

Consultation Paper No. 15/2014-15



Airports Economic Regulatory Authority of India

**Amendment to the Order No.08/2014-15 dated
10.06.2014 issued by the Authority in respect of
aeronautical charges of Kempegowda
International Airport (earlier known as
Bengaluru International Airport) in view of the
Orders of Hon'ble High Court of Delhi in the Writ
Petition (civil) no. 4338/2014**

New Delhi: 26th December, 2014

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

The Authority after detailed consideration of the Multi Year Tariff Proposal (MYTP) and the Annual Tariff Proposals (ATP) submitted by BIAL, had determined the Aeronautical Tariffs in respect of BIAL vide Order No. 08/2014-15 dated 10th June 2014 (MYTO). In the MYTO, the Authority had, vide Decision No. 17 (a) (i), inter alia, decided to consider revenue from ICT services (CUTE, CUSS and BRS) as revenues arising out of Aeronautical service and had thus considered these charges as Aeronautical charges. Accordingly, as part of the tariff structure of BIAL, the Authority had approved CUSS/CUTE/BRS CHARGE @ US\$ 1.25 per departing passenger, effective from 1st July 2014.

2. Appeal filed by Federation of Indian Airlines (FIA) and Court Order

- 2.1 Subsequent to the issue of MYTO, FIA filed an appeal in the AERAAT against the aforesaid order of the Authority. The AERAAT vide its order dated 1st July 2014 (**Annexure - I**) had ordered status quo in respect of these charges as on 10th June 2014, when the impugned order was passed.
- 2.2 Subsequently, BIAL filed a writ petition before the Hon'ble High Court of Delhi against the aforesaid Order dated 1st July 2014 passed by AERAAT.
- 2.3 The Hon'ble High Court has now passed an order dated 23rd December 2014 (**Annexure-II**) which inter-alia states as under:

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

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

3. Authority's analysis in view of the Court Order dated 23rd December 2014.

- 3.1 In accordance with the Orders of the Hon'ble High Court of Delhi, the Authority vide letter dated 24th December 2014 requested BIAL to file the details of settlement/agreement between BIAL and FIA at the earliest, for further consideration of the Authority.
- 3.2 BIAL, vide its letter dated 25th December 2014 (**Annexure-III**) has inter-alia, stated the following:

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

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

- 3.3 The Authority notes the terms of the settlement (**Annexure-IV**) are as under:

“.....BIAL and FIA, after mutual discussions, have resolved the impasse in relation to CIC charges whereunder CIC charges has been agreed to be reduced to \$1 (instead of \$1.25 as per AERA Order dated 10.06.2014) per departing passenger (both national and international) will now be leviable for and on behalf of BIAL....”

- 3.4 The Authority notes that the charges for ICT (CUTE, CUSS and BRS) as approved by the Authority vide the MYTO w.e.f. 1st July 2014 has not yet been levied by BIAL in view of the stay granted by AERAAT. As a result BIAL may have a shortfall in collections of aeronautical charges, which may have to be trued up at the end of the current control period, at the time of determination of Aeronautical Tariffs for the next control period.
- 3.5 The Authority feels that any prolonged period of non-levy of the ICT charges would not be in the interest of passengers as it would mean additional shortfall in revenue to be trued-up at the time of determination of tariffs for the second control period in respect of BIAL, thus having an impact on the passenger charges to be determined at that point of time.
- 3.6 The Authority therefore is of the view that agreeing to the rates of CUTE, CUSS and BRS agreed between BIAL and FIA, would be in public interest as it would allow BIAL to commence the levy of these charges at an early date.
- 3.7 Considering the revised rate agreed between BIAL and FIA and the Order of the Hon'ble High Court of Delhi, the Authority proposes in public interest to amend its Order No. 08/2014-15 dated 10th June 2014 (MYTO) to the extent that the

revised rate for CUTE, CUSS and BRS would be fixed at \$ 1 per departing passenger (as against \$1.25 per departing passenger fixed in the MYTO), in line with the terms of the settlement between BIAL and FIA, to be charged effective from 15th January 2015.

4. Proposal: Regarding Revised CUTE, CUSS and BRS Charges

- i. **The Authority proposes that CUTE, CUSS and BRS Charges leviable on domestic and International departing passengers will be US\$1 effective from 15th January 2015, for the current control period.**
 - ii. **The difference in collections between the CUTE, CUSS and BRS Charges that would accrue to BIAL now under revised rates and the amount considered as per the MYTO will be trued up at the end of the current control period, during the determination of Aeronautical tariff for the next control period.**
 - iii. **All other decisions issued as part of the MYTO will continue to be applicable and the proposals given herein would be considered as an amendment to the already issued MYTO.**
5. The Authority welcomes written evidence-based feedback, comments and suggestions from stakeholders on the proposal made in **Para 4** above, latest by **31.12.2014** at the following address:

**Airports Economic Regulatory Authority of India,
AERA Building,
Administrative Complex,
Safdarjung Airport,
New Delhi- 110003
Email: alok.shekhar@gov.in
Tel: 011-24695042
Fax: 011-24695039**

**Alok Shekhar
Secretary**

AIRPORTS ECONOMIC REGULATORY AUTHORITY APPELLATE TRIBUNAL
NEW DELHI

APPEAL No. 01 of 2014

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

CORAM

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

Hon'ble Mr. Rahul Sarin
Member

In the matter of :

Federation of Indian Airlines (FIA)

...Appellant

Versus

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

.... Respondents

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

ORDER
1st July, 2014

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

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

...2/-

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

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

[Justice V.S. Sirpurkar]
Chairman

[Rahul Sarin]
Member

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 4338/2014 & CM 8692/2014BANGALORE INTERNATIONAL AIRPORT
LIMITED

..... Petitioner

Through Ms Pallavi Langar, Advocate.

versus

MINISTRY OF CIVIL AVIATION AND ORS Respondents

Through Ms Poonam Verma, Mr Gaurav
Saini and Mr Shantanu Singh,
Advocates for R2.Mr Atul Nanda, Sr. Advocate with
Mr Rameeza Hakeem, Mr Priyadarshi
Gopal, Advocates for R3 (AERA).
Mr Digvijay Raj, Advocate for R6
(AAI).Ms Anjana Gosain, Advocate for
UOL.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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23.12.2014

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

[Signature]
24/12/2014
Court Master
High Court of Delhi
New Delhi

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

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

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

Dasti under the signature of Court Master.

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

sd/-

VIBHU BAKHURU, J

DECEMBER 23, 2014

pkv

[Signature]
24/12/2014
Court Master
High Court of Delhi
New Delhi

Bangalore International Airport Limited
Alpha 2, Kempegowda International Airport Bengaluru,
Bangalore- 560 300, India.
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Ref: AERA/Finance/2014-15/06

December 25th, 2014

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

Dear Sir,

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

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

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

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

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

Bangalore International Airport Limited
Alpha 2, Kempegowda International Airport Bengaluru,
Bangalore- 560 300, India.
T +91 80 6678 2050 F +91 80 6678 3366 www.bengaluruairport.com



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

Placed for consideration and necessary orders.

For Bangalore International Airport Limited

A handwritten signature in black ink, appearing to be 'Shravan'.

Authorized Signatory

Encl: a/a

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

Dear Madam & Sir,

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

Thank you & best regards,
Anand

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

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

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

To: Anand Kumar P

Cc: Jagdish Prasad; Jyoti.Lakhotia@sita.aero; Abraham Kuruvilla; Maneesh.Jaikrishna@sita.aero;

Bhaskar Bodapati; Poonam JSA; Anoop Khatry (GBP,Legal); Neena Gupta; Rahul Kumar (GBP,

Legal); Gaurav Sarin; chandan.sand@spicejet.com; Gaurang Shetty; Kamal Kikani

Subject: Re: CIC charges_ Settlement terms_Scan Copy-BIAL

Dear Mr. Anand,

Enclosed is the signed joint statement.

Thanks and regards
Ujjwal Dey

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

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

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

For Federation of Indian Airlines



Authorized Representative

For Bangalore International
Airport Limited



Authorized Representative