cost of Equity • Internal Resource Generation • Upfront fee to AAI • Demurrage Income • Non-Aeronautical Revenue • Cargo Revenue • Fuel Throughout Charges • CUTE Counter Charges • Rate Cards • 10% escalation in annual tariffs • DF Collection Charges • User Development Fees • Parking for General Aviation
5.	Bid Services Division (Mauritius) Limited & ACSA Global Limited	• Determination of DF • Cost of Equity
6.	Air France	• Project Cost • Tariff Proposal
7.	Board of Airline Representatives – India	• Project Cost • Regulation (Shared Till Approach) • DF Levy • Aeronautical & Non-Aeronautical Revenue • Fuel Throughout Charges • Master Plan

Sl. No.	Stakeholder	Issues commented upon
		• Major Development Plan • Real Estate
8.	British Airways	• Non-Aeronautical Revenues • WACC • Project Cost • RAB • Slot Charges (for flight cancellation) • Differential Treatment of International and Domestic passengers for UDF • Tariff Increase
9.	Cathay Pacific	• Project Cost • Asset Allocation • Revenue from Cargo Service • Fuel Throughout Charge • Tariff Structure/Rate Card • Period of Truing up of variables • O&M costs • FRoR • Real Estate
10.	Federation of Indian Airlines	• Project Cost • Development Fee Levy • Single Till Approach versus Shared Till Approach • Regulatory Period • Depreciation • Asset Allocation • Hypothetical RAB • Cost of Debt • Operating Expenditure • Non-Aero revenue • UDF Levy • Cargo and Ground Handling Service • Multiple Impact of Inflation • Need for Benchmarking • Engagement of Consultant by MIAL
11.	International Air Transport Association	• Project Cost • Inclusion of Metro cost in RAB • Determination of DF, DF Levy rate and project funding • Asset Allocation • Operational Capital Expenditure • Cost of Equity • Consideration of Upfront Fee Paid by MIAL to AAI towards equity • WACC • O&M costs • Cargo services revenue, Ground Handling revenue, Fuel Throughput • CUTE Counter Charges • Quality of Services

Sl. No.	Stakeholder	Issues commented upon
		• Tariff Structure/Rate Card • Alternatives from UDF implementation • Proposed new Slot Charges
12.	Hindustan Petroleum Corporation Limited	• Revision in FTC on retrospective basis
13.	Indian oil Corporation Limited	• Annual Escalation of CPI or & 7%, whichever is lesser • Proposed increase should be on prospective basis
14.	CONCOR Air Limited	• Application for approval of initial tariff for domestic cargo facility
15.	Express Industry Council of India	• Proposal not in accordance with respect to the Authority's direction on Courier/ Express cargo services • X-ray screening tariff • Differential pricing for same service
16.	Federation of Indian Chambers of Commerce & Industry	• Return on Equity
17.	Confederation of Indian Industry	• Return on Equity • Remunerating Security Deposit as means of Finance • Return on Internal Resource Generation • Allocation of use of DF based on actuals rather than notional basis
18.	Air Passengers Association of India	• AAI's additional infusion of equity • Lack of project management by MIAL • Comments on Project cost components • Differential rate for landing charges on domestic and international passengers
19.	Zee News Limited	• Parking charges for General Aviation Aircraft
20.	Ashley Aviation Limited	• Penal Charges for parking of aircraft
21.	Jupiter Aviation Services Private Limited	• Unavailability of parking / maintenance slot at CSI Airport
22.	Government of Maharashtra	• Ensuring best interest of Mumbai Airport passengers and developers
23.	Airlines for America	• Endorsing IATA's views
24.	Assocham	• Cost of Equity • Refundable Security Deposits • Hypothetical RAB • Return on Internal Resource Generation • RAB Adjustment on account of DF • Corporate Tax • Fuel Throughput Charge • Reduction in Equity due to payment of Upfront Fee • Cargo services • Cost of Debt
25.	Airports Authority of India	• RAB Adjustment on account of DF

5.2. As can be seen in the table above, not all the 24 stakeholders, listed in the table above have commented upon the issues related to DF and Project Costs. The comments pertaining to DF and Project Cost for CSI Airport have been discussed in the subsequent sections.

5.3. The views and observations made by the various stakeholders (including MIAL) on different issues, the responses of MIAL on stakeholder's comments, the Authority's examination thereof and the Authority's decision on the issues are summarized hereunder:

Issue No-I. Project Cost and Escalation thereof

I.a. Stakeholder Comments on Issue No-I

5.4. Various stakeholders have objected to the Authority's consideration of increase in project cost in case of CSI Airport. Stakeholders (FIA, IATA and APAI) have noted that the Project cost submitted by MIAL for consideration of the Authority under the MYTP was Rs 12,380 crores, which is higher than that indicated by MIAL at the time of bidding. Stakeholders are of the view that such a huge increase in the project cost should not be allowed.

5.5. IATA on the issue of escalation in Project cost stated that the steep increase in the project cost is a major concern.

5.6. On the issue of cap on the project cost, IATA agreed that a cap in escalation needs to be placed in order to prevent runaway costs and further suggested that MIAL must exercise good project cost management and demonstrate that it has taken all necessary measures consistent with good project management to keep costs within the approved budget.

5.7. FIA have stated as under,

> *"It is noteworthy that Planning Commission in its 'Report of the Task Force Financing Plan for Airports" issued in July, 2006 has mentioned project cost of CSI Airport at Rs.6,187 crores. In November 2007, MIAL had estimated the project cost at Rs.9,802 crores as in the revised Master Development Plan. However, MIAL has enhanced its claim towards the project cost to Rs. 12,380 crores, out of which Rs. 11,647 crores is tentatively approved by the Authority on the basis of inputs provided by the Technical and Financial auditor"*

5.8. FIA have referred to various provisions in OMDA and have expressed their views that the Airport Operator cannot seek review in the Project Cost, even if the Master Plan is sought to be revised and approved. FIA further stated that it is pertinent to note that though the definition of 'Master Plan' in the OMDA provides for upgradation, it cannot be construed to keep the channel open for increase in capital expenditure. FIA have referred to clause 7.1.2 and 7.2.1 stating that,

> "*Under* the OMDA, MIAL is fully and exclusively responsible for financial, technical, commercial, legal and *other* risks in relation to the Project".

5.9. FIA also raised certain queries on the issue of escalation in project cost, presented below:

> *(b) What was the business and financial model of MIAL at the time of the execution of OMDA and SSA?*
>
> *(c) What is the legal efficacy and values of the project cost submitted MIAL at the time of bidding?*
>
> *(d) Under what circumstances, when and to what extent can such diversion in project cost be permitted to be revised without complying with the requirements of prudence check especially when there is no provision under OMDA or SSA to raise such claims arising out of escalation in project cost?*
>
> *(g) Can the passengers be burdened for the omissions and commissions of MIAL in controlling the project cost when the very premise of privatization of the CSI Airport reflected in the concession agreements (OMDA and SSA) explicitly prohibit such escalation?*

5.10. APAI on this issue commented stating as under,

> *"it is noted that there was no regular monitoring by PMC during the construction period. The observations of Financial Auditor make you feel the lack of transparency and there were several failures on the part of the Project Management which led to the delay of the Project by over 17 months and increase in the Project cost from the original estimate of Rs.9,802 crores to Rs.12,380 crores. This is totally not acceptable from the point of view of the passenger as the delay has caused the increase in project cost and a passenger cannot be made to pay for the same."*

5.11. APAI further stated that costs pertaining to infrastructure like elevated access road, Mithi River widening within airport premises cannot be considered as part of the project cost.

5.12. Cathay Pacific submitted that details of the project cost were not included in the Consultation Paper, though the costs were categorized as T1 projects, T2 projects etc, the level of details is insufficient. This makes the justification difficult on whether these costs are entitled to be included in the project cost.

I.b. MIAL Response to Stakeholder Comments on Issue No-I

5.13. In response to the question on prudence check of the diversion in the project cost, MIAL said that any inference about absence of prudence check is not based on facts. Attaching an annexure on reasons for the increase in the project cost, MIAL further stated that,

> *"Reasons for increase in the project cost can be broadly categorized under:*
>
> *i. Change in scope due to comments received from MoCA / AAI on Master Plan / Major Development Plan*
>
> *ii. Change in scope due to mandated projects (imposed cost)*
>
> *iii. Delay which was beyond the control of MIAL*
>
> *It may be noted that MIAL has taken several initiatives to reduce the project cost.........*
>
> *...... MIAL undertook many value engineering measures during the planning, design and execution stages to reduce project cost. These included a) procurement of key materials for construction by MIAL instead of EPC contractor to save duties and overheads and b) efficient design of the New Common User Terminal resulting in a lower unit cost with respect to design capacity.."*

5.14. Responding to the comments that the Authority should not accept any escalation in the project cost, MIAL referred to the clauses / provisions of OMDA quoted by FIA and said that the clauses quoted namely 7.1.2, 7.2.1, 13.1(a), 8.3.2 and 8.3.5 are being fully complied by MIAL. It further stated as under,

> *"MIAL remains responsible for financial, technical and all other types of risks while implementing the project. It is arranging for finance for implementation of project which includes DF as permissible means as per statute. Hon'ble Supreme Court has already decided the right of MIAL to utilize DF to meet part of the capital cost of project."*

5.15. Responding to FIA's question on burdening the passengers for omissions and commissions of the airport operator, MIAL refuted any claims of having benefitted from the project cost escalations and stated that,

> *"........ neither there is any additional burden on passengers nor there is any extra benefit to MIAL. Allegations about omissions and commissions of MIAL are wrong. Increase in project cost is not due to any negligence on part of MIAL. Each and every increase in the project cost has been fully explained and is due to valid and justified reasons."*

5.16. MIAL responded to the FIA query on the business model of MIAL at the time of bidding as under,

> *"Business and financial model of MIAL at the time of execution of OMDA and SSA was based upon then the estimated project cost and provisions of OMDA, SSA and other Project Agreements. The same has undergone revisions due to changes in underlying assumption."*

5.17. Responding to the above comments, MIAL stated that selection of developer in respect of privatization of Mumbai Airport was irrespective of the project cost and increase in the project cost has been explained by MIAL in its earlier submissions to the Authority. MIAL stated as under,

> *"The criteria for selection of developer in respect of privatization of Mumbai and Delhi airports was highest revenue share proposed by the Bidder, which has to be paid by the JVC to AAI, irrespective of the project cost. Increase in the project cost has already been fully explained and justified by MIAL while giving its response to audit reports of Financial and Technical Auditors appointed by the Authority through AAI. Further, every revision in project cost has been approved by the Board of Directors of MIAL, where AAI was also represented through its nominee directors. MoCA, AAI and the Authority have been kept fully apprised, from time to time, of the developments relating to changes in project cost."*

I.c. MIAL's own comments on Issue No-I

5.18. Apart from responding to the stakeholders comments, as above, MIAL has also given its own comments on the Consultation Paper pertaining to this issue. It has commented as under,

5.19. On the issue of disallowance of Project Cost, MIAL have submitted their comments on the following issues

5.19.1. T1C Hotel – MIAL stated that based on its understanding of OMDA provisions, MIAL have considered T1C hotel as Transfer Assets. However view of the Authority that the T1 C hotel is a Non-Transfer Assets has to be confirmed by AAI.

5.19.2. **Contract price for Program Management Consultant** – MIAL stated that Subsequent to their submissions in the response to the audit report of Technical / Financial Auditors, it was confirmed by Technical Auditor that the disqualification of L1 and L2 bidders was justified. MIAL further stated that once it is so established, the quotations of such bidders do not merit any consideration. In case of public tenders, (i) any financial quote of disqualified bidders is not even opened, (ii) any post bidding offer by any unsuccessful bidder is squarely rejected though it could be argued that such offer should be taken into consideration to reduce cost.

5.19.3. MIAL further stated that accordingly, MIAL was fully justified to ignore bids of disqualified bidders and move on to next bidder and it has also not been established that MIAL has overpaid. MIAL also stated that it is pertinent to mention that CH2M Hill is a leading project management consultant in the industry and its selection has been done on an arm's length basis.

5.19.4. In view of the above, MIAL requested the Authority to kindly include the proposed disallowance of Rs. 48 crs. as part of the project cost

5.19.5. **Drain Realignment –** MIAL in their response to Consultation Paper - 22/2012-13 dated 11.10.2012 submitted the drawing and stated that it is quite evident that covering of the Drain at point C1 was essential and unavoidable, in order to construct approach to at-grade road portion as a part for elevated road. MIAL further stated that this requires the existing road to be re-routed so that it passes over the drain and thus necessitating covering of the drain at this point C1. In the case of C2 and C3, the coverings of the drain were absolutely essential for transportation of materials from batching plant to the construction site of the terminal.

5.19.6. MIAL further stated that in view of above, it is clear that drain realignment and coverings were required to facilitate construction of Aeronautical Assets i.e. the access road system and the terminal. Thus, the amount of Rs.2 crs. should be allowed. MIAL further stated that it may be kindly observed that Technical Auditor has confirmed that it is justified to include the above expense in project cost.

5.19.7. **Landside Projects –** MIAL observed that the Technical Auditor has estimated the cost of landside works at Rs. 40 crs. (as against Rs. 41 crs. submitted by MIAL) but has not provided any reasons for the same. MIAL has further stated that MIAL have made available all relevant information, documents and justifications to the Auditor in respect of landside works. MIAL requested the Authority to include the amount of Rs. 1 cr. in the project cost.

5.19.8. **Airport Ground Lighting for RET E2** – MIAL stated that the Financial Auditor has wrongly compared the estimates for two different taxiways E2 and N5. MIAL also submitted that the provision for requirement of AGL is project specific and can vary between projects depending on the nature, scope and requirement of a given project. MIAL further stated that provision for AGL in the estimate for RET E2 was made based on the technical requirements and therefore cannot be compared with AGL provision for RET N5. MIAL further requested the Authority not to exclude Rs. 0.75 cr. from the project cost.

5.19.9. **Penalty paid in respect of relocation of police station** – MIAL submitted that the old Sahar Police Station was located on the footprint of the New Common User Terminal and had to be relocated. Relocation of the police station from Sahar was an enabling project for New Common User Terminal. Delay in construction of terminal would have resulted in significant cost escalations including increase in interest during construction. MIAL further stated that permission from relevant authorities to relocate the police station was granted after a delay of more than eight months. It was essential to complete this project no sooner such permission was available to facilitate construction of terminal. MIAL further stated that

> *"MIAL applied for permission to MMRDA and got permission of upto plinth level. The permission beyond plinth level was delayed. MIAL had two alternatives, either to (i) stop work and consequently delay completion of terminal, or (ii) to complete construction of police station in anticipation of approval from MMRDA to facilitate timely completion of terminal. In the interest of controlling costs, MIAL decided to proceed with the construction. Decision of MIAL was rational and justified.*
>
> *MIAL management took a considered view of the issue, expecting wavier of penalty by MMRDA and took a well considered decision, to complete the police station at the earliest to prevent escalation in project cost"*

5.19.10. Based on the above consideration, MIAL requested the Authority to consider the penalty of Rs. 0.60 crore. should be considered as part of the project cost as it was paid to avoid potentially larger cost overrun

5.20. On the issue of Capping of project cost and associated escalation and contingencies, MIAL requested the Authority not to exclude increase in cost due to reasons that may be beyond the control of MIAL like, inter alia, the additional requirements from AAI, MoCA, any other government authorities, and other contingencies. MIAL further requested the Authority not to cap the Escalation, Claims and Contingencies at Rs. 630 crores due to similar reasons. MIAL also requested the Authority to true-up any cost incurred in the present control period concerning Rs. 422.34 crores towards projects not considered by the Authority for the present control period.

5.21. MIAL has also requested for allowing the Interest During Construction for the additional debt to be raised by them towards the gap in means of finance, left by the Authority, as part of the project cost. MIAL stated that,

> *".....the corresponding interest during construction (IDC) on account of such debt shall have to be capitalized and shall form part of the project cost. We request the Authority to allow for such additional IDC costs, if any, to be included as part of the project cost."*

I.d. Authority's Examination of Issue No-I

5.22. The Authority has considered the reference to clauses in OMDA, as highlighted by FIA, and has not found any warrant in OMDA regarding prohibition of cost escalation. Furthermore the Authority has given detailed consideration to the relevant clauses in OMDA in paras 1.3 above, 2.31 above, 3.27 till 3.35 above and 5.74 below

5.23. As discussed in the Consultation Paper - 22/2012-13 dated 11.10.2012, the Authority has considered the detailed reasons for increase in the project cost from Rs. 9,802 crores to Rs. 12,380 crores and has also outlined the same. The Authority has taken Rs 9,802 crores as the starting point of its analysis. This is in consonance with Schedule 1 of SSA, which states that "...AERA will accept the Master Plan and Major Development Plan as reviewed and commented by the GOI and will not seek to question or change the approach to development if it is consistent with these plans...". The Authority has given due consideration to this provision. It, therefore, does not feel that the project cost of Rs 6,187 crores, mentioned in the planning commission document of July, 2006 would be appropriate for this purpose. Inasmuch as the Government had taken the figure of 9,802 crores as relevant for the purpose of estimate of project cost as well as the determination of DF vide its letter dated 27.02.2009. The Authority, therefore, after full analysis of the facts pertaining to the project has come to the conclusion that Rs. 11,647.46 crores can be taken as the allowable project cost for the purpose of determining the aeronautical tariffs.

5.24. The Authority has capped allowable project cost at Rs. 11,647.46 crores including a separate cap for the costs not included in the allowable project cost for the current control period at Rs. 422.34 crores. The Authority had also clearly indicated in the Consultation Paper - 22/2012-13 dated 11.10.2012 that the cap of Rs. 422.34 crores on costs not included in the allowable project cost for the current control period is subject to further review in terms of completion of underlying activities or evidential documents supporting this expenditure. At any rate, after the completion of the project, in the event that the final project cost comes below the total allowable project cost of Rs. 11,647.46 crores, the Authority would take into account such lower project cost, as finally audited and certified, to be eligible for calculation of aeronautical tariffs.

5.25. The Authority has noted the comments made by MIAL on the Consultation Paper - 22/2012-13 dated 11.10.2012, presented in para 5.19 and 5.20 above, on the components of the project cost namely, T1C Hotel, Contract price for Program Management Consultant, Drain Realignment, Landside Projects, Airport Ground Lighting, Penalty paid in respect of relocation of police station and the issue of capping the project cost and associated escalation and contingencies. The Authority's responses to MIAL's comments on the project cost are, as under,

5.25.1. T1C Hotel – In the Consultation Paper – 22/2012-13 dated 11.10.2012, the Authority had indicated that it would not include the cost of this project of Rs. 54 crores from the Regulatory Asset Base (RAB) on the ground that the hotel appears to be in the nature of a non-transfer asset. It had also indicated that since this is an important issue, having financial implications, it would need to be considered after taking into account the comments of AAI/MoCA. The Authority has not received any comments from AAI / MoCA on this issue so far. As and when final view of AAI/MoCA is available, the Authority would be in a position to decide the treatment to be given to the exclusion or inclusion of Rs. 54 crores. The Authority also notes that if the hotel were to be given away to a third party, the transaction would need to be transparent and at arms-length so as to realize full economic and commercial value of the hotel (which may not merely be Rs. 54 crores), suitable treatment of which can be given at that time.

5.25.2. Contract Price for Program Management Consultant: The financial quantum proposed to be disallowed on this account is Rs 48 crores. The Authority has given its detailed reasoning for disallowing this cost in Para 2.31.8 above. As already noted by the Authority, this has been one of the process issues for which financial quantification by the Financial Auditor. The Authority also weighed the opinion of the Technical Auditor that the disallowance may be limited to Rs 2.07 crores (and not Rs 48 crores). The Authority has also noted that the AAI has also supported the exclusion of Rs 48 crores. The Authority has considered all the above and, in its best judgment, does not find any reason to alter its earlier decision of disallowance.

5.25.3. Drain Realignment: On this issue, the amount of Rs. 2 crores was proposed by the Authority to be disallowed while calculating the allowable project cost. The Authority has also given detailed reasoning for its disallowance in Para 2.31.7 above, based on analysis of the observations of the Financial and Technical Auditors. The Authority has also noted that according to MIAL, the drain realignment and coverings were required to facilitate construction of aeronautical assets. The Authority, however, was not persuaded to regard this expenditure itself as a part of aeronautical assets and had proposed its disallowance. It has no reason to alter its earlier tentative decision to disallow this expenditure.

5.25.4. Landside Projects: The purpose of appointment of either Technical or Financial Auditor is to primarily ascertain the reasonableness or otherwise of the cost incurred on the project with due regard to the specifications and the procedure of execution. The Technical Auditor, with his wide ranging experience in the construction field, is expected to estimate if the costs incurred are reasonable and commensurable with the quantum and / or nature of work done along with other parameters like quality, etc. The Technical Auditor had estimated the cost of landside work at Rs. 40 crores being reasonable. MIAL itself has stated that it has made available the relevant information, documents and justifications to the auditors in respect of landside works. It is thus clear to the Authority that based on all the relevant data and papers, the Technical Auditor had suggested a disallowance of Rs. 1 crore. AAI is an expert body with planning and construction experience specifically relate to the airports. It has also concurred with the opinion of the Technical Auditor. Authority does not find any further ground to include this cost as an allowable project cost.

5.25.5. Airport Ground Lighting (RET E2): The disallowance proposed in the Consultation Paper – 22/2012-13 dated 11.10.2012 on this account was Rs. 0.75 crore. This was based on the views of both the Technical and the Financial Auditors. AAI also has opined that the Authority may agree with the observations of the technical auditor. The Authority notes that M/s EIL as well as AAI have wide ranging experience in construction works. AAI has specific experience pertaining to the airports. The Authority, therefore, does not find any reason to disagree with the opinion of the expert bodies.

5.25.6. Penalty paid in respect of Relocation of Police Station: The amount of disallowance proposed in the Consultation Paper – 22/2012-13 dated 11.10.2012 on this account was Rs. 0.60 crore. MIAL has given the background of the delay caused in relocation of the Police Station owing to which it has attracted the penalty. The Authority notes that MMRDA gave part permission upto plinth level and according to MIAL, permission beyond plinth level was delayed. MIAL has also stated that it expected waiver of penalty by MMRDA. MMRDA has not found this case fit for waiver of penalty. There is, therefore, no reason for the Authority to include this amount in the allowable project cost, thereby indirectly allowing the waiver which MMRDA has not found fit to grant. The Authority thus is unable to reconsider its earlier decision of disallowing Rs. 0.60 crore from the project cost.

5.25.7. It could be seen that the total proposed disallowances in the project cost on account of all the above 6 items comes to Rs 106.35 crores. Of these, the Authority had indicated that the final treatment for the hotel and inclusion / non-inclusion / disallowance in RAB can be given effect after considering the comments of AAI / MoCA on this issue. The Authority has also noted the views of other stakeholders regarding the escalation in the project cost from Rs. 9,802 crores to Rs. 12,380 crores. The Authority feels that its tentative decision to exclude the amount of Rs. 106.35 crores is appropriate and reasonable.

5.25.8. Capping of Project Cost - Out of various issues highlighted by the Technical and the Financial Auditor, the issue of the project cost not being capped during the bidding stage and execution stage was an important one. The stakeholders have also commented on this aspect that the project execution by MIAL proceeded without any cap on the project. The Authority, therefore, after the full consideration, taking into account all the factors had proposed to cap the allowable project cost at Rs.11,647.46 crores. It has separately proposed capping of the contingencies at Rs. 630 crores to avoid further overrun of the project cost. The Authority expects that MIAL should expedite completion of the project and is unable to accept MIAL's request to allow the project cost beyond the cap of Rs. 11,647.46 crores, specifically, noting that this itself represents an escalation of around 19% over and above the initial cost of Rs.9,802 crores.

5.25.9. The Authority has noted the submissions made by MIAL on 10.12.2012 regarding the slum rehabilitation agreement with Housing Development and Infrastructure Limited. The Authority had considered the amount of Rs 110 crores and Rs 25 crores as part of the costs, which were not proposed to be considered in the current control period on the ground that these amounts were to be reimbursed to MIAL by HDIL. MIAL, through its submission dated 10.12.2012, has requested the Authority to consider that these costs will need to be incurred by MIAL and accordingly needs to be considered as part of the project cost. The Authority has noted that MIAL has invoked the Performance Guarantee, details whereof have not been provided in the submission. The Authority has also noted from the submissions that the matter is sub-judice and hence the Authority will consider the matter based on the final judgement of the court of law. The Authority notes that the amount of Rs 135 crores (Rs 110 crores plus Rs 25 crores) is included in Rs 422.34 crores that is not included in the said cap of Rs 11,647.46 crores of the allowable project cost for the current control period. The Authority has already given its consideration to the issue in para 2.31.6 above that so far the agency to execute the project as well as the use of land that may be freed from slum rehabilitation / resettlement of NAD colony has not been indicated by MIAL. Inclusion / non-inclusion / disallowance of the cost incurred for such resettlement (resulting in freeing up of land underneath for alternative use by MIAL, for purpose like aeronautical or other) can be considered only thereafter.

5.25.10. As regards the issue of additional debt, to be raised by MIAL towards the gap in the means of finance, and its impact on the project cost due to capitalized interest on such additional debt is concerned, the Authority is of the view that this issue will be considered as and when such additional debt is raised by MIAL and the evidential details thereof are produced to the Authority. It will also consider appropriate treatment that can be accorded to this component after stakeholder's consultations. However for the present, the Authority would like to continue with its proposed cap on the project cost.

5.25.11. The Authority has specifically noted that the amount of Rs. 422.34 crores was not proposed to be disallowed but was not considered in the allowable project cost in the current control period pending completion of underlying activity / evidence-based submissions. Based on the documents, if and when presented by MIAL, regarding incurrence of expenditure on items included in Rs 422.34 crores during the current control period, the Authority after review would make appropriate decision on including such items in the allowable project cost for the current control period.

Issue No-II. Requirement of stakeholder consultation on Master Plan / Major Development Program

II.a. Stakeholder Comments on Issue No-II

5.26. Stakeholders have expressed that changes or modifications to the Master Plan / Major Development Plan made by MIAL should have been presented to the stakeholders for consultation before being incorporated and implemented.

5.27. FIA have referred to provisions of OMDA for requirement of stakeholder consultation on deviations from the Master Plan. FIA stated as under,

> *"......It is also noteworthy that under Clause 8.3.2 of OMDA, any significant deviation in the Master Plan from the Initial Development Plan needs to be fully explained. In the present case, MIAL has failed to seek views from the Stakeholders for revising its Master Plan. However, even under Clause 8.3.2 no provision for increase in capital expenditure has been made in view of such deviations."*

5.28. Cathay Pacific stated that there is no prior detail on the Master Plan and Major Development Plan nor public discussion or consultation among the airport users, who eventually are the stakeholders that need to bear the costs. It further stated that the Major Development Plans, having a value in excess of INR 100 crores, have not been discussed with international airlines or the members of BAR (India) as is required under Section 8.4.1 of OMDA.

II.b. MIAL's Response to Stakeholder Comments on Issue No-II

5.29. Responding to the above comments MIAL has referred to the provisions of SSA and OMDA, which provide that the Authority will accept the Master Plan and Major Development Plan as reviewed and commented by the GOI. MIAL stated as under,

> *"Schedule 1 of SSA lists the Principles of Tariff Fixation. One of the principles is that the Authority will accept the Master Plan and Major Development Plan as reviewed and commented by the GOT. The relevant provision in SSA Schedule 1 is reproduced below for ready reference:*
>
> *"Master Plan and Major Development Plans: The Authority will accept the Master Plan and Major Development Plans as reviewed and commented by the GOI and will not seek to question or change the approach to development if it is consistent with these plans. However, the Authority would have the right to assess the efficiency with which capital expenditure is undertaken." — (underline added)*
>
> *It may be noted that the Master Plan and Major Development Plan have been reviewed and commented by AAI/MoCA. As indicated in para 1.5 and 1.26, Technical and Financial Auditors, appointed by AAI on the request of the Authority, have also scrutinized the project cost and submitted their respective comments to the Authority. Consultation with all the stakeholders was part of the development of the Master Plan."*

5.30. On issues related to stakeholder consultation for Master Plan and Major Development Plan, MIAL is of the view that due compliance has been met by MIAL and stated as under,

> *"........ Original Master Plan was submitted in September, 2006. While this Master Plan was prepared extensive consultation was undertaken with all stakeholders. Subsequent, changes / modification to Master Plan took place either due to compliance with comments of MoCA / AAI or to implement mandatory projects. Hence, any allegation about lack of consultation is unfounded."*

II.c. Authority's Examination of Issue No-II

5.31. The Authority has considered the comments made by the stakeholders on the requirement of consultation on the Master Plan and Major Development Plan and has studied MIAL's response to them.

5.32. The Authority has already indicated above that it has taken Rs 9,802 crores as the project cost as the starting point. The comments of the stakeholders regarding requirement of stakeholder consultation appear to pertain to the escalation in the project cost from Rs 6,187 crores (July 2006) to Rs 9,802 crores. As far as the escalation from Rs 9,802 crores to Rs 12,380 crores is concerned, AERA has examined the different elements through independent financial and technical auditors, made their reports available to stakeholders for informed comments, and through its consultation paper gave adequate opportunity to the stakeholders to comment on the same.

Issue No-III. Process-related issues in planning and implementation of the project as evidenced by the Financial and the Technical Auditors

III.a. Stakeholder's comments on Issue No-III

5.33. Stakeholders have referred to the findings of the Technical and Financial Auditor, which highlight process-related issues in the implementation of the airport project.

5.34. FIA have referred to a number of observations of the Technical Auditor and the Financial Auditor and stated that,

> *".....review of audit reports of financial (Ved Jain and Associates) and technical (Engineers India Limited) auditors indicate that escalation in the project cost is attributable to casual approach of MIAL towards management and monitoring of project. The auditors have raised certain key issues......"*

5.35. IATA noted that both independent auditors have found that process issues and project management failings have led to avoidable increases in project cost. IATA also raised certain issues stated as under,

> *"- The random basis that MIAL used in negotiating with successful bidders without developing its own cost estimates for meaningful comparison with the sub-contractors' quotes.*

- Change in approach for contracting of EPC works after awarding the contract led to the contract cost to be open ended.

- For the program manager cost, MIAL opted to pay an amount that was 25% more per annum than the lowest bidder.

- MIAL had failed on a number of occasions to communicate key increases in costs to its Board, AAI and the Ministry of Civil Aviation."

5.36. IATA further stated that it is unfair to make the users pay for the failure of the airport to control project cost and to carry out prudent and sensible project management that is to be reasonably expected of any major project execution.

5.37. APAI also stated that there was no regular monitoring by PMC during the construction period and the observations of Financial Auditor made them feel the lack of transparency and several failures on the part of the Project Management led to the delay of the Project by over 17 months and increase in the Project cost from the original estimate of Rs.9,802 crores to Rs.12,380 crores. APAI further stated that this was not acceptable from the point of view of the passenger as the delay has caused the increase in project cost and a passenger cannot be made to pay for the same.

5.38. APAI also stated that the costs relating to infrastructure like elevated access road, MITHI river widening within airport premises, etc. totaling to Rs.650.00 crores cannot be considered as part of the project cost.

5.39. Cathay Pacific noted that both the independent auditors, Technical Auditor and Financial Auditor, have stated that the process issues and project management failures have led to avoidable increases in project cost. Cathay Pacific further submitted that while the Authority could impose penalties for the airport's failure to deliver the service quality by agreed timeline, it has not taken action to address the failure in effective project management that has a huge implication on the industry's cost. The manner of selection of the EPC contractor and the failure of MIAL to carry out its own assessment of the project cost is questionable. This resulted in inefficient bid process and a faulty evaluation. Such negligent and unprofessional bidding process cannot be accepted and the cost of such failure cannot be quantified.

5.40. Board of Airline Representative (India) stated that it is imperative to note that the financial auditor, during the course of the audit conducted by it, observed that many of the processes followed by MIAL in the selection of vendors and award of contracts were not in conformity with best market practices. These reports in no uncertain terms suggest that MIAL's inefficient handling of the project is chiefly responsible for the exponential increase in the project cost. Board of Airline Representative (India) further stated that AERA has chosen to ignore the same and proceed with the proposal made by MIAL, thereby not fulfilling its statutory functions.

5.41. Board of Airline Representative (India) further submitted that condoning these lapses would tantamount to rewarding the airport operator for its inefficient handling of the project at the cost of the passengers and airlines.

5.42. British Airways noted that it does not appear that MIAL have managed their project costs well, incurring multiple project cost over runs, seemingly down to poor management of these projects. British Airways further submitted that it is not right that British Airways, as an airline customer of the airport, should be made to pay for the failure of the airport to control project costs. British Airways further submitted that the airport needs to have some risk associated with their project management; it cannot be fully insulated from the cost over runs associated with poor management discipline and practice. British Airways proposed that it would be usual for the regulator to form an independent view of the effectiveness of the airport's performance in this regard, maybe through the use of independent auditors and then disallow that proportion of the project costs that were avoidable. The RAB could then be adjusted downward to ensure the airlines are not funding inefficiency and bad practice and the airport is encouraged to 'up-its'-game' in relation to project management.

III.b. MIAL's response to Stakeholder's comments on Issue No-III

5.43. Responding to the comments from the Stakeholders that MIAL has followed a casual approach in implementation of the project, MIAL referred to the processes and procedures followed by MIAL in dealing with project cost escalation and said that all the escalations in the project cost are approved by its Board.

> *"In all such complex projects changes during execution of the project are unavoidable. From the governance point of view, what is essential is that changes are made in accordance with set procedures and with necessary approvals from component authority. Development work at CSIA faces unique constraints during*

execution. MIAL had to make changes during the execution stage to address ground realities. However, changes were approved as per well laid out procedure as explained below.

As per Board resolution dated 28th April 2006, MD of MIAL was authorised to take decisions for executing the project.

There is a robust and well established system in place to deal with change in scope or otherwise during execution of the project as detailed below:

i. A change committee has been constituted by the Managing Director to scrutinise and recommend / approve any change. Committee comprises of members from Projects, Finance and Procurement department.

ii. A detailed procedure for scrutiny and approval of change is enclosed as Annexure 5.

iii. Committee meetings are held regularly and decisions are minuted."

III.c. Authority's Examination of Issue No-III

5.44. The Authority has considered the comments made by the stakeholders on the process-related issues in implementation of airport project by MIAL.

5.45. Based on its review of the audit reports submitted by both the Technical Auditor and the Financial Auditor, the Authority has taken note of the key issues regarding the project cost, which were pointed out by the auditors. The Authority notes that wherever it was possible for the Authority, based on these reports, to quantify a monetary value, it has given due consideration to either allowing or disallowing such monetary value. However where the Financial/Technical Auditors have not indicated any monetary value attributable to the key process related issues, the Authority has not made any deductions on this account. The Authority also notes that MIAL is a Board-managed company having senior level representations both from AAI as well as MoCA and that the project cost submitted by MIAL for consideration towards tariff determination has been approved by the Board.

5.46. The Authority has also noted that the works on the project commenced after 2006, when the lease was granted in favour of MIAL. The project is not yet complete. It is targeted to be completed by August 2014. An amount of about Rs. 5400 crores would be due for capitalization in the next two years. The Technical and Financial Auditors had analyzed the process as well as technical workings during the third quarter of 2011, when a significant part of the capital expenditure was yet to be made. The Authority expects that the issues, highlighted by the independent Auditors, would be taken into consideration by MIAL wherever feasible.

Issue No-IV. Requirement of independent study for assessment of project cost

IV.a. Stakeholder's comments on Issue No-IV

5.47. Various stakeholders have felt that an independent study should be conducted to assess the project cost for CSI Airport for consideration towards determination of tariff.

5.48. IATA stated that it is unfair to make the users pay for the failure of the airport to control project cost and to carry out prudent and sensible project management that is to be reasonably expected of any major project execution. IATA believed that a fair treatment would be for AERA to commission an independent study to reasonably quantify the avoidable cost increases and using this study to revise the RAB downwards accordingly.

5.49. Expressing similar views, Air France stated that AERA should initiate an independent study that seeks to quantify the inefficient costs of the airport project identified by the two independent auditors appointed by AAI and the findings of the study could be the basis for the necessary adjustments to RAB.

5.50. Cathay Pacific stated that there is a strong sense of injustice that airlines and passengers are made to bear the cost of serious failures by the airport to control costs. Cathay Pacific urged the Authority to initiate an independent study that seeks to quantify the inefficient costs by benchmarking project cost at CSI Airport against best practices. Cathay Pacific proposed that the findings of this study can be the basis for the necessary adjustments to RAB.

5.51. Board of Airline Representatives (India) noted that the report from the Technical Auditor has exclusively relied on the studies and reports that were submitted by the consultants appointed by MIAL, which cannot be construed as an independent study undertaken by the Technical Auditor in any way. Board of Airline Representatives (India) further stated that AERA ought to have either conducted by itself a study in this regard or ought to have itself appointed an independent expert, rather than instruct AAI to appoint an expert to prepare a report on this aspect.

IV.b. MIAL's response to Stakeholder's comments on Issue No-IV

5.52. MIAL has responded to the stakeholder requirements that an independent study ought to be conducted by the Authority to quantify the inefficient project cost. MIAL stated as under,

> *"Assumption that prudence check has not been carried out by the Authority is unfounded. Independent auditors appointed by the Authority, both Technical (M/s. Engineers India Ltd.) and Financial Auditors (M/s. Ved Jam and Associates), have reviewed the project cost and submitted respective reports to the Authority based upon which the Authority has finalised project cost.........*
>
> *.......Table below shows that CSIA has the lowest capital cost per million passengers among comparable airports in the world.*

Table: Comparison of Terminal Cost

Parameters	*Bangkok*	*Kuala Lumpur*	*Beijing*	*London Heathrow*	*Madrid*	*Delhi*	*Mumbai#*
Terminal Capacity (mppa)	45	25	43	28	42	34	40
Design PHP Capacity	11,000	8,716	24,000	7,150	18,000	9,450	9,910
Floor Area (in '000 sq. m.)	563	479	900	353	757	553	439
Total Actual Cost (in mn USD)	2,800	1,600	3,800	4,100	2,948	1,660	1,279
Actual Cost /mppa (in mn USD)	62	64	88	146	70	49	32
Actual Cost /1000 php (in mn USD)	255	184	158	573	164	176	129
Actual Cost / m^2 (in USD)	4,973	3,337	4,222	11,614	3,895	3,002	2,912
Area per 1000 pax (in sq.m.)	13	19	21	13	18	16	11
Area per PHP (in sq.m.)	51	55	38	49	42	59	44

 # Scheduled / Estimated

."

IV.c. Authority's Examination of Issue No-IV

5.53. The Authority has considered the requirement of independent study proposed by the stakeholders as above and the benchmarking of its project cost presented by MIAL against those of other large airports in the world.

5.54. The Authority observes that both the technical and financial audits were done by independent expert Auditors. The purpose of appointment of such independent Auditors was to obtain independent advice to assist the Authority in discharge of its regulatory functions. The Authority has reviewed the reports submitted by both the Auditors. It has found no grounds to infer that the independent Auditors did not exercise due diligence in performance of the assigned tasks.

5.55. The Authority further notes from MIAL's response to stakeholder comments that the numbers against various parameters in the table above are lowest for MIAL. The Authority, however, has not, on that basis alone, concluded these costs to be appropriate and allowable. The Authority, had therefore appointed Technical and Financial Auditors to ascertain the reasonableness of costs incurred as well as the procedure or process of execution of the work. It gave detailed scope of work to both the Technical and Financial Auditors. The scope of work is included in their respective reports that have also been made available to the stakeholders. The independent Auditors have in their report given details of what they considered to be reasonable costs as well as their views on disallowances, non-inclusion and process issues. In view of the above, the Authority is of the view that there is no requirement to conduct a fresh independent study for assessment of the project cost in respect of CSI Airport, Mumbai.

Issue No-V. Cost of metro stations as part of the project cost

V.a. Stakeholder's comments on Issue No-V

5.56. On the issue of consideration of cost of metro stations as part of the project cost, some of the stakeholders have expressed that metro stations are not part of the airport project and hence cost for development of the same should not be considered as part of the project cost.

5.57. IATA strongly disagreed that the cost for construction of metro station and equipment should be included in the Regulatory Asset Base. IATA stated that Metro stations have nothing to do with the functioning of the aviation industry and under no circumstance should they be treated as aeronautical assets which would cause airport users to unfairly shoulder the cost burden.

5.58. FIA also stated that,

"It is submitted that any cost on account of Metro ought not to be added to the project cost as it is not adding any asset value to the CSI Airport let alone aeronautical asset. Further, MIAL will be duly compensated from retention of its commercial rights at 3 stations towards any contribution from its side."

5.59. APAI has stated that the cost of construction of metro rail connectivity should not be passed on to the passengers.

5.60. Cathay Pacific stated that the inclusion of the cost of construction of metro stations and equipment is also a grave concern to us. It is absolutely unreasonable to expect the aviation industry to bear the cost for metro connectivity. The metro is a form of public utility similar to water and electricity and the cost of provision ought to be the obligation of the government. Therefore the construction cost that the airport has agreed to bear without prior consultation with users should not be included in the RAB for tariff determination.

5.61. With regards to the potential inclusion of the metro station and associated equipment in the RAB, British Airways stated that they would counsel against including such assets in the RAB. British Airways stated that the metro station and associated equipment assets are not aeronautical assets. British Airways further stated that,

"This argument is strengthened by the lack of full single till at MIAL. At Heathrow we find ourselves burdened by the enormous cost of a railway line, which places significant pressures on the costs that need to be recovered from the airport's customer and makes Heathrow a far less competitive airport than it would be without these costs. The costs of the metro station should be able to be justified on a standalone basis, with its own business case, unrelated to the aeronautical charges."

V.b. MIAL's response to Stakeholder's comments on Issue No-V

5.62. MIAL stated that Metro stations is not a standalone business for MIAL Providing reasons for inclusion of the cost of metro stations in the project cost, MIAL stated as under,

"It may be noted that MMRDA had asked MIAL to bear the costs of stations at CSIA along with provision of electro-mechanical facilities to the extent of 20% of the estimated project cost of Rs. 20,000 crs. MIAL initially did not agree for bearing any cost, however, MMRDA was not agreeable to provide connectivity unless there was contribution from MIAL. After a series of discussions, MIAL agreed to bear the cost of three stations, of which the cost of two stations serving the Santacruz and Sahara terminals is proposed to be included in the RAB amounting to about Rs. 518 ers. If not agreed to, MMRDA would have not included the same in the proposed plan and passengers would have been deprived of this essential and efficient service, which was highly undesirable. The Authority has, however, tentatively decided to not include the cost of development of metro station in the cut-rent control petiod. It

may also be noted that cost of development of metro connectivity at IGI Airport, New Delhi was allowed to be included as part of RAB. In UK, the Heathrow Express which is the Metro rail for Heathrow Airport is part of RAB of Heathrow Airport, London for tariff purposes.

Please refer to MIAL letter MIAL/CEO/73 dated 4th September 2012 to the Authority on the cost to be incurred on metro connectivity to the airport terminals, which is self explanatory. ...."

V.c. Authority's Examination of Issue No-V

5.63. The Authority has considered the comments made by the stakeholders on inclusion or otherwise of cost of metro stations in the overall project cost for CSI Airport, Mumbai.

5.64. As far as the cost on account of metro stations is concerned in Consultation Paper – 22/2012-13 dated 11.10.2012, the Authority had clearly indicated that expenditure, on this count, is not likely to be materialized in the current control period (end March, 2014). It had also stated that it would address this issue, as and when and if required in the next control period and depending on the documents and requirements at that point of time including stakeholder consultations. Likewise, the issue of retention of commercial rights at 3 stations was also proposed to be a part of such examination. The Authority has, however, noted that in case of Delhi airport, Rs. 300 crores as a contribution to DMRC to lay the requisite rail connectivity to Delhi airport, was considered towards RAB. The decision to treat the contribution of Rs 300 crores as an aeronautical asset was on the ground that the rail connectivity is significant facility in the interest of the passengers and further that MoCA, vide its letter dated 01.11.07, had indicated the quantum and treatment of such expenditure. The Authority, however, has not included the likely cost of metro stations in the allowable project cost (and RAB) for CSI Airport, Mumbai in the current control period.

5.65. Having regard to the above, the Authority decided as under,

Decision No-I. Regarding Project Cost and Escalations thereof in respect of CSI Airport, Mumbai

I.a. The Authority decides that there is no need for any fresh study for assessment of project cost.

I.b. The Authority decides to consider the allowable project cost at Rs 12,069.80 crores, which includes Rs 11,647.46 crores as allowable project cost during the current

control period and Rs 422.34 crores as cost of projects not included in the current control period.

I.c. The Authority decides to disallow Rs 310.20 crores from the project cost of Rs 12,380 crores as submitted by MIAL.

I.d. The Authority decides that it will reckon the project cost of Rs 11,647.46 crores as the basis for determination of RAB for the current control period.

I.e. The Authority also decides to cap the project cost at Rs 12,069.80 crores based on the proposed dis-allowances / exclusions. Cost of projects, which are not included in the project cost for the current control period, is Rs 422.34 crores.

I.f. As regards the non-inclusion of the items, included in Rs 422.34 crores in the allowable project cost, capped at Rs 11,647.46 crores, the Authority decides that, based on the documents, if and when presented by MIAL, regarding incurrence of expenditure on items included in Rs 422.34 crores during the current control period, the Authority, after review, would make appropriate decision on including such items in the allowable project cost for the current control period.

I.g. The Authority decides to cap the Escalation, Claims & Contingencies at Rs. 630 crores to avoid overrun of project cost.

I.h. The Authority decides that inclusion or otherwise of the cost of metro stations, in future, will be subject to review of correspondences from Government of Maharashtra, MMRDA and Ministry of Civil Aviation to this effect as well as stakeholder consultations.

Issue No-VI. Legal Construct for levy of DF

VI.a. Stakeholder's comments on Issue No-VI

5.66. Some of the stakeholders have questioned the legal construct for levy of Development Fee.

5.67. FIA stated that Section 22A of the Airports Authority of India Act, 1994 ("AAI Act") provides that only AAI is empowered to levy and collect DF. It is to be noted that vide Order No.2/201213, Authority had levied DF in absence of any authority of law and also, in the present consultation process, the Authority proposed to continue the levy of DF by MIAL, which is a private concessionaire. AAI Act neither authorizes a private concessionaire to levy DF nor empowers AAI to delegate such powers to a private concessionaire. FIA further submitted that

> *".....power to delegate, thus, being a statutory requirement must find its place in the principle statute and not in the Regulations. In this regard, reliance is placed on the judgment of Hon'ble Supreme Court in M. Chandru vs. Member Secretary, Chennai Metropolitan Area & Another reported as (2009) 4 SCC 72[5]. Hence, it is respectfully submitted that the Authority has erred by allowing levy of DF on the requests of MIAL. The power to levy DF under Section 22A of the AAI Act is only with the AAI and under Section 13(1)(b) of the AERA Act, Authority can ONLY determine the amount of such DF."*

5.68. FIA further stated that it is to be noted that FIA's Appeal No.3/2012 (FIA vs. AERA and Others) challenging the legality, validity and propriety of the Order No. 02/2012-13 dated 16.04.2012 by the Authority is pending adjudication before the Hon'ble Tribunal (AERAAT). The said Appeal involves questions pertaining to levy and collection of DF in the hands of private concessionaire i.e. MIAL. In view of the fact that the Appeal is pending adjudication and is at the stage of final hearing, Authority should defer any decision on levy of DF till the disposal of the said Appeal.

5.69. Board of Airline Representatives (India) stated that AERA has not mentioned the statutory provision under which DF, including User Development Fees, is being levied. It further stated that the right to impose DF is conferred on the AAI under Section 22A of the Airports Authority of India Act, 1994. If any such rate approval is granted by AERA, MIAL may be well within its rights to collect the same on behalf of the AAI in terms of the AAI DF Rules. However, MIAL has no locus to initiate the process of sanction of DF with AERA.

VI.b. MIAL's response to Stakeholder's comments on Issue No-VI

5.70. With regards to the legal construct for levy of Development Fee, MIAL stated that,

> *"Levy and collection of DF at CSI Airport has statutory sanction under section 22A(ii)(a) of The Airports Authority of India Act, 1994*
>
> *Thus, the premise that collection of DF is contrary to established legal practice is factually wrong and untenable. Levy of DF is also consistent with ICAO guidelines.*
>
> *The levy of DF has been upheld by Hon'ble Supreme Court after thorough examination and disposal of all relevant issues. Further, provisions for levy of Development Fee was very much a part of the statutory scheme prior to the bidding*

process. DF in no way confers any additional benefit to MIAL since the Regulatory Asset Base (RAB) gets reduced to (lie extent of DF collected and thereby neither depreciation nor any returns are earned on such assets. Also there is no additional burden on passengers due to DF as there is corresponding reduction in Aeronautical Tariff benefit of which is realized by the passengers."

VI.c. Authority's Examination of Issue No-VI

5.71. The Authority has examined the comments made by the stakeholders on the legal construct for levy of DF and also noted that the DF Order dated 18.04.2012 is sub-judice before the Appellate Tribunal.

5.72. As regards the appeal before the Appellate Tribunal is concerned, the present order of DF determination is subject to the final outcome of the said appeal(s).

5.73. The issue of determination of quantum of DF as well as rate thereof forms part of the Consultation Paper No – 22/2012-13 dated 11.10.2012. The Authority has also noted the order of the Appellate Tribunal to complete the tariff determination process by 15.01.2013. The Authority is, thus, issuing the present order in accordance with the said order of the Tribunal.

5.74. The Authority has noted the provisions of OMDA wherein it is stated under clause 13.(1)(a) that "It is expressly understood that the JVC shall arrange for financing and/or meeting all financing requirements through suitable debt and equity contributions in order to comply with its obligations hereunder including development of the Airport pursuant to the Master Plan and the Major Development Plans". The Authority has, nevertheless, proceeded to determine DF since MIAL represented to the Authority on its inability to obtain additional finances in the form of equity as well as debt. Along with OMDA, the Authority has also taken into account the provisions of AAI Act, AERA Act as well as the determination of DF by the Government vide its letter dated 27.2.2009. The Authority has dwelt on this letter in paras 1.5 and 1.6 above. The Authority has also noted the judgment of the Hon'ble Supreme Court dated 26.04.2011 regarding the levy of DF at IGI Airport, Delhi and CSI Airport, Mumbai. In this judgement the Hon'ble Supreme Court ordered that

"(ii) It is declared that with effect from 01.01.2009, no development fee could be levied or collected from the embarking passengers at major airports u/s. 22A of the 1994 Act, unless the Airports Economic Regulatory Authority determines the rates of such development fee

(iii) We direct that MIAL will henceforth not levy and collect any development fee at the major airport at Mumbai until an appropriate order is passed by the Airports Economic Regulatory Authority under Section 22A of the 1994 Act as amended by the 2008 Act........

(v).....any development fees that may be levied and collected by DIAL and MIAL under the authority of the orders passed by the Airports Economic Regulatory Authority under section 22A of the 1994 Act as amended by the 2008 Act shall be credited to the Airports Authority and will be utilized for the purposes mentioned in clauses (a), (b) or (c) of Section 22A of the 1994 Act in the manner to be prescribed by the rules which may be made as early as possible".

5.75. The Authority's approach has been made clear (as indicated in para 3.27 above) in its order no. 28/2011-12 dated 14.11.2011 (in the matter of DF determination of Delhi airport). The Authority also took into account the provisions of Section 13 (1) (a) (i) of AERA Act, which required the Authority to take into consideration, "The capital expenditure incurred and timely investment in improvement of airport facilities". After noting that unless the DF is granted, it may not be possible to complete the project, the Authority proceeded to determine first the allowable project cost and later the DF required for this purpose.

5.76. The Authority recognizes that the provisions of the Statutes take primacy. Furthermore, the amount of DF is subtracted from the allowable project cost (on aeronautical side) to arrive at net allowable aeronautical project cost on which fair rate of return is granted to the Airport Operator. It also follows that no depreciation is available on this amount, since the depreciation is given only on the net allowable aeronautical project cost (net aeronautical RAB). Hence, by grant of DF, no unjust enrichment or extra monetary benefits accrue to the airport operator. The Authority has given detail reasoning in this regard, in para 3.28 to para 3.35 above.

Issue No-VII. Internal Resource Generation and Refundable Security Deposits (RSD) as Means of Finance

VII.a. Stakeholder's comments on Issue No-VII

5.77. FIA stated that as against Rs. 4,021 crores of internal resource generation proposed by financial auditor, Authority has proposed that the internal resource generation, to be considered towards means of finance by MIAL, should be Rs. 1,151 crores (comprising of Rs. 645 crores of audited cash balance as on March 31, 2012 and Rs. 506 crores of projected depreciation on aeronautical assets for FY13 and FY14) and has not considered any profits earned by MIAL.

5.78. On the issue of Refundable Security Deposits, FIA submitted that there is no clarity in the Consultation Paper No. 22/2012-13 as regards to the efforts made by MIAL to monetise the airport land for the last six years. There has been no document to suggest that land parcels were sought to be marketed but the proposal was shelved for want of market interest. FIA is not privy to any independent real estate consultant report that justifies the inaction on this front on the part of MIAL. In the present Consultation Paper, Authority has proposed to levy DF to bridge the remaining funding gap of Rs. 1,883 crores. The funding gaps can be inter alia are attributable to arbitrary decline in RSD by Rs.1,219 crores and owing to unbridled escalation in project cost. Such factors leading to funding gap are disputable based on qualitative matters such as increase in cost in contravention to OMDA provisions and process issues highlighted by Financial and Technical auditors without providing any reasons for the same. Considering there is significant decline in amount of deposits, Authority ought to analyse the same in detail and should not simplicitor accept MIAL's proposal in this regard.

VII.b. MIAL's response to Stakeholder's comments on Issue No-VII

5.79. MIAL has not responded to the comment made by FIA on consideration of Internal Resource Generation (as presented in para 5.77).

5.80. Further MIAL has briefly responded to the FIA comment on MIAL's efforts on raising RSD. MIAL stated as under

> *"Considering the given constraints and non availability of clear land bank delay in monetization is not without a valid reason"*

VII.c. Authority's Examination of Issue No-VII

5.81. As regards the issue of Internal Resource Generation, the Authority has already deliberated the composition of Internal Resource Generation in the Consultation Paper – 22/2012-13 dated 11.10.2012 (para 3.16 to para 3.38, which also includes its views on the Financial Auditor's assessment of Rs 4,021 crores) and has provided detailed reasoning for considering the value of Rs 1,151.26 crores towards Internal Resource Generation. Stated briefly, the Authority had proposed to calculate Internal Resource Generation according to the actual funds, that are likely to be available with MIAL (namely, the cash balance as of 31.03.2012 reflected in the Balance Sheet and the depreciation going forward).

5.82. Further the Authority had considered the means of finance in Consultation Paper – 22/2012-13 dated 11.10.2012 (as in Table 9). MIAL, vide its letter dated 10.12.2012, has forwarded an auditor certificate and stated that

> *"Authority is requested to consider the accumulated profits of Rs. 799.89 Crores already deployed for the project funding and estimated profits that would be generated and deployed during FY13 and FY14 for project funding and give returns equivalent to that of equity on the same while determining aeronautical tariffs for CSIA, Mumbai, for 1 Control Period."*

5.83. The Authority has noted the above. It has also noted that according to the Auditor certificate, the accumulated profits as on 31.03.2012 have been put in the project. The Authority had already indicated in the Consultation Paper – 22/2012-13 dated 11.10.2012 that it is proposing the quantum of DF at Rs. 3,400 crore. This DF fulfils part of the total funding gap of Rs. 4219.05 crore. The Authority does not find any reason to change the proposed quantum of DF.

5.84. The Authority notes that "the accumulated profits of Rs 799.89 crores" are reported as the Reserves and Surplus of MIAL as per its audited Balance Sheet as on 31.03.2012. The Authority notes that MIAL's letter dated 10.12.2012 is on both "Determination of Aeronautical Tariff and Development Fee in respect of Chhatrapati Shivaji International Airport, Mumbai for the 1st Regulatory Period (01.04.2009 — 31.03.2014)". The present decision of the Authority is limited to determining the quantum of DF (as well as its rate and tenure i.e. the time period for billing of DF). Hence the issue of admissible return on such Reserves and Surplus as reflected in the Balance Sheet would be considered by the Authority at the time of final determination of the aeronautical tariffs.

5.85. So far as the issue of RSD is concerned, the Authority has examined the submissions made by MIAL. The Authority has considered an amount of Rs 1,000 crores, to be raised through RSD, towards the means of finance. The Authority has noted that MIAL has not been able to raise any RSD as yet. It has also noted that MoCA in its ad-hoc determination of DF had also considered an amount of Rs 1,000 crores as realizable from RSD. The Authority expects that MIAL would undertake real estate development programme on a time bound basis through competitive bidding at the earliest. In case, the amount actually received/receivable as a result of competitive bidding is more than the presently estimated amount of Rs, 1000 crores, the funding gap would be revised downwards at the time of review.

Issue No-VIII. Infusion of additional funds (equity & debt, MoCA's Press Release dated 16.10.2012)

VIII.a. Stakeholder's comments on Issue No-VIII

5.86. IATA disagreed with the use of DF (a pre-funding scheme) to fund the airport development project especially if other financing measures are available. IATA supports the Ministry of Civil Aviation's directive for the removal of DF at CSI Airport, Mumbai by January 2013 and welcomes AAI's notification to AERA that it would be able to inject more equity into MIAL. IATA stated that with other financing options available, there is no valid reason for DF at CSI Airport, Mumbai to continue from January 2013 onwards.

5.87. IATA urged AERA that with the removal of DF (which unnecessarily frontloads the project costs on users), AERA might look at spreading any additional returns arising from higher financing cost over a longer time period to moderate the increase in airport charges.

5.88. British Airways is supportive of the removal of the Airport Development Fee, as this was effectively a pre-funding finance tool that is inconsistent with the principle of 'user-pays'.

5.89. APAI said as under,

> *"It was recently announced that AAI will be increasing its share of the equity in line with the percentage of holding (49%) and the fact that the shareholders of MIAL are unwilling to bring additional equity cannot be the reason for levy of DF. It has already been pointed out during the CAG's audit of DIAL that the DF cannot be levied for meeting any kind of funding gap in a project cost."*

5.90. Bid Services Division (Mauritius) Limited and ACSA Global Limited (ACSA) has confirmed as under,

> *"We would like to reiterate that our lead bankers have expressed their inability to sanction further debt pending finalisation of MYTP and DF and shareholders are not in position to bring in additional equity beyond Rs 1200 crores.*

In the given scenario, we request the Authority to take a considered view of the issue and allow funding through Development Fee to cover for the present gap of Rs. 1347.74 crs left by the Authority."

5.91. ACI welcomed the Authority's proposal for levy of DF and stated as under,

"AERA has approved Project cost of Rs. 11647 crs and it has proposed levy and collection of Development Fee (DF) amounting to Rs. 3400 crs for project funding. We welcome the proposal of AERA for levy and collection of DF which would lead to permanent reduction in Regulatory Assets Base (RAB) resulting in lower aeronautical charges throughout the concession period thereby benefitting the passengers and airlines immensely. This proposal of AERA is in accordance with provisions of ICAO and is considered as one of the most appropriate means of finance for funding long term, large scale investments."

VIII.b. MIAL's response to Stakeholder's comments on Issue No-VIII

5.92. MIAL submitted that it has already exhausted all other means of finance before resorting to Development Fee. MIAL stated as under,

"All possible means of finance has been explored and fully exhausted before approaching for DF. Infact, the Authority has left a funding gap of Rs. 1347.74 crs unaddressed and MIAL has to struggle to bridge this gap. Details of various steps taken so far as below:

a) Quantum of DF: The Authority in the Consultation Paper has identified a funding gap of Rs. 819.05 crs. This, however, does not take into account the deferred project cost of Rs. 422.34 crs. MIAL is also required to arrange funds of Rs. 106.35 crs. (out of Rs. 310.20 crs.) on account of project cost which has been disallowed. Thus, the total gap in funding, left unaddressed by the Authority is Rs. 1,347.74 crs. The break-up is shown below.

	Rs Crs	Remarks
Funding gap indentified by the Authority (as per Consultation Paper)	819.05	
Project Cost deferred	422.34	
Effective disallowance in project cost for the purpose of funding	106.35	Out of the total project cost disallowance of Rs. 310.20 crs. By the Authority: . AAI Upfront Fee (Rs. 153.85 crs.) and . International Cargo Development cost (Rs. 50 crs.) need not be considered
Total Funding gap	1347.74	

....

c) MIAL's Board had deliberated on the issue of total funding gap of Rs. 1,347.74 crs. The feasibility of infusion of additional equity beyond Rs. 1,200 crs. was also examined by the Board and it was found that there was no possibility of infusion of additional equity.

d) AAI vide its letters had indicated its intention to bring in additional equity. However as indicated above the matter of infusion of additional share capital was deliberated upon in the Board meeting held on October 31, 2012 and it was found "there is no change in position from the last Board meeting as on July 26, 2012 and accordingly it was felt that no further equity infusion would be possible."

e) In response to Authority and AAI letter, referred in paragraph 4.2.2 above, requesting MIAL to inform the Authority the quantum of infusion of additional equity by other shareholders as well as expected additional resources to fund the project through debt etc. MIAL sent its response vide its letter no MLAL/CEO/91 dated 19th November 2012. Vide this letter MIAL explained to the Authority that it will be extremely difficult to even bridge funding gap of Rs. 1347.74 crs. And there is no possibility of bringing any additional equity. MIAL also clarified that any intent by AAI alone to infuse equity share capital to meet the funding gap does not offer a viable alternative. Copy of letters referred to above are enclosed at Annexure 3.

VIII.c. Authority's Examination of Issue No-VIII

5.93. The Authority is in agreement with the views of IATA that Development Fee (DF) as a pre-funding stream should not be resorted to if other financing measures are available. In case of CSI Airport, Mumbai, the Authority has analysed in detail the other means of finance before arriving at the financing gap as well as the quantum of DF which is expected to partly fill that gap. It has also given details of the developments after the issue of the MoCA's Press Release no. ID88444. Authority has also noted the AAI's letter dated 05.12.2012 that

> *"AAI Board, in principle, approved to infuse equity of Rs. 293 Crore in MIAL, as and when cash call is made by the Company"*

5.94. The Authority also notes that the provision of DF is made in the AAI Act as well as in the AERA Act and that Hon'ble Supreme Court has also held that it needs to be determined by the Authority for major airports.

Issue No-IX. DF (which is a means of last resort) has been considered in MIAL as means of first resort

IX.a. Stakeholder's comments on Issue No-IX

5.95. IATA disagrees with the use of DF (a pre-funding scheme) to fund the airport development project especially if other financing measures are available.

5.96. Referring to the Airport Guidelines (Direction No.5/2010-11 issued on 28.02.2011 by the Authority), FIA stated that Guideline 6.8.7 categorically provides that DF has to be imposed as a last resort whereas in the present case AERA has imposed DF as a first resort.

5.97. FIA further stated that it is noteworthy that even Authority (in paragraph No.3.16 at Pg.62) has observed that DF is a means of last resort, yet it has proposed to levy DF without taking into consideration the various sources of funding which are available to MIAL, especially in view of improved economic conditions as confirmed by Ved Jain and Associates (the financial auditor).

5.98. FIA also stated that such allowance of levy of DF in the hands of private concessionaire absolutely negates the framework of private participation. Authority by allowing levy of DF would let MIAL to continue funding through the pockets of common man which is in violation of the spirit of Public Private Partnership ("PPP"). The levy of DF has enabled MIAL to enjoy disproportionately larger economic interest of the property than its own equity contributions. The term of concession entered between the AAI and MIAL is for a period of thirty years, which is further extendable to another 30 years.

5.99. FIA further stated that the Authority has recommended to consider same DF for MIAL as determined by Authority in case of DIAL i.e. Rs 3,400 crores. FIA stated that it is glaring that Authority has tentatively decided to use the figures on the basis that funding gap for MIAL is comparable to DIAL in terms of size of investment, number of passengers and cargo traffic and the scope, nature and scale of projects being executed at both the airports are also similar without caring to analyze the difference in scale and size of operations and development in the two said airports.

5.100. APAO has supported the Authority's decision to allow levy of DF and also felt that Delhi and Mumbai Airports are comparable. APAO on this issue has stated as under, *"We support the Authority's position to allow project funding of Rs. 3,400 cr. through Development Fee as a means of last resort. The amount proposed to be sanctioned as DF is comparable to the DF allowed in case of IGI Airport, New Delhi as the two airports are comparable in terms of capital expenditure, passenger and cargo volumes. It will certainly help MIAL to achieve timely completion of the project and at the same time will not result in any undue or unjust benefit to MIAL."*

IX.b. MIAL's response to Stakeholder's comments on Issue No-IX

5.101. MIAL has not responded specifically on this issue.

IX.c. MIAL's own comment on the Consultation Paper – 22/2012-13 dated 11.10.2012 pertaining to Issue No-IX

5.102. On the issue of quantum of DF, MIAL stated that the Authority in the Consultation Paper has identified a funding gap of Rs. 819.05 crs. This, however, does not take into account the deferred project cost of Rs. 422.34 crs. MIAL is also required to arrange funds of Rs. 106.35 crs. (out of Rs. 310.20 crs.) on account of project cost which has been disallowed. Thus, the total gap in funding, left unaddressed by the Authority is Rs. 1,347.74 crs.

5.103. MIAL also stated that MIAL's Board had deliberated on the issue of total funding gap of Rs. 1,347.74 crs. The feasibility of infusion of additional equity beyond Rs. 1,200 crs. was also examined by the Board and it was found that there was no possibility of infusion of additional equity.

5.104. MIAL further stated that

"AAI vide its letters had indicated its intention to bring in additional equity. However as indicated above the matter of infusion of additional share capital was deliberated upon in the Board meeting held on October 31, 2012 and it was found "there is no change in position from the last Board meeting as on July 26, 2012 and accordingly it was felt that no further equity infusion would be possible.""

5.105. MIAL also requested the Authority to consider enhancing DF beyond Rs. 3400 crs., to meet the funding gap left unaddressed by the Authority in its Consultation Paper.

IX.d. Authority's Examination of Issue No-IX

5.106. The Authority has put before the Stakeholders separate building blocks for tariff determination in CSI Mumbai., It has received considered responses on the building blocks and would be examining the same at the time of its decision regarding tariff determination at CSI, Mumbai. As far as the quantum of DF is concerned, the Authority noted the inter-play between the determination of DF and the determination of tariff. It has also noted that it may have to make certain truing up decisions in the final tariff determination order. The Authority has already indicated that the total funding gap in the project is estimated at Rs 4,219.05 crores. However, it has not found it reasonable to bridge this entire gap through DF. It would thus be seen that the DF has not been taken as a first resort to bridge the funding gap as perceived by some stakeholders. DF remains as a last resort towards the project funding gap.

5.107. The following table, indicating different components in the estimation of means of finance would make this position clear. This is the same table as Table 9 in para 3.39 above, but slightly rearranged, to focus on the fact that the Authority has not treated the development fee as a means of first resort (as surmised by IATA and FIA). This table shows that DF has been treated only as a last resort towards funding part of the larger gap in the means of finance.

Table 10 : Means of Finance

Means of Finance				Rs in crores
Total Project Cost				11,647.46
Equity				1,046.15
Debt				4,231.00
Real Estate deposits allocated for the project				1,000.00
Internal Resource Generation				
Audited Cash Balance up to 31 March 2012				645.26
Projected Depreciation on Aeronautical Assets for FY13 and FY14				506.00
Total Internal Resource Generation				1,151.26
Gap in Means of Finance and funding thereof				4219.05
	Gap met by			
		Development Fee	3400	
		Other Means (additional Debt, Equity, RSD, Accumulated Profits utilized for project)	819.05	

5.108. In order that the determination of tariff and DF are separate and distinct, the Authority needed to determine the appropriate quantum of DF in an objective manner. It had therefore indicated that it proposes to put the DF at Rs 3,400 crores as the quantum of DF on a comparable basis on what obtained in Delhi where the allowable project cost as well the passenger throughput has been similar. As far as comparison of the operations of

Delhi and Mumbai Airports are concerned, these impact on the O&M costs and not on the allowable capital cost.

5.109. The Authority noted that MIAL has referred to the funding gap identified by the Authority at Rs. 819.05 crores and has recalculated the funding gap at Rs 1,347.74 crores after considering additional components of Rs 422.34 crores on account of project cost deferred and of Rs 106.35 crores on account of effective disallowance in project cost for the purpose of funding. The Authority in its decision on Project cost and Escalations Thereof in para I.f above has decided to review the inclusion or otherwise of any item comprised in Rs 422.34 crores based on evidential documents.

5.110. The Authority further notes that MIAL has added the effective disallowance of Rs.106.35 crores in the funding gap in its calculation. Since this amount has been disallowed (except for the treatment for Hotel T1C), the Authority cannot include this amount as a funding gap for the purposes of determination of DF and aeronautical tariffs. Thus the Authority is not persuaded to consider any additional quantum of DF beyond the proposed amount of Rs 3,400 crores.

Issue No-X. Treatment of DF as equity contribution by Passengers

X.a. Stakeholder's comments on Issue No-X

5.111. FIA felt that MIAL should be made a minority shareholder as the equity brought-in by MIAL (Rs 1,200 crores) is less than that proposed to be contributed by the passengers in the form of DF (Rs 3,400 crores). FIA questioned as under,

> *"For a claimed capital/project outlay of Rs.12,380 crores if the airlines and indirectly/partly the passengers are to contribute Rs. 3,400 crores as capital infusion while the operator along with AAI infuses Rs.l,200 crores as Equity Share capital, why must MIAL not be reduced to a minority shareholder with a representative body of the airlines/passengers being issued the relevant equity? Was such an eventuality contemplated in the competitive bidding process for PPP and airport development by the Government of India?"*

X.b. MIAL's response to Stakeholder's comments on Issue No-X

5.112. MIAL responded to FIA's comment and stated that total amount of fund to be contributed and arranged by MIAL, including its shareholders, is 72% of the entire project cost. MIAL responded as under, *"The various means of finance envisaged to meet the project cost are indicated below:*

Means of Finance	*Rs. crs.*	
Equity Share Capital	*1,200*	*2,351*
Internal Resource Generation	*1,151*	
Real Estate Security Deposits (from Non Revenue Share Assets)		*1,000*
Debt		*4,231*
Development Fee		*3,400*
Gap in funding		*1,348*
Total - Means of Finance		*12,330 **

**Project cost Rs. 12380 Crs. less Rs. 50 Crs. to be reimbursed by International cargo concessionaire*

From the table above, it may be noted that DF contributes 28% towards funding of project cost. The contributions by MIAL include Equity, Internal Resource Generation and Real Estate Security Deposits (total of Rs. 3,351 crs.). Arrangement of Debt and the remaining funding to meet the gap in finance, left unaddressed by the Authority, is also the responsibility of MIAL. Thus, total amount to be contributed and arranged by MIAL, including its shareholders, is 72% of the entire project cost.

It may also be noted that the Regulatory Asset Base (RAB) gets reduced by the DF amount leading to reduced prospective tariff. Hence ultimately passengers are not burdened in the long run."

X.c. Authority's Examination of Issue No-X

5.113. The Authority has given careful consideration to the observations of both, FIA as well as response of MIAL thereto. FIA has stated that the airlines and passengers are contributing Rs.3400 crores to the equity capital of MIAL whereas equity of the shareholders in capital stands at Rs.1200 crores. MIAL has responded stating that according to it, the contributions by MIAL to the project cost including Equity, Internal Resources general as well as Real Estate Security Deposits which total to Rs.3351 crores as contrasted to the DF contribution of Rs.3400 crores. MIAL has also stated that the responsibility of the funding gap, which according to its calculation is Rs.1348 crores, is also its responsibility.

5.114. The Authority is unable to accept the statement of FIA that "airlines and indirectly/partly the passengers" contribute the DF amount. The Authority notes that the

DF is paid directly and entirely by the passengers as a pre-financing levy and only the collection mechanism thereof is through airline tickets.

5.115. As far as MIAL's response to FIA comment is concerned, the Real Estate Security Deposits are obtained through land made available by AAI for the purposes of monetization. On the specific issue of equity, therefore, the real estate security deposits cannot be taken as equity. The issue, therefore, is not the relative contribution of component of means of finance in the total project cost but specifically about the equity part. The MIAL's response does not appear to have clearly indicated whether DF contribution should be counted towards the equity or otherwise.

5.116. The Authority further notes that the proposed contribution from DF at Rs. 3400 crores is close to 3 times that of the initial equity contribution from the promoters of MIAL. Treatment of this contribution as equity or otherwise, as suggested by FIA, is outside the purview of the Authority. The Authority has noted the shareholding structure as indicated in the shareholder agreement. As indicated in its Consultation Paper – 22 /2012-13, the Authority had proposed treatment of DF at zero interest rate as well as without depreciation and to that extent its treatment is at par with subsidy or subvention if granted by the Government.

Issue No-XI. Quantum of DF, tenure of collection and Rate of DF per embarking passenger

5.117. The Authority had presented the following two options for stakeholder's consultation in the Consultation Paper – 22/2012-13 dated 11.10.2012.

i) To continue the present rate of DF namely Rs 100 per embarking domestic passenger and Rs 600 per embarking international passenger.

ii) To increase the rate of DF to Rs 200 per embarking domestic passenger and Rs 1300 per embarking international passenger with effect from 01.01.2013

XI.a. Stakeholder's comments on Issue No-XI

5.118. FIA stated that it opposes both the proposals of the Authority regarding tenure and increase of amount of DF in the present Consultation Paper.

5.119. IATA disagrees with both options of DF presented by AERA as the difference in fees between international and domestic passengers for both options are unjustifiably large. IATA stated that the development fee paid by international and domestic passengers should be the same. IATA noted that the proportion of 2:1 proposed by MIAL for international UDF to domestic UDF converges towards a level that is more reasonable.

5.120. Board of Airline Representatives (India) stated that in the event the stakeholders to the present Consultation paper ought to choose one of the two options provided by AERA for the levy of DF, the member airlines of BAR(I) are of the opinion that the option 1 would be more practical for all the airlines and their passengers, viz. to continue the present rate of DF, which is INR 100 per embarking domestic passenger and INR 600 per embarking international passenger. Under this option and based on the current traffic forecast, the DF would continue till about March, 2019, which is slightly less than 5 years after the likely completion of the project in August, 2014. The member airlines of BAR(I) would prefer to opt for this as the huge difference in DF between international and domestic passengers in the alternative option would further erode the passenger traffic.

5.121. APAO, on the issue of rate of DF has preferred Option 2 and stated as under,

> *"It must also be noted that DF is used as a pre-funding mechanism to finance capital expenditure. Therefore, the amount sanctioned to be collected through DF by the Authority should be available to MIAL at the earliest for the purpose of project funding. Option II – Rs. 200 per departing domestic passenger and Rs. 1,300 per departing international passenger – may be adopted as the DF rates for CSIA, Mumbai.*
>
> *We would also like to point out that in the case of IGI Airport, New Delhi, the Authority has permitted DF rates of Rs. 200 per departing domestic passenger and Rs. 1,300 per departing international passenger (i.e Option II).*
>
> *In respect of levy of DF, APAO requests the Authority to allow the following rates of levy:*
>
> *c. Rs. 200 from each departing domestic passenger*
>
> *d. Rs. 1,300 from each departing international passenger"*

XI.b. MIAL's response to Stakeholder's comments on Issue No-XI

5.122. MIAL has preferred the Option 2. MIAL stated that,

> *"In respect of levy of DF, we request the Authority to adopt the following option:-*

- *Rs. 200 from each departing domestic passenger,*
- *Rs. 1,300 from each departing international passenger*

till collection of approved amount."

XI.c. Authority's Examination of Issue No-XI

5.123. The Authority has estimated that the balance DF remaining to be billed as on 01.01.2013 out of Rs.3,400 crore is Rs. 2,515.00 crore (Calculation Vide Table 12). The Authority has also calculated the period required to meet this balance through levy of DF based on revised DF levy rate, as discussed below.

5.124. The Authority notes the fact that the Airport Operator is allowed to collect DF amount from passengers over a period of time whereas the purpose of DF levy is to meet the funding gap for construction of the project. The Authority therefore recognizes the fact that an Airport Operator may be required to securitise the DF amount and take upfront loans from lending institutions for funding the project. However, such loans would require debt servicing to the lending institutions comprising repayment of principle as well as payment of interest.

5.125. If a part of DF (or the entire DF) is securitized by the airport operator, the lender (normally a bank) advances that amount as loan/ debt to the airport operator and charges interest during the tenure of the loan. This means that the total amount which the airport operator gives back to the lender includes the DF amount as well as the accrued interest thereon.

5.126. The Authority also notes that according to DF Rules, the money deposited in Development Fees Receipt Account can be used

> *"to pay the remaining amount into the Development Fees Disbursement Account towards payment to the Airport Operator in accordance with the total amount of development fees determined by the Airports Economic Regulatory Authority and the fund from this account shall be disbursed to the Airport Operator as per the Drawdown Schedule for meeting the project cost directly or for servicing the debt to the lenders, raised against development fees."*

5.127. In common parlance, servicing of debt to the lenders include payment of both the principle amount as well as the interest amount, against the amount borrowed. As per the DF Rules, DF can be used for servicing debt on securitization depending upon the draw down schedule and the tenure of the loan. However, when such DF is securitized there would also be an interest element. This interest part would vary based on the terms of the arrangement with the banker. When this interest element is added to DF, this sum would be higher than only the DF as determined by AERA towards meeting the gap in the means of finance of the project.

5.128. The Authority has noted in its earlier Order no 02/2012-13 dated 18.04.2012 related to levy of DF at CSI Airport that the Authority will review the monthly billing of DF on the basis of audited figures provided by the AAI and MIAL and take appropriate decisions as may be required, based on such review.

5.129. Provision of interest amount for debt servicing on the DF amount securitised can be achieved through either of the two approaches as mentioned below so that the net amount of Rs. 3,400 crores is actually available to meet the project requirements:

5.129.1. To limit the allowed billing of DF only to the DF determined to meet the gap (shortfall) in the means of finance of the project and expense away the *interest part each year* while determining the tariffs;

$$DF_{Allowed\ to\ be\ billed} = DF_{Determined} + (Interest = 0\ as\ it\ is\ expensed\ away)$$

5.129.2. Take into account the total amount that would be necessary and adequate to service the debt on account of securitisation of DF. This amount would include the interest part. In this alternative, there would be no expensing away of interest:

$$DF_{Allowed\ to\ be\ billed} = DF_{Determined} + (Accrued\ Interest)$$

5.130. When DF amount is determined, the DF that can be available is based on the rate of DF as well as passenger traffic. When it is securitised, the lender would look at the DF available each year, the interest of the debt, and the duration of loan and accordingly agree to securitise that portion of DF as would be able to repay the loan along with interest thereon.

5.131. As far as CSI Airport Mumbai is concerned, the DF Order no. 02/2012-13 dated 18.04.2012 for the amount of Rs 876.27 crores was not based on the NPV value but on the current value. MIAL had not securitized any DF amount at that time. MIAL, in its comments to the Consultation Paper – 22/2012-13 dated 11.10.2012, have given the Auditor certificate that it has securitized an amount of Rs 750 crores from the banks.

5.132. The Authority notes that it had proposed adoption of the first approach (i.e. expensing of interest as discussed in 5.129) in its Consultation Paper – 22/2012-13 dated 11.10.2012. MIAL in its letter dated 10.12.2012 has stated that

> *"The Authority may kindly observe that DF is capital receipt for funding of project. Any Interest outgo because of securitization of DF for funding the project cost also needs to be considered while sanctioning DF i.e. over and above Present Value of DF, interest amount should also be allowed to be collected through DF. The Authority has correctly adopted this approach while approving DF for IGI Airport, Delhi."*

5.133. The Authority has carefully considered this submission and has decided to adopt the second approach, namely to include the interest component in the total allowed DF to be billed (vide para 5.129.2 above).

Review of Rate of DF and Time period for its collection

5.134. The Authority gave careful consideration to the question of further reducing the rate of DF from Rs. 100 per embarking domestic passenger and Rs. 600 per embarking international passenger. It was found that with this level of the rate of DF and taking into account interest as a part of allowable DF billing, the time period for collection extends upto April 2021 (the time period of March 2019 indicated in the Consultation Paper – 22/2012-13 dated 11.10.2012 was based on expensing of the interest component in tariff determination). The Authority took a view that any further extension of time period beyond April 2021 on account of further reduction in the rate of DF would not be appropriate. Hence the Authority felt that DF rate of Rs. 100 per embarking domestic passenger and Rs. 600 per embarking international passenger would be in order. The Authority apprised MoCA of this position. The Ministry indicated that it is in agreement with AERA on this issue.

5.135. For the present calculation, the Authority has reckoned the amount of Rs. 2515.00 crore on NPV basis (Calculation Vide Table 12) for the purposes of calculation of the time period as well as the total allowable DF to be billed (which would also represent interest component, as is explained in para 5.129). These calculations are based on the traffic forecast as considered by the Authority at time of Consultation Paper – 22/2012-13 dated 11.10.2012 (Calculations vide Table 14). The Authority has also reckoned interest @11.25%, as MIAL has informed, it being contracted interest rate with the lenders.

5.136. To summarise, therefore, the Authority would calculate the amount of Rs.2515.00 crores on NPV basis with an interest rate of 11.25% and taking the traffic projections as assumed by it in its Consultation Paper – 22/2012-13 dated 11.10.2012. The total period for which the DF billing would be allowed to cover the amount of Rs.2515.00 crores on NPV basis as of 01.01.2013 extends upto April 2021. According to the above calculations, the total amount of DF billing allowed is therefore estimated at Rs. 3845.50 crore of which Rs. 2515.00 crore will represent the balance DF as on 01.01.2013, the remaining amount of Rs. 1330.50 crore representing the interest component (vide Table 14). It is also clarified that the interest calculations in this table are based on monthly interest rate at 0.89%. The total amount of interest to be paid to the lenders on the securitization of the DF would however be limited to the actual interest paid by MIAL based on the factors like periodicity of paying interest (Quarterly or half-yearly interest)

5.137. The Details of DF loan repayment and interest calculation is as under:

Table 11 : Loan Parameter

Interest rate	% p.a.	11.25%
Interest rate (monthly)	% p.m.	0.89%

Table 12 : DF Balance as on 01.01.2013

Sl. No.	Particulars	Rs. In Crore	Remarks
A	Total DF sanctioned	3,400.00	As determined by the Authority in this Order
B	DF billed till 26 April 2011	640.73	DF levied by MIAL pursuant to MoCA Order
C	Estimated DF billed till July 2012 (pursuant to the Authority's Order No 02/2012-13 dated 18.04.2012)	103.22	Based on traffic estimated in Consultation Paper – 22/2012-13 and DF levy at the rate of 100/600 for the months of May, June and July, 2012
D	DF Securitized on August 2012 (pursuant to the Authority's Order No 02/2012-13 dated 18.04.2012)	750.00	As per Auditor Certificate submitted by MIAL (DF of Rs 750 crores securitized at an interest rate of 11.25%)
E	Estimated Principal Repayment till 31st Dec 2012	141.06	Based on estimated DF billing and monthly interest rate of 0.89%
F	Remaining Principal to be repaid as on 01.01.2013	608.94	F = D – E
G	DF Remaining to be billed / securitized as on 01.01.2013	1906.05	G = A – (B + C +D)
H	**Total Amount remaining as on 01.01.2013**	**2515.00**	H = F + G

Table 13 : DF Rate as applicable from 01.01.2013

	Domestic per embarking Passenger	International per embarking Passenger
Rate of Development Fee (in Rs.)	100	600

Table 14 : DF Repayment Schedule

Year	Month	Domestic Traffic (in millions)	International Traffic (in millions)	Opening Balance (In Rs. Crore)	DF Billing (In Rs. Crore)	Principal Repayment (In Rs. Crore)	Interest (In Rs. Crore)	Closing Balance (In Rs. Crore)
2013	Jan	0.94	0.42	2,515.00	34.41	11.96	22.44	2,503.03
	Feb	0.94	0.42	2,503.03	34.41	12.07	22.34	2,490.96
	Mar	0.94	0.42	2,490.96	34.41	12.18	22.23	2,478.79
	Apr	1.00	0.43	2,478.79	35.81	13.69	22.12	2,465.10
	May	1.00	0.43	2,465.10	35.81	13.81	22.00	2,451.30
	Jun	1.00	0.43	2,451.30	35.81	13.93	21.87	2,437.36
	Jul	1.00	0.43	2,437.36	35.81	14.06	21.75	2,423.31
	Aug	1.00	0.43	2,423.31	35.81	14.18	21.62	2,409.13
	Sep	1.00	0.43	2,409.13	35.81	14.31	21.50	2,394.82
	Oct	1.00	0.43	2,394.82	35.81	14.43	21.37	2,380.39
	Nov	1.00	0.43	2,380.39	35.81	14.56	21.24	2,365.82
	Dec	1.00	0.43	2,365.82	35.81	14.69	21.11	2,351.13
2014	Jan	1.00	0.43	2,351.13	35.81	14.82	20.98	2,336.31
	Feb	1.00	0.43	2,336.31	35.81	14.96	20.85	2,321.35
	Mar	1.00	0.43	2,321.35	35.81	15.09	20.72	2,306.26
	Apr	1.04	0.44	2,306.26	36.86	16.28	20.58	2,289.98
	May	1.04	0.44	2,289.98	36.86	16.43	20.44	2,273.55
	Jun	1.04	0.44	2,273.55	36.86	16.57	20.29	2,256.98
	Jul	1.04	0.44	2,256.98	36.86	16.72	20.14	2,240.26
	Aug	1.04	0.44	2,240.26	36.86	16.87	19.99	2,223.39
	Sep	1.04	0.44	2,223.39	36.86	17.02	19.84	2,206.37
	Oct	1.04	0.44	2,206.37	36.86	17.17	19.69	2,189.19
	Nov	1.04	0.44	2,189.19	36.86	17.33	19.54	2,171.87
	Dec	1.04	0.44	2,171.87	36.86	17.48	19.38	2,154.39
2015	Jan	1.04	0.44	2,154.39	36.86	17.64	19.23	2,136.75
	Feb	1.04	0.44	2,136.75	36.86	17.79	19.07	2,118.96
	Mar	1.04	0.44	2,118.96	36.86	17.95	18.91	2,101.01
	Apr	1.09	0.45	2,101.01	37.94	19.20	18.75	2,081.81
	May	1.09	0.45	2,081.81	37.94	19.37	18.58	2,062.44
	Jun	1.09	0.45	2,062.44	37.94	19.54	18.40	2,042.90
	Jul	1.09	0.45	2,042.90	37.94	19.71	18.23	2,023.19
	Aug	1.09	0.45	2,023.19	37.94	19.89	18.05	2,003.30
	Sep	1.09	0.45	2,003.30	37.94	20.07	17.88	1,983.23
	Oct	1.09	0.45	1,983.23	37.94	20.25	17.70	1,962.99
	Nov	1.09	0.45	1,962.99	37.94	20.43	17.52	1,942.56
	Dec	1.09	0.45	1,942.56	37.94	20.61	17.33	1,921.95
2016	Jan	1.09	0.45	1,921.95	37.94	20.79	17.15	1,901.16
	Feb	1.09	0.45	1,901.16	37.94	20.98	16.97	1,880.18
	Mar	1.09	0.45	1,880.18	37.94	21.17	16.78	1,859.01
	Apr	1.13	0.46	1,859.01	38.99	22.40	16.59	1,836.61
	May	1.13	0.46	1,836.61	38.99	22.60	16.39	1,814.00
	Jun	1.13	0.46	1,814.00	38.99	22.81	16.19	1,791.20
	Jul	1.13	0.46	1,791.20	38.99	23.01	15.98	1,768.19
	Aug	1.13	0.46	1,768.19	38.99	23.21	15.78	1,744.97
	Sep	1.13	0.46	1,744.97	38.99	23.42	15.57	1,721.55
	Oct	1.13	0.46	1,721.55	38.99	23.63	15.36	1,697.92
	Nov	1.13	0.46	1,697.92	38.99	23.84	15.15	1,674.08
	Dec	1.13	0.46	1,674.08	38.99	24.05	14.94	1,650.03
2017	Jan	1.13	0.46	1,650.03	38.99	24.27	14.72	1,625.76
	Feb	1.13	0.46	1,625.76	38.99	24.49	14.51	1,601.27

Airports Economic Regulatory Authority of India

Year	Month	Domestic Traffic (in millions)	International Traffic (in millions)	Opening Balance (In Rs. Crore)	DF Billing (In Rs. Crore)	Principal Repayment (In Rs. Crore)	Interest (In Rs. Crore)	Closing Balance (In Rs. Crore)
	Mar	1.13	0.46	1,601.27	38.99	24.70	14.29	1,576.57
	Apr	1.17	0.47	1,576.57	39.98	25.91	14.07	1,550.66
	May	1.17	0.47	1,550.66	39.98	26.14	13.84	1,524.52
	Jun	1.17	0.47	1,524.52	39.98	26.37	13.60	1,498.15
	Jul	1.17	0.47	1,498.15	39.98	26.61	13.37	1,471.54
	Aug	1.17	0.47	1,471.54	39.98	26.85	13.13	1,444.69
	Sep	1.17	0.47	1,444.69	39.98	27.09	12.89	1,417.61
	Oct	1.17	0.47	1,417.61	39.98	27.33	12.65	1,390.28
	Nov	1.17	0.47	1,390.28	39.98	27.57	12.41	1,362.71
	Dec	1.17	0.47	1,362.71	39.98	27.82	12.16	1,334.89
2018	Jan	1.17	0.47	1,334.89	39.98	28.07	11.91	1,306.82
	Feb	1.17	0.47	1,306.82	39.98	28.32	11.66	1,278.51
	Mar	1.17	0.47	1,278.51	39.98	28.57	11.41	1,249.94
	Apr	1.20	0.48	1,249.94	40.70	29.55	11.15	1,220.40
	May	1.20	0.48	1,220.40	40.70	29.81	10.89	1,190.59
	Jun	1.20	0.48	1,190.59	40.70	30.08	10.62	1,160.51
	Jul	1.20	0.48	1,160.51	40.70	30.34	10.36	1,130.17
	Aug	1.20	0.48	1,130.17	40.70	30.61	10.09	1,099.55
	Sep	1.20	0.48	1,099.55	40.70	30.89	9.81	1,068.67
	Oct	1.20	0.48	1,068.67	40.70	31.16	9.54	1,037.50
	Nov	1.20	0.48	1,037.50	40.70	31.44	9.26	1,006.06
	Dec	1.20	0.48	1,006.06	40.70	31.72	8.98	974.34
2019	Jan	1.20	0.48	974.34	40.70	32.00	8.69	942.34
	Feb	1.20	0.48	942.34	40.70	32.29	8.41	910.04
	Mar	1.20	0.48	910.04	40.70	32.58	8.12	877.47
	Apr	1.20	0.48	877.47	40.70	32.87	7.83	844.60
	May	1.20	0.48	844.60	40.70	33.16	7.54	811.43
	Jun	1.20	0.48	811.43	40.70	33.46	7.24	777.98
	Jul	1.20	0.48	777.98	40.70	33.76	6.94	744.22
	Aug	1.20	0.48	744.22	40.70	34.06	6.64	710.16
	Sep	1.20	0.48	710.16	40.70	34.36	6.34	675.80
	Oct	1.20	0.48	675.80	40.70	34.67	6.03	641.13
	Nov	1.20	0.48	641.13	40.70	34.98	5.72	606.15
	Dec	1.20	0.48	606.15	40.70	35.29	5.41	570.86
2020	Jan	1.20	0.48	570.86	40.70	35.61	5.09	535.25
	Feb	1.20	0.48	535.25	40.70	35.92	4.78	499.33
	Mar	1.20	0.48	499.33	40.70	36.24	4.46	463.09
	Apr	1.20	0.48	463.09	40.70	36.57	4.13	426.52
	May	1.20	0.48	426.52	40.70	36.89	3.81	389.63
	Jun	1.20	0.48	389.63	40.70	37.22	3.48	352.41
	Jul	1.20	0.48	352.41	40.70	37.55	3.14	314.85
	Aug	1.20	0.48	314.85	40.70	37.89	2.81	276.96
	Sep	1.20	0.48	276.96	40.70	38.23	2.47	238.73
	Oct	1.20	0.48	238.73	40.70	38.57	2.13	200.16
	Nov	1.20	0.48	200.16	40.70	38.91	1.79	161.25
	Dec	1.20	0.48	161.25	40.70	39.26	1.44	121.99
2021	Jan	1.20	0.48	121.99	40.70	39.61	1.09	82.38
	Feb	1.20	0.48	82.38	40.70	39.96	0.74	42.41
	Mar	1.20	0.48	42.41	40.70	40.32	0.38	2.09
	Apr	1.20	0.48	2.09	2.11	2.09	0.02	-
Total					**3,845.50**	**2,515.50**	**1,330.50**	

5.138. Having regard to the above considerations, in exercise of powers conferred by Section 13(1)(b) of the Airports Economic Regulatory Authority of India Act, 2008 read with Section 22A of the Airports Authority of India Act, 1994, the Authority orders as under,

Decision No-II. Regarding Amount of DF, tenure of collection and Rate of DF per embarking passenger in respect of CSI Airport, Mumbai

II.a. The Authority decides to determine the Development Fee that should be available for the project at Rs 3,400 crores.

II.b. The Authority decides to include the interest component in the allowable DF billing, if DF is securitized.

II.c. The Authority notes that the estimated balance of Development Fee as on 01.01.2013, based on the expected monthly receipts, would be Rs 2,515 crores. The Authority, however, notes that MIAL has securitized an amount of Rs 750 crores in August 2012 and this has been taken into consideration while estimating the balance DF of Rs 2,515 crores as on 01.01.2013.

II.d. The rate of DF is determined as Rs 100 per embarking domestic passenger and Rs 600 per embarking international passenger w.e.f. 01.01.2013. This levy will commence w.e.f 01.01.2013 and, at present, is estimated to continue upto April 2021 based on the traffic forecast considered in the Consultation Paper – 22/2012-13 dated 11.10.2012.The Authority further decides that provided the balance amount of Rs. 2,515.00 crores is securitized (at an interest rate of 11.25%, that is taken for the purpose of Table 14), the total amount of DF billing permitted is Rs.3,845.50 crores of which Rs. 2,515.00 crores represents the balance DF as of 01.01.2013, the remaining amount of Rs. 1,330.50 crores represents the interest component. The allowed tenure of DF collection is therefore estimated upto April 2021.

II.e. The Authority clarifies that the calculations made by it in the Table 14 are based on the assumptions made therein and therefore decides to periodically review the DF billing (based on traffic as well as on the basis of audited figures provided by AAI and MIAL), its securitization, consequent interest charge and any

additional means of finance during the above mentioned tenure and make appropriate decisions as may be required based on such review.

II.f. The Authority decides that the amount of Development Fee, levied and collected at CSI Airport, Mumbai, will be utilized by Mumbai International Airport Limited in accordance with provisions of Airports Authority of India (Major Airports) Development Fees Rules, 2011.

Impact of DF on the Regulatory Asset Base (RAB)

5.139. The Authority in its Consultation Paper – 22/2012-13 dated 11.10.2012 (Tentative Decision No. 12) had indicated that the issue of calculating depreciation would be addressed in terms of the actual date of completion of the respective aeronautical assets rather than assuming them to have been commissioned in the middle of the financial year. The Authority also notes that for proper determination of depreciation, both the date of completion/commissioning of the asset as well as the DF billed/ securitised on such dates are important and relevant factors. This is because DF is a measure of last resort for funding the project and gets reduced from the RAB to arrive at the net RAB on which Weighted Average Cost of Capital (WACC) is given which then forms one of the components for determination of the Target Revenue.

5.140. In Consultation Paper – 22/2012-13 dated 11.10.2012, the Authority had "tentatively decided to consider the DF Funding of RAB such that RAB to be capitalized in any tariff year would be first reduced to the extent of DF amount billed / securitized and not already reduced from RAB". In this regard, the Authority has received comments of Airports Authority of India (forwarded by MoCA vide letter no AV20036/4/2010-AD dated 21.12.2012). In their comments, AAI has referred to the Consultation Paper – 22/2012-13 dated 11.10.2012 and regarding adjustment of RAB on account of DF stated that

> *"1. As per the Airports Authority of India Development Fee Rules, 2011, the amount collected as DF should be utilized towards payment for the cost of Eligible Assets. As per approval, DF was to be utilized only for the development of Aeronautical Assets which are Transfer Assets. However, AERA while issuing this order has not mentioned specific condition for manner of utilization of DF and did not mention any specific assets which are to be funded through DF.*

2. In the MYTP proposal, the AERA has followed the policy of the DF billed/securitized to be first adjusted against the completed assets in that financial year and any balance DF thereof is assumed to have funded the capital works in progress. MIAL has contended saying the amount of assets capitalized in all financial years exceed the DF billed/securitized and as a result the entire DF amount is assumed to have been utilized towards capitalized Eligible Assets which is not fair and as per normal practice.

In normal practice the amount of DF collected should be adjusted against the assets for which it has been sanctioned. However, as the AERA order does not specify the assets which are to be funded by DF, it is felt that the following methods can be adopted:

i) Adjust the amount of DF collected against assets for which it has been utilized, if it can be identified through any proper means and records/alternatively apportion over all the eligible asset proportionately.

ii) The treatment should be as per the guidelines given in AS- 12 issue by Institute of Chartered Accountant regarding grant against the asset."

5.141. The Authority has received considered comments from the other stakeholders also. In this regard, the Authority notes that the total quantum of DF as determined by the Authority is Rs 3,400 crores and the total allowable project cost is Rs 12,069.80 crores (Rs 11,647.46 crores plus Rs 422.34 crores). Further it is also noted that the present exercise is limited to the determination of DF to bridge the funding gap between various means of finance and the allowable project cost. The extent, to which this amount of DF is utilized to fund the assets – partly / wholely, is a separate matter, which is relevant to and pertains to the adjustment of RAB on account of DF.

5.142. . The Authority would consider and analyse these comments and make appropriate decision at the time of its Order regarding determination of aeronautical tariff in respect of CSI Airport, Mumbai.

6. Summary of Decisions

By the Order of and in the
Name of the Authority

(Capt. Kapil Chaudhary)
Secretary

To,

Mumbai International Airport Private Limited
Chhatrapati Shivaji International Airport
First Floor, Terminal 1B, Santacruz (E),
Mumbai – 400009
(Through: Shri R. K. Jain, Chief Executive Officer)

ANNEXURE - I

विजय प्रकाश अग्रवाल
V. P. AGRAWAL
अध्यक्ष
Chairman
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भारतीय विमानपत्तन प्राधिकरण
AIRPORTS AUTHORITY OF INDIA
राजीव गांधी भवन
Rajiv Gandhi Bhawan
Safdarjung Airport, New Delhi-110 003
सफदरजंग हवाई अड्डा, नई दिल्ली - 110003

D.O. No. AAI/MC/MIAL-07/EC/2012-13 / 9590 26th October 2012

Grant of Development Fee in respect of Mumbai airport

Dear Sir,

I am in receipt of your D.O. letter No. AERA/20010/MIAL-DF/2011-12 dated 30th August 2012, regarding infusion of additional equity in MIAL by AAI to firm up the calculation of Development Fee.

2. AAI Board has reviewed the financials and is in a position to infuse the additional required equity.

3. Accordingly, the matter of levy of development fee at CSI airport beyond 31st December 2012 may be considered and reviewed by AERA.

With regards.

Yours sincerely

V. Agrawal

(V. P. AGRAWAL)

Shri Yashwant Bhave
Chairman
Airports Economic Regulatory Authority of India
AERA Building, Administrative Complex,
Safdarjung Airport, New Delhi – 110003

ANNEXURE - II

GVK

MIAL/CEO/91

19th November, 2012

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

Sir,

Subject: Grant of Development Fee (DF) in respect of Mumbai Airport – reg.

Ref: 1. Authority letter No. AERA/20010/MYTP/MIAL/2011-12-III/1803 dated 01 November, 2012
2. AAI letter D.O.No. AAI/MC/MIAL-07/EC/2012-13/2520-21 dated 26th October 2012 (copy received by MIAL from AAI on 8th November, 2012)

The letter of AAI as referred above regarding infusion of additional equity in MIAL to firm up the calculation of DF, was received by MIAL only on 8th November, 2012. Authority's letter dated 01 November, 2012 (mentioned above) refers to this letter of AAI.

We would like to bring to kind notice of the Authority that consequent to the issue of Consultation Paper No. 22/2012-13 dated 11th October, 2012 by the Authority for "Determination of Aeronautical Tariff and Development Fee in respect of Chhatrapati Shivaji International Airport, Mumbai for the 1st Regulatory Period (01.04.2009 – 31.03.2014)", the Board of MIAL was apprised of the funding gap left unaddressed by the Authority to the extent of Rs. 1347.74 crores while proposing Development Fee of Rs. 3400 crores (including Rs. 1517 crores already sanctioned). Details of gap of Rs. 1347.74 crores are as below:

		Rs/Crs
Gap as mentioned in the CP		819.05
Add:		
Project cost deferred	422.34	
Project cost disallowed	106.35*	528.69
Total Gap		1347.74
* Project cost disallowed		310.20
Less:		
Upfront fee reduced from equity	153.85	
Int. Cargo Development Cost to be incurred by the concessionaire	50.00	203.85
Effective disallowance		106.35

Contd..2/-

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GVK

The Board deliberated on the issue and noted with concern that funding gap of Rs. 1347.74 crores is yet to be addressed. Issue of infusion of additional equity beyond Rs. 1200 crores was also deliberated upon and it was found that there is no change in position from the last Board Meeting held on 26th July, 2012 and accordingly it was felt that no further equity infusion would be possible. Hence a statement of intent by AAI alone to infuse Equity Share Capital to meet the funding gap does not offer a viable alternative.

Upon further discussions on the matter of meeting the uncovered funding gap of Rs. 1347.74 crores, the Board reiterated its serious concern about meeting this funding gap for completion of the project. It was noted that in the past, lenders had clearly mentioned that any decision for further loan is dependent upon finalisation of DF and determination of tariff by AERA and financials of the project. The Board directed officials of the company to approach the lenders to explore possibility of tie-up for loan to meet this funding gap.

In view of above facts, it is extremely difficult to bridge funding gap of Rs. 1347.74 crores and there is no possibility of bringing any additional equity. As we have explained in our earlier submissions no other resources are available towards reducing requirement of DF proposed by the Authority.

We request the Authority to kindly consider the above facts and finalise the proposed DF of Rs. 3400 crores (including Rs. 1517 crores already approved by the Authority) at the earliest, in the interest of completion of project.

Thanking you,

Yours sincerely,
For Mumbai International Airport Private Limited

(R.K. Jain)
Chief Executive Officer

CC: 1) Secretary, Ministry of Civil Aviation, New Delhi
2) Chairman, Airports Authority of India, New Delhi

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ANNEXURE - III

भारतीय विमानपत्तन प्राधिकरण
AIRPORTS AUTHORITY OF INDIA

No. AAI/JVC/MIAL/Equity/2012-13

5th December, 2012

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

Sub : **Grant of Development Fee in respect of Mumbai Airport**

Madam,

This has reference to your letter no. AERA/20010/MIAL-DF/2009-10/Vol-V/1993 dated 26th November, 2012 on the subject cited above.

As indicated in your above referred letter, if the Final Capital Gap is taken as Rs.3400 crores (as DF) against which actual DF collected upto December, 2012 will be Rs.833 crores (Approx.).

AAI Board has, in principle, approved to infuse equity of Rs.293 crores in MIAL as and when cash call is made by the Company.

This issues with the approval of Competent Authority.

Yours faithfully,

(S. SURESH)
Member (Finance)

भारतीय विमानपत्तन आर्थिक विनियामक प्राधिकरण
Airports Economic Regulatory Authority of India

राजीव गांधी भवन
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