Mumbai International Airport Limited

Response to AERA Consultation Paper No 35/2020-21 Dated 21st September 2020

on Determination of Aeronautical Tariffs in respect of

Chhatrapati Shivaji Maharaj International Airport, Mumbai

for the Third Control Period

30th November, 2020

Disclaimer

This document has been prepared by Mumbai International Airport Limited (MIAL) in response to AERA's Consultation Paper No. 35/2020-21 on Determination of Aeronautical Tariff in respect of Chhatrapati Shivaji Maharaj International Airport (CSIA), Mumbai for the 3rd Control Period (1st April 2019 – 31st March 2024) ('Consultation Paper' or CP) dated 21st September, 2020.

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List of Abbreviations:

Abbreviation	Expansion
AAI	Airport Authority of India
ACI	Airport Council International
AERA	Airport Economic Regulatory Authority of India
ATF	Aviation Turbine Fuel
ATM	Air Traffic Movement / Automated Teller Machine
AVSEC	Aviation Security
CAPM	Capital Asset Pricing Model
CoD	Cost of Debt
CP	Consultation Paper no. 35 of 2020-21 dated 21st September, 2020
CPI or Inflation	Consumer Price Index
CPWD	Central Public Works Department
CSMIA or CSIA	Chhatrapati Shivaji Maharaj International Airport
CoE	Cost of Equity
CWIP	Capital Work in Progress
DF	Development Fees
FCP	First Control Period
FIDS	Flight Information Display System
FRoR	Fair Rate of Return
FTC	Fuel Throughput Charges
GoI	Government of India
GoM	Government of Maharashtra
GDP	Gross
HRAB	Hypothetical Regulatory Asset Base
IATA	International Air Travelers Association
ICAO	International Civil Aviation Organization
IDC	Interest during Construction
MAG	Minimum Annual Guarantee
MIAL	Mumbai International Airport Ltd
MMRDA	Mumbai Metropolitan Region Development Authority
MYTP	Multi Year Tariff Proposal
NBFC	Non-Banking Financial Company
NCAP	National Civil Aviation Policy,2016
NAR	Non-Aeronautical Revenue
NPA	Non-Performing Asset
OMDA	Operation, Management and Development Agreement
O&M	Operation & Maintenance
RAB	Regulatory Asset Base
RSA	Revenue Share Assets
RWY	Runway
RSC	R. Subramanian & Co. LLP
SCP	Second Control Period
SRA	Slum Rehabilitation Authority, Mumbai
SSA	State Support Agreement
TCP	Third Control Period
TDSAT or the Appellate Authority	Telecom Disputes Settlement and Appellate Tribunal
TWY	Taxiway

UDF	User Development Fees
VDGS	Visual Docking Guidance System
VFR	Visiting Friends and Relatives
WACC	Weighted Average Cost of Capital
WDV	Written Down Value

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1. Change in business Scenario post submission of MYTP for Third Control Period.

1.1 Impact on Traffic

MIAL had submitted MYTP for the Third Control Period on 7th June 2019. Subsequently because of outbreak of COVID-19 Pandemic in Feb-March, there is unprecedented impact on economy world-wide.

It has been widely accepted that the COVID-19 Pandemic has led to a deep global recession. The stringent restrictions and voluntary restraints on human interaction to prevent the spread of the virus has already led to massive disruptions in advanced and developing economies. In the absence of an effective vaccine or treatment, this pandemic has caused extraordinary economic uncertainty about the extent and duration of the global recession and how different countries will be affected.

This unprecedented pandemic might push a majority of countries into recession this year. Furthermore, advanced economies are projected to shrink considerably in 2020, as widespread social-distancing measures, a sharp tightening of financial conditions, and collapse in external demand has depressed the business activity. The World Bank Group's Flagship Report on Global Economic Prospects[1] dated June 2020 has termed COVID-19 as the "Deepest recession since World War II".

The report further states "Beyond its short-term impact, deep recessions triggered by the pandemic are likely to leave lasting scars through multiple channels, including lower investment; erosion of the human capital of the unemployed; and a retreat from global trade and supply linkage."

The International Finance Corporation (IFC), World Bank Group in its report titled The Impact of COVID-19 on Airports[2]: An Analysis has stated that "COVID-19 has had an immediate, dramatic impact on airport traffic and revenue. The economic crisis that will follow the pandemic will continue to drive lower demand for air travel in the immediate aftermath."

IFC reports further states that "Airports are likely to see structural changes in demand from the economic crisis that will follow the COVID-19 outbreak. Airports' performance will continue to be affected by the lower-than-expected GDP growth around the globe after COVID-19. As a result, industry experts project a much slower recovery than in previous shocks such as 9/11 or SARS.

Many airports hold minimum revenue guarantee contracts with their tenants. However, in view of the COVID-19 pandemic, some airports are adapting payment conditions and relieving airlines and retail partners from some of their contractual obligations.

Historically, aviation has recovered from major shocks within five to seven months after events such as 9/11 or SARS. The impact of COVID-19 on airports will depend on the duration of lockdowns and how fast economic activity recovers after the pandemic. Many industry observers expect the recovery to be much slower than those of previous shocks, reflecting the double hit from travel bans and the economic fallout caused by lockdowns".

Though, the Government of India (GoI) has gradually lifted restriction on domestic flights from 25th May, 2020 but more stringent restrictions on domestic flights have been imposed by Government of Maharashtra (GoM). Domestic traffic is still miniscule as compared to pre COVID period. Scheduled

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[1] https://www.worldbank.org/en/publication/global-economic-prospects

[2] https://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/infrastructure/resources/the+impact+of+covid-

international flights are yet to be permitted by Government of India. Only few bubble flights have been permitted as a result international traffic is hardly 9% to 10% of normal traffic. Due to second wave of spread of COVID in Europe and USA and various restrictions imposed by different countries to quarantine passengers, there is no clarity on revival of international passenger traffic.

Impact of Disruption in passenger traffic and also cargo tonnage will have long lasting adverse effect on aeronautical revenue, Non aeronautical revenue and cargo revenue. Already there is severe liquidity crisis and company is not able to meet its obligations towards operating expenditure and debt servicing.

Due to low passenger traffic it became necessary to review even capex plan which was based on trigger points of expected passenger traffic, considering normal scenario. IATA, ICF (a global consulting services company), ACI and ICAO have projected return of normalcy in passenger traffic in about 3-4 years. Domestic traffic is likely to have faster recovery while international passenger traffic will take much longer time for returning to normalcy which depends on restrictions and lockdowns imposed in other countries. There could be multiple waves of spread of COVID 19 which makes it completely uncertain to project international passenger traffic. And it may be noted that, at present the US and European Union have restricted countries for international travel[3]. Considering the lack of clarity around when international travel will gain back its momentum, the recovery of traffic to pre COVID 19 level.

It is also important to note, that even if these countries may declare themselves COVID free, India may take a longer time to completely eradicate COVID 19 due to a very large population size. And In such a case, we expect that these countries may impose visa or travel restrictions for Indian, which may have a direct bearing on the International passenger traffic. Hence, the International traffic may take longer time to recover to pre-COVID levels, as compared to Domestic passenger traffic. Therefore, we request to the Authority to consider a differential approach for Domestic and International passenger traffic recovery.

Even in Domestic traffic there is sudden spurt in number of daily Covid-19 cases in Delhi and other northern states. It may lead to imposition of restrictions by other states on traffic to and from Delhi and other cities.

Recently released report on Indian Economy by Oxford Economics states “The long-term scars caused by Covid-19 pandemic, amid a weak fiscal stimulus by the government, would push India’s trend growth substantially lower from pre-Covid levels, causing a large medium term output loss. The potential growth to average just 4.5 per cent over 2020-2025, as opposed to its pre-virus forecast of 6.5 per cent.”

Arguing that India’s weak fiscal response plays a role in magnifying the structural drags, it noted the “GDP per capita to be 12 per cent below over pre-virus baseline even in 2025, implying the largest amount of scarring among major economies globally.”

“India’s gross domestic product (GDP) growth contracted 23.9 per cent in the April-June quarter, while various agencies have projected contraction of around 10 per cent for the entire fiscal.”

“The deep economic damage caused by the coronavirus pandemic and lockdowns instituted to contain it make a prolonged growth impact inevitable. Even after the pandemic is contained, India’s economy will have to deal with its aftermath. It is likely that headwinds already hampering growth prior to 2020

[3] https://www.cdc.gov/coronavirus/2019-ncov/travelers/from-other-countries.html

3

— such as stressed corporate balance sheets, elevated non-performing assets (NPAs) of banks, the fallout in non-bank financial companies (NBFCs), and labour market weakness — will worsen."

"Despite having one of the most stringent lockdowns globally in Q2, its direct fiscal response to Covid so far amounts to just 2.5% of GDP, with the lion's share of the USD 230 billion fiscal package earmarked for liquidity and financing support schemes. While we forecast the Central Government's, fiscal deficit will widen to 7% of GDP in FY21 from 4.7% in FY20, it is unlikely to deliver a meaningful boost to growth because it is not the result of a surge in spending."

"According to this model, the government's fiscal deficit will balloon towards 9 per cent in 2021, but will fall to around 4.5 per cent by 2024."

The report projected a continuation of falling investment rate, as highly leveraged balance sheets not only impinge on the sectors' appetite for fresh investments, but also make banks increasingly reluctant to extend credit to them. The share of total investment in India's GDP has trended lower since 2012, led by a deceleration in private investment growth, and a "broad-based fall in future investment rates"

In last 10 years, we have seen Kingfisher (in 2012) and Jet Airways (in 2019) shutting down the operations, which had a big impact on the traffic, business operations and finances of the airport. This economic downturn had impacted the airlines substantially, and hence there is an additional risk which airports may face, i.e., downturn of any of the airlines will have a direct impact on the receivables and cashflows for airport operators.

While submitting MYTP for TCP, projected revenue and capex were considered in normal circumstances. However, due to impact of pandemic on passenger traffic, cargo, and non-aeronautical revenues, there will be far-reaching long-term impact on various building blocks. Revised traffic, cargo and non-aero revenue projections are as below:

Table 1: MIAL revised Projection Traffic vis-à-vis Consultation Paper

		FY20	FY21		FY22		FY23		FY24	
		Actual	MIAL	AERA	MIAL	AERA	MIAL	AERA	MIAL	AERA
ATM	Intl	76	22	38	60	57	74	76	82	84
	Dom	229	87	114	171	172	227	229	229	247
	Total	**305**	**108**	**152**	**231**	**229**	**301**	**305**	**311**	**330**
Passengers (Mn)	Intl	12.3	1.2	6.1	9.1	9.3	11.6	12.4	13.2	13.6
	Dom	33.6	9.3	16.8	23.6	25.1	32.3	33.5	33.7	36.3
	Total	**45.9**	**10.5**	**22.9**	**32.7**	**34.4**	**43.9**	**45.9**	**46.9**	**50.0**

Table 2: Revised Cargo Tonnage vis-à-vis Consultation Paper

Tonnage	FY20		FY21		FY22		FY23		FY24	
('000 MT)	MIAL	AERA	MIAL	AERA	MIAL	AERA	MIAL	AERA	MIAL	AERA
Int'l	396.15	499.33	328.79	265.17	348.08	382.25	390.62	499.33	416.73	546.84
Perishable	76.98	70.50	67.09	37.43	74.59	53.97	87.88	70.50	98.46	77.21
Domestic-ConcorAir	137.84	152.32	52.98	76.16	103.15	114.24	137.12	152.32	138.34	164.35
Courier-Express Cargo	27.96	35.41	23.20	18.81	24.57	27.11	27.57	35.41	29.41	38.78
Total	**638.95**	**757.56**	**472.06**	**397.57**	**550.39**	**577.57**	**643.19**	**757.56**	**682.94**	**827.18**

Though the Authority, has also shown a downward trend in projections for passenger traffic and cargo tonnage, our estimates are based on long term impact of not only the COVID-19 pandemic but its aftermath viz., severe and long-term economic downturn.

Therefore, we request the Authority to consider passenger traffic and cargo tonnage as estimated by MIAL for TCP as per details given in Table 1 and Table 2 above.

1.2 Non-Aeronautical Revenue (NAR):

Impact on NAR:

Various non-aeronautical revenue streams are linked not only to ATMs, and passenger numbers but also to profile of passengers. As per CAPA, discretionary domestic travel segments –viz. business, institutional, MICE, leisure and foreigners travelling on the domestic network – accounted for an estimated 55% of the market pre COVID. Most of these segments have evaporated and are unlikely to return until the pandemic is under greater control or deployment of a vaccine is widespread. All these discretionary travel segments face a twin impact from COVID on the one hand and economic conditions on the other. The full impact of the latter is perhaps yet to come. Most major corporations have largely deferred business travel for the remainder of the current financial year, and uncertainty remains for FY 22. The same is true for MICE and institutional travel.

In the absence of the discretionary travel segments, the industry is instead largely reliant on Visiting Friends and Relatives (VFR) and emergency traffic. VFR traffic accounted for around 45% of pre COVID traffic, but not all this segment will be realized as non-essential travel is likely to be deferred.

There are multiple segments of inbound traffic. Recently, foreign business travelers and Overseas Citizen of India (OCI) holders are once again permitted to enter the country, but the country remains closed to leisure visitors, VFR travelers (unless they are NRIs or hold OCI) and medical tourists.

Similarly, in the case of overseas travel, discretionary business and leisure travel accounts for an estimated 56% of total departures, and these segments are likely to see limited activity. VFR, employment and education accounts for around 44% of traffic and may be slightly less impacted. But in these cases, too, CAPA India estimates that demand may be down by up to 70%.

International transit traffic was already insignificant in India and will remain close to zero for the remainder of the FY21.

As stated earlier, NAR is linked to passenger traffic and profile of passengers; and cargo tonnage to some extent is linked to ATMs, as majority of cargo is belly cargo. Ground Handling and Bridge Mounted Equipment (BME) revenues are linked to ATMs.

Considering the above, estimation for revenue from RSA for TCP will undergo major change as compared to submissions in MYTP. Various concessionaire had approached the company for resetting of terms of contract due to severe adverse impact on passenger traffic and cargo tonnage due to COVID 19. Out of 401 concessionaires 54 have already terminated contracts due to prevailing Force Majeure. In case of Retail and Duty Free, out of 187 concessionaires 35 have terminated the contracts representing 75% of the revenue earned by MIAL from these concessions.

MIAL has extended relief to the concessionaires for FY 21 and revenues for FY 21 have been considered based on such reliefs. However, since impact of Covid-19 may be for a long term, it is expected that further demand from concessionaires for reliefs will be forthcoming.

Effect of Covid-19 and its aftermath has been estimated in the assumptions detailed below. It may be observed that negative impact on revenues is deep and long lasting.

Revenue from RSA for the FY 20 and FY 21 (till October 20) has been considered based on the actual and for balance FY 21, and for FY 22 to FY 24 revenue has been estimated based on below mentioned rationale:

1. Duty Free, Food & Beverage (F&B), Retail, Advertisement, Passenger Services and Flight Kitchen:

There is substantial reduction in number of passengers in both domestic and international segments much more severe in case of international passengers, but there is also change in profile of passengers. Business and Leisure travel is negligible which also affects Sales Per Passenger (SPP). Structure of most of the concessions is Minimum Annual Guarantee (MAG) or Revenue Share (RS) whichever is higher.

However, due to unprecedented reduction in number of passengers and due to complete lock down up to 24th May 2020, concessionaires had expressed their inability to adhere to existing contracts. Accordingly, relief has been provided to all the concessionaires. In all probability, demand for such relief shall be forthcoming in future also. Concessionaire may not be able to pay MAG in rest of the control period.

NAR for TCP has been recalculated as follows:

Actual revenue for FY 20 and up to October 20 (as per the relief given) has been considered unless otherwise specified, [redacted]

Duty Free, F&B, Retail, Flight Kitchen, Advertisement - 20% reduction in SPP (on total embarking passengers for F&B, retail and flight kitchen, total international passengers for duty free and total passengers for advertising) for the balance FY 21

2. **Terminal Hotel:**
Actual revenue till October 20 (as per relief given) and for balance period of FY 21 contractual MAG adjusted in ratio of actual revenue vis-à-vis average revenue of FY 20. Thereafter, MAG as per contract.

3. **Meet & Assist Services**
Revenue per passenger, based on total passengers, of FY 20 increased by inflation.

4. **Car Park, Car Rental and Forex:**

There is fixed monthly rental charges for these concessions. Passengers of FY20 have been considered. MMG per passenger on total passengers for Car Park, total disembarking passengers for Car Rental, and total international passengers for Forex, Passengers of FY 20 are considered for the purpose of calculating revenue for FY 21

5. **Canteen Concession:**
MAG and fixed charge reduced by 50%. Revenue share is suspended from FY 21 till end of respective concessions.

6. **ATM -** ATM concessions are on monthly rental basis. Monthly rental to be reduced by 50% in FY 21

7. **Lounges:** Fixed charges and MAG have been merged to arrive at revenue per embarking domestic / international passenger, as applicable, and based on projected passenger numbers, revenue is calculated for FY 21

8. **Contracts on revenue share (BME, Ground handling** - **Air India Subsidiary, Line maintenance services, Aircraft Security services)**: Revenue per ATM for FY 20 is considered as base for entire TCP, calculating revenue share on projected ATMs,

9. **Contracts on revenue share (Day Hotel)**: Actual revenue till October' 20 has been considered and SPP of FY20 on total international disembarking passengers for period November'20 to March'21 to calculate revenue for FY21.

10. **Ground Handling, other than Air India Subsidiary**: MMG, Revenue Share per departing aircraft in FY20, whichever is higher to be considered for FY 21

11. **Terminal Building Rent/Hangar Rent/Cargo Rent/Other Building Rent/Land Rent:** Actuals and as per assumptions by the Authority for balance TCP.

12. **SEIS Income:** SEIS is not applicable for airport services anymore.

Cargo Revenue:

13. **Domestic Cargo**: 0.60 MT per domestic ATM of FY 20 is applied on projected ATMs of FY21 and subsequent year of the TCP and yield is based on present rates.

14. **Perishable Cargo**: 1.01 MT per international ATM for FY 20 tonnage

15. **Courier:**

- **Domestic**: As per Concession Agreement.
- **International**: Upto October, 20 actual tonnage and revenue. 0.37 MT per ATM of FY20 on balance period of FY 21 and subsequent years of the TCP has been considered.

16. **International Cargo:** 5.21 MT per international ATM of FY20 has been applied on balance period of FY 21 and subsequent years of the TCP and yield is based on present rates.

Table 3: Revised Projected Revenue for TCP **Rs. in cr.**

Category	FY20	FY21	FY22	FY23	FY24	Total
F&B	138.5	17.8	61.0	78.8	83.5	379.6
Flight kitchen	25.6	3.4	14.5	19.5	20.9	83.9
Retail concession	152.1	12.3	42.7	55.6	59.0	321.6
Foreign Exchange, & Bank/ATM	61.2	3.1	13.7	16.9	19.1	114.0
IT & Communication	53.3	-	-	-	65.3	118.6
Car Rentals & Taxi Service	24.6	5.9	18.1	24.5	26.4	99.6
Duty Free Shops	351.7	30.5	123.7	156.2	174.6	836.8
Advertising Income	155.0	31.1	88.5	118.9	127.1	520.6
Car Parking	33.4	7.7	23.8	32.0	34.1	131.1
Ground Handling	107.9	34.4	72.4	93.7	101.8	410.2
Others	45.6	16.0	35.1	46.8	51.5	194.9
Total (A)	**1,148.8**	**162.3**	**493.5**	**642.9**	**763.4**	**3,210.9**

Rent & Services	FY20	FY21	FY22	FY23	FY24	Total
Land Rent and Lease	96.2	40.2	73.4	109.5	114.3	433.6
Hangar Rent	18.0	9.7	21.8	33.5	36.0	118.9
Terminal Building Rent	63.4	23.6	45.1	68.2	71.2	271.5
Cute counter charges	12.9	3.5	9.9	12.8	13.7	52.8
Lounges	73.7	19.6	56.7	77.0	89.1	316.0
Cargo Building and Other Bldg Rent	28.3	12.2	22.9	35.1	37.7	136.1
Total (B)	**292.4**	**108.7**	**229.8**	**336.0**	**362.0**	**1,328.9**

Cargo Revenue	FY20	FY21	FY22	FY23	FY24	Total
Domestic Cargo	21.0	11.3	16.1	21.3	21.5	91.3
Cargo Handling Revenue	25.0	15.3	21.7	24.3	26.0	112.3
Perishable Cargo	22.0	22.0	21.6	25.0	27.8	118.5
Courier Revenue	32.0	23.8	24.3	26.7	28.6	135.3
International Cargo Revenue	201.0	190.3	201.6	220.4	236.0	1,049.3
Total (C)	**301.0**	**262.7**	**285.2**	**317.8**	**339.9**	**1,506.7**
Grand Total (A+B+C)	**1,742.3**	**533.7**	**1,008.5**	**1,296.7**	**1,465.3**	**6,046.5**

We request the Authority to consider revised NAR as per details mentioned in Table 3. However, for the purpose of calculation of 'S' factor for cross subsidization, MIAL contends that for this purpose, 30% of gross revenue from Revenue Share Assets (RSA) should only be considered after reducing corresponding Annual Fee.

Further, we would also like appraise the Authority that MIAL has appointed, CAPA to carry out an Independent study on Traffic and Revenue viz. ATM, Passenger traffic, Cargo and Non-Aeronautical revenues. The report is expected to be received by end of December 2020 which shall be submitted to the Authority for its review.

1.3 Capital Expenditure:

1.3.1 Capex deferred:

As elaborated above in Traffic section there is reduction in expected passenger traffic in TCP due to COVID 19 impact, which have been a trigger point for capex will also shift. Capex proposal submitted to the Authority has been critically reviewed and capex of Rs. 2,933 cr. are deferred to ensure economic efficiency and to conserve resources. Such deferred capital projects will be undertaken as and when considered essential in future, and the same would be submitted again for the Authority's consideration.

1.3.2 Additional Capex which were not included in MYTP:

While MIAL has critically analyzed each capex proposal, there are some of the essential capex have been identified for TCP which would ensure safety, security and compliance with the Government directives. These capex were not part of MYTP submission. Detailed break-up of the same would be provided at a later stage. Details of such works proposed are as below:

i) Engineered Material Arresting System (EMAS) for Runway End Safety Area (RESA) of RYW 14

The landing distance available on Runway 14 is just 2471 mtrs, it has only 90 mtrs Runway End Safety Area (RESA) and it is not possible to extend the same, because of Mithi River. In the last two years there have been two instances of Runway excursion on Runway 14. On 2nd July 2019, SJ-6248, B737 from Coimbatore to Mumbai and on 3rd June 2020 FX -5033, MD-11 from Bengaluru to Mumbai after landing on Runway 14 had runway excursion. On both instances, aircraft managed to stop within 15 mtrs

from the end of the runway. Had the aircraft not managed to stop, it could have led to a very serious situation since Mithi River is just after another 120 mtrs away.

14, at times, face tail wind which may lead to runway excursion and make the aircraft stray into the Mithi River.

It is therefore proposed to install EMAS as recommended in ICAO DOC 9157 **(Design Manual Part I)** para 5.4.16. This proposed capex is essential for safe operations on runway 14. This project shall be completed in FY 22 and shall cost Rs.35 cr. (excl. inflation).

ii) **DigiYatra** (IT Expenditure):

Under DigiYatra scheme, Ministry of Civil Aviation is proposing to implement digital processing of passengers at the airports. Passengers will be automatically processed based on facial recognition system at check points like; Entry point, Entry into Security, Aircraft Boarding. Additionally, this will also facilitate self-Bag Drop and Self Check-in, using facial recognition to identify passengers and data recall. Taking a learning from the ongoing pandemic, this proposal is very important for the health and safety of passengers as well as airport personnel. This would be one of the steps taken by Airport operator in minimizing human interaction and maintaining social distancing. Estimated cost of this project is Rs. 51.6 cr. (excl. inflation).

iii) **New fire station**:

As part of Aerodrome Rescue and Fire Fighting (ARFF), CSMI Airport has two fire stations at the airside. The main fire station (ARFF building) is very old and its life along with a sub-fire station has almost come to an end. Further Apron Control facility in front of Terminal 1 is also very old and needs to be reconstructed. To address this requirement, it is planned to construct new ARFF building at identified location where Apron Control of (T1) is there and to integrate both fire stations and Apron Control facilities.

The new ARFF building will meet CAT-10 Aerodrome Rescue Fire Fighting category requirements of DGCA Civil Aviation Requirements (CAR). The project will commence in FY 22.

Estimated cost of the facility: Rs.42 cr. (excl. inflation).

iv) Counter Drone Solution:

As per AVSEC Circular No. 02/2020 dated 12th February 2020[4] the hypersensitive airports were required to implement Counter Drone Technology / solutions for surveillance, detection and neutralization of drones within 6 months from the date of the circular. CSMIA is a hypersensitive airport. Counter Drone solution is planned to be implemented in FY 22.

Estimated cost for a robust, smart, highly modular and comprehensive counter drone solution is Rs.121.7 cr. (excl. inflation).

The Authority is requested to allow capex under (i) to (iv) of Rs.250.30 cr. in TCP.

[4] File name: AVSEC Circular 02.pdf

1.3.3 1% penalty on project cost in case of non-completion of projects as per timelines:

Proposed in CP:

Para 4.7.5: To deduct 1% penalty of the project cost along with applicable carrying cost from the ARR at the time of determination of tariff for the fourth control period in case of non-completion of the project as per proposed timelines.

MIAL Response:

The Authority has proposed imposition of 1% penalty of the project cost along with applicable carrying cost in case of delay in implementation of the project. First of all such proposal puts MIAL in double jeopardy because any delay in completion of project implies denial of return on such asset and depreciation. Imposition of 1% penalty along with carrying cost is too harsh a step proposed by the Authority, which is in addition to loss of return and depreciation as mentioned above. It is abundantly clear that it is in the interest of MIAL to complete the project as per schedule, however there could be delays due to various un-certainties, especially in present situation due to covid-19 pandemic. There may be shortage of manpower, funds and internal accruals. Also there could be situation, say, due to sudden drop in traffic, where postponing project is fully justified, instead of incurring cost and burdening passengers with higher tariff. There is no mention of imposition of such penalty in the AERA Act, hence the proposal by the Authority is ultra vires the Act and also not in compliance with principles of tariff fixation as per Schedule 1 of SSA. In fact one of the principles for tariff fixation stipulates, incentive for undertaking investment in timely manner. Instead of providing incentive for timely completion of project the Authority is proposing unilateral imposition of penalty on delay while airport already gets penalized, as stated above, for such delay.

In case major work has been completed say 99% and asset is yet to be capitalized, even in such case imposing 1% penalty with carrying cost is quite harsh and unjustified.

We request the Authority to withdraw this proposal.

2. True up for the First Control Period

2.1 HRAB:

Hypothetical Regulatory Asset Base (HRAB) was computed by the Authority using Dual Till approach, whereas aeronautical charges prevailing in FY09 were based on Single Till.

The Authority is continuing to consider HRAB value as on 1st April 2009 at Rs. 966.03 cr., while the same should have been Rs.4358.96 cr,.basis this the entire revenue should have been considered for the purpose of HRAB calculation. In view of the fact that entire non-aero revenue was utilized to subsidize aeronautical tariff. Hence, Aeronautical revenue alone could not be the basis for derivation of aeronautical assets as HRAB. If this distortion is not corrected, it will defeat the basic principle that return at the rate of WACC is to be provided on aeronautical assets along with reimbursement of O&M expenses and corporate tax. Authority has not considered this issue in spite of the fact that during hearing before Hon'ble TDSAT, counsel of the Authority had requested to remand the case for reconsideration of the Authority in view of the new fact that AAI had confirmed aeronautical tariff in FY09 to be on the basis of Single Till. We are certain that in view of confirmation from Airport Authority of India, that then prevailing tariff was on single till basis, as per AAI letter no. AAI/CHQ/Tariff/Misc/2017/343 dated 18th June, 2018, the Authority is empowered to reconsider this issue because new facts have been submitted to it.

To elaborate on the issue of HRAB reference to Schedule 1 of State Support Agreement (SSA) is essential. Schedule 1 contains Principles of Tariff Fixation. Relevant clause of Schedule 1 specifically provides for computation of HRAB. For the convenience this clause is being reproduced hereunder:

1. *"**SCHEDULE 1***

…….

The revenue target is defined as follows:

TRi = RBi x WACCi + OMi + Di + Ti – Si

Where,

TR = target revenue

RB = regulatory base pertaining to Aeronautical Assets and any investments made for the performance of Reserved Activities etc. which are owned by the JVC, after incorporating efficient capital expenditure but does not include capital work in progress to the extent not capitalised in fixed assets. It is further clarified that working capital shall not be included as part of regulatory base. It is further clarified that penalties and Liquidated Damages, if any, levied as per the provisions of the OMDA would not be allowed for capitalisation in the regulatory base. It is further clarified that the Upfront Fee and any pre-operative expenses incurred by the Successful Bidder towards bid preparation will not be allowed to be capitalised in the regulatory base.

WACC = nominal post-tax weighted average cost of capital, calculated using the marginal rate of corporate tax

OM = efficient operation and maintenance cost pertaining to Aeronautical Services. It is clarified that penalties and Liquidated Damages, if any, levied as per the provisions of the OMDA would not be allowed as part of operation and maintenance cost.

D = depreciation calculated in the manner as prescribed in Schedule XIV of the Indian Companies Act, 1956. In the event, the depreciation rates for certain assets are not available in the aforesaid Act, then the depreciation rates as provided in the Income Tax Act for such asset as converted to straight line method from the written down value method will be considered. In the event, such rates are not available in either of the Acts then depreciation rates as per generally accepted Indian accounting standards may be considered.

T = corporate taxes on earnings pertaining to Aeronautical Services

S = 30% of the gross revenue generated by the JVC from the Revenue Share Assets. The costs in relation to such revenue shall not be included while calculating Aeronautical Charges.

***"Revenue Share Assets"** shall mean (a) Non-Aeronautical Assets; and (b) assets required for provision of aeronautical related services arising at the Airport and not considered in revenues from Non-Aeronautical Assets (e.g. Public admission fee etc.)*

i = time period (year) i

RBi = RBi-1 – Di + Ii

Where:

RB0 for the first regulatory period would be the sum total of:

(i) the Book Value of the Aeronautical Assets in the books of the JVC and

(ii) the hypothetical regulatory base computed using the then prevailing tariff and the revenues, operation and maintenance cost, corporate tax pertaining to Aeronautical Services at the Airport, during the financial year preceding the date of such computation.

I = investment undertaken in the period…"

a. The self-evident reason as to why the SSA contains this clause is because the first year of the first control period does not have any base to start with. Unless the base taken is actual or hypothetical, as the case may be, there would be no asset base to commence calculation of RAB for year one of the FCP, which is precisely HRAB is required to meet in FCP.

b. It is common ground that in the real world, Airports, Aeronautical Revenue, Non -Aeronautical Revenue and ground level operations, started well before the establishment of the AERA on 12.05.2009.

c. Equally, the Act which provides guidance and criteria for evaluation of regulatory basis and tariff, namely, AERA Act, 2008 came into operation w.e.f. 01.01.2009.

d. It was to take into account the operational realities and the historical figures existing as on 01.01.2009, that, inter-alia, tariff determination mandatorily required under the AERA Act, 2008, the need to take "into consideration" …. *(vi) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise*;"

e. Even, Section 13(1)(a)(vii) of the Act is not irrelevant for the present purposes. It reads as under "… (*vii) any other factor which may be relevant for the purposes of this Act*".

f. It is, thus, a statutory mandate for the regulatory authority not to ignore relevant factors and a pre-existing operative contract inter-parties, can hardly be considered an irrelevant factor.

g. As such, this issue of HRAB is pending for consideration before the Hon'ble Supreme Court of India and our submissions in this response are made without prejudice to the same.

2. **Historical phases relevant for HRAB:**

a. Prior to 2006, the tariff was fixed by the Ministry of Civil Aviation (MoCA), broadly by trying to cover the costs and provide some reasonable rate of return, after inviting inputs from the relevant stakeholders. There was neither a statutory authority nor any regulator in existence. Equally, there was no contractual guidance in existence.

b. The SSA, qua MIAL came into effect on 26.04.2006 and the Operation Maintenance Development Agreement (OMDA) on 04.04.2006. Apart from Schedule 1 quoted in para 1 above, clauses 3.1.1, 3.1.2 and 3.1.3 of SSA are equally relevant and quoted here under for the ease of reference;

"Clause 3.1.1. GOI's intention is to establish an independent airport economic regulatory authority (the "Economic Regulatory Authority"), which will be responsible for certain aspects of regulation (including regulation of Aeronautical Charges) of certain airports in India. GOI agrees to use reasonable efforts to have the Economic Regulatory Authority established and operating within two (2) years from the Effective Date. GOI further confirms that, subject to Applicable Law, it shall make reasonable endeavours to procure that the Economic Regulatory Authority shall regulate and set/ re-set Aeronautical Charges, in accordance with the broad principles set out in Schedule 1 appended hereto. Provided however, the Upfront Fee and the Annual Fee paid / payable by the JVC to AAI under the OMDA shall not be included as part of costs for provision of Aeronautical Services and no pass-through would be available in relation to the same.

Clause 3.1.2: The Aeronautical Charges for any year during the Term shall be calculated in accordance with Schedule 6 appended hereto. For abundant caution, it is expressly clarified that the

Aeronautical Charges as set forth in Schedule 6 will not be negotiated post bid after the selection of the Successful Bidder and will not be altered by the JVC under any circumstances.

3.1.3 GOI confirms that till such time as the Economic Regulatory Authority commences regulating Aeronautical Charges, the same shall be approved by GOI in accordance with the broad principles set out in Schedule 1 appended hereto."

c. The aforesaid quotations unambiguously demonstrate that the tariff fixation was to be done specifically with regard to the contractual provisions mentioned in the clauses quoted above.

d. It was open to the legislature to dilute, derogate or modify this contractual mandate, both when the legislation came into effect in 2009 and when the regulatory authorities were established in 2009, on the contrary, the legislature chose to do the exact opposite. Far from diluting or derogating from the SSA, they chose to explicitly re-affirm it. Refer clauses of Section 13(1)(a)(vi) and (vii) of the Act.

e. Consequently, it is submitted that relevant clauses of the SSA were, mutatis mutandis, incorporated by reference into the statutory regime, save and except, to the extent, they would be fundamentally inconsistent from the statutory mandate.

f. It may, however, be pointed out that the MoCA practice of fixing tariff continued right uptil 2009, despite the coming into play of the contractual provisions under the SSA. As quoted in Clause 3.1.1 above, the SSA itself contemplated that a regulatory authority would be set up and that the principles as enumerated in the SSA Schedule 1, would be applied by that regulatory authority for determination of tariff.

g. As far as HRAB is concerned, far from being inconsistent with the SSA, the only methodology of calculating HRAB, which may be treated for the first-year of inception period post operation of the Act and the Regulatory Authority, is to adopt the reality, operating prior to the coming into force of the Act and the Regulatory Authority. The only way in which both the contractual mandate of the SSA (Clauses 3.1.1, 3.1.2, 3.1.3 and Schedule 1- Principles of tariff fixation) as also statutory mandate of Section 13 (1)(a)(vi) and (vii) of the Act, could be fulfilled and implemented, <u>if it would take into account the entire revenues from the immediately preceding year</u>, being the year minus one for computation of HRAB, i.e. FY 2008-09. Indeed, even practically speaking, neither AERA nor the statute could have been conceived of as operating on a *tabula rasa*, in view of facts and figure of revenue available for immediately preceding year prior to HRAB. Ignoring these figures, would involve an unreal and academic approach, unconnected to and remote from operational realities.

3. There is another vital legal reason why this rectification must be made. This reason is broken up to simplify it, as follows:

a. As demonstrated above, the agreement/SSA categorically contemplated considering aggregate revenue immediately on creation of act/regulatory authority.

b. Section 13 of the Act contemplated exactly the same.

c. As demonstrated above, the operational reality of FY 2001-06 and 2006-08 coalesced into the revenue figures of FY 2008-09 ending on March 31, 2009.

d. It is common ground that till commencement of the Act, regulatory tariff fixing for prior years including from conception of MoCA and up to the year 2009 were based on Single Till methodology. All that this jargon means is that all revenues were co-mingled, prior to 31.03.2009, into a single basket ("Single Till") without bifurcation/demarcation and division into Aeronautical Revenue and Non- Aeronautical Revenue.

e. Prior to fixing of the tariff by AERA, Single Till methodology was applicable and revenue from all the sources i.e. aeronautical and non-aeronautical, were utilized towards covering the operating expenses, depreciation and reasonable return on aeronautical assets. Therefore, from FY 2009-10 entire revenue of the previous year (i.e. FY 2008-09) needs to be considered.

f. By not considering the non-aeronautical revenue into account, which was gone into reducing aeronautical charges, AERA has failed to appreciate that the expenses on aeronautical activities, which amount to almost around 90% were being taken care of by such non-aeronautical revenue as well, since the expense on non-aeronautical activities were practically negligible. Thus, such non-consideration of non-aeronautical revenue for the computation of HRAB, does not cover the legitimate expenses on aeronautical activities and to that extent the HRAB considered by AERA is inadequate.

g. This demarcation between aeronautical revenue and non-aeronautical revenue arose only from the SSA, which was admittedly to be applied with effect from 01.04.2009.

h. Conclusion, if the mandate of both SSA and Section 13 of the AERA Act is to apply the last year's revenue prior to coming into force of the Act and that relevant year does not make a demarcation between Single Till and Shared Till, it is impossible to calculate the revenue for the year minus one, only on the basis of Aeronautical Revenue, and altogether ignoring the Non-Aeronautical Revenue.

Lastly, this fundamental error would make a minimum difference of Rs.3393 cr. This difference of Rs. 3393 cr. would cause humongous prejudice to MIAL and would have a cascading downward effect in perpetuity for each year within the first control period and thus for subsequent control periods also.

Hence, this would seriously impair the viability of MIAL operations and its quality and efficiency.

2.2 Weighted Average Cost of Capital ("WACC"):

2.2.1 Cost of Equity – Grossing Up:

Schedule 1 of SSA provides Principles of Tariff Fixation. Revenue Target is defined as:

$TR_i = RB_i x WACC_i + OM_i + D_i + T_i - S_i$

Where WACC is nominal post-tax weighted average cost of capital, calculated using the marginal rate of corporate tax.

As a result of this CoE has to be grossed up using the marginal rate of corporate tax to ensure the same return post tax and accordingly such grossed up rate of return on equity has to be applied for calculation of WACC. For example if CoE as per CAPM is 16% the same has to be grossed up. If marginal rate of corporate tax is 30%, grossed up CoE shall be 16% / (1-30%) = 22.86%.

The Authority is requested that WACC should be calculated by grossing up CoE arrived at as per CAPM.

2.2.2 Cost of Equity – Before the Hon'ble Supreme Court of India

Cost of equity allowed by the Authority is also under appeal pending before the Hon'ble Supreme Court of India. Any positive outcome of the appeal shall have bearing on FCP true up.

2.2.3 Share Application money not considered as Opening Equity of FY13:

Proposed in CP:

Authority has not considered Share Application Money of Rs.200 cr. as part of opening equity for FY 2012-13:

MIAL Response:

The Authority in Order no.13 / 2016-17 while truing up for FCP had decided to consider Rs.200 cr. Share Application Money in the opening equity Share Capital of MIAL for FY13. Para no.3.36 based on which in Decision no.2.b, WACC of 12.06% has been decided is reproduced below:

"3.36. The Authority has carefully examined the submissions made by various stakeholders with respect to Authority's proposed treatment regarding:
(1) ………………………………………… and
(2) Not considering Rs. 200 crores of Share Application Money pending allotment as on 31.03.2012 for the purpose of calculating Share Capital for WACC calculation for the FY 2011-12 and FY 2012-13. Based on its examination of various submissions, the Authority has presented its decision in para 4.118. The Authority has decided to not change its proposal with respect to …………… and has decided to consider Rs. 200 crores Share Application Money in the opening equity Share Capital of MIAL for FY 2012-13."

However, in Table 7 of CP, the revised FRoR has been computed omitting Rs.200 cr. share application money from opening of FY13 and considered only in the closing equity, leading to lower equity and thereby lower WACC and hence return on RAB.

This seems to be an inadvertent error by the Authority which needs to be corrected.

2.2.4 Lower Upfront Fee:

Proposed in CP:

The Authority has proposed to consider Upfront Fee of Rs.150 cr. instead of Rs.153.85 cr. as part of equity capital while computing FRoR.

MIAL Response:

In accordance with TDSAT Order dated 15th November, 2018 the Authority has proposed to consider the Upfront fee as part of equity. However, instead of including entire upfront fee of Rs.153.85 cr., referred to Table no.49 of Order no.32 of 2012-13, the Authority has considered upfront fee of Rs.150 cr. only (Table no. 7 of CP35). In para no 14.5 of Order No 32 of 2012-13, had not included Rs 153.85 cr. in equity towards upfront fees for computation of WACC.

We request the Authority to consider Rs. 153.85 cr. as part of equity instead of Rs. 150 cr.

2.2.5 Reserves:

Proposed in CP:

The Authority has considered opening reserves lower by Rs.0.62 cr. for FY 10:

MIAL Response:

The Authority while computing cost of equity considered reserves for FY 10 at Rs 285.6 cr. instead of Rs. 286.22 cr. equity reserve is Rs 286.22 cr. The Authority is requested to consider the opening reserve for FY 10 at carried amount of Rs.286.22 cr.

2.3 Excess Depreciation on DF Funded Assets:

MIAL in its MYTP has erroneously provided, an average rate of depreciation of 2.46% for DF funded assets while 2.46% is for all the assets. Average rate of depreciation for DF funded assets is 1.29% (39.3/3048 X 100) as a result because of excess depreciation considered for DF funded assets deprecation on other assets has got reduced by 1.17% (2.46%- 1.29%), which is Rs. 35.56 cr. (3038 x 1.17%).

We request the Authority to rectify this error in the depreciation.

The Authority capitalized DF funded assets by entire Rs. 3400 cr. including CWIP of Rs.362 cr. against Rs.3038 cr. considered by MIAL as at 31st March, 2014. The matter is sub-judice before the Hon'ble TDSAT.

2.4 Annual Fee treated as an allowable expense for computation of 'T':

Annual Fees has been treated as cost for computation of 'T' (Corporate Tax) a building block of Target Revenue, contravening the provisions of Article 3.1.1 of SSA.This has been discussed in detail in the MYT Proposal still MIAL reiterates as follows:

Clause 3.1.1 of SSA states as follows ......

Provided however the Upfront Fee and the Annual Fee paid/payable by the JVC to AAI under the OMDA shall not be included as part of costs for provision of Aeronautical Services and no pass-through would be available in relation to the same.

Going back to the terms of OMDA which may be read with the SSA, MIAL is required to pay Annual Fee at 38.7 % of pre-tax gross revenue to AAI. Schedule 1 of the SSA which pertains to the principles of Tariff Fixation clearly lays down that for working out the Target Revenue of the CSMIA, Mumbai the Corporate tax on earning pertaining to Aeronautical services has to be taken into consideration as a factor of cost. Interestingly, the SSA provides for an illustrative numeric example which is to be used to calculate the Aeronautical charges. A careful glance at the illustrative example would show that it allows calculation of aeronautical charges by applying the methodology according to factors laid down in the SSA. The principles of SSA that need to be implemented clearly state that while setting the price cap, it has to be kept in mind that the JVC should be in a position to generate sufficient revenue to cover efficient operating cost and also obtain a reasonable rate of return on investment commensurate with the risk involved. Furthermore, the SSA also reveals that the JVC is to be provided with appropriate incentives so as to operate in an efficient manner and optimise operating cost and maximise revenue. Thus, if the corporate tax is not worked as mentioned in SSA the same would negate the true purpose of the principles of tariff fixation that have been appended as Schedule I to the SSA. Pertinently, one of the fundamental principles as has been elucidated is the commercial principle, which categorically posits that AERA, while ascertaining the price cap, will have to accord due regard to the need for the JVC to generate sufficient revenue to not only cover its operating costs, but also obtain and achieve a reasonable return on the investment as well as recuperate its capital. It is opined that this principle unmistakably postulates that while determining the price cap, the methodology which is to be adopted by AERA will have to duly consider the commercial and monetary sense and thereby Corporate tax will have to be worked out as specifically mentioned in SSA, i.e. Annual Fee cannot be considered as cost for this purpose.

The general principle governing interpretation of contracts is that consistent interpretation must be followed which goes on to make a contract workable and can be read as a whole.

The placement of the illustrative example is the closest mechanism available to arrive at a practical solution of the problems at hand and more so since there is no other mechanism provided for either in the SSA or the OMDA. Furthermore, it is a well settled position of interpretation that all the tools available and provided by the legislators or drafters have to be taken into account while correctly interpreting a provision. Title, preamble, illustrations/examples, marginal notes, etc. are all tools of internal aid that assist in a comprehensive interpretation of a provision as they reflect the true purpose and intent with which the provision was enacted and thought to be implemented. The illustration is an indicative internal aid that has be to read in consonance with the principles guiding the formula as well as the definition so as to have a holistic and correct interpretation of the provision. It is needless to state that the clause 3.1.1 of SSA even when read as it is, convinces that there is specific exclusion of Annual Fee being included as part of cost since if Annual Fee is considered as cost for calculating taxation then it would get directly allowed as cost for calculating target revenue which was not the intent of the SSA since the same would be contrary to the provisions of SSA. It is true that the formula prescribed in

Schedule – I of the SSA for the purpose of determination of Tariff will have to be done wholly and not in a piecemeal manner.

We request the Authority to exclude Annual Fee as allowable expense for the purpose of calculating Corporate Tax.

As such, this issue of Corporate Tax is pending for consideration before the Hon'ble Supreme Court of India and our submissions in this response are made without prejudice to the same.

2.5 FTC treated as aeronautical revenue instead of non-aeronautical revenue:

Fuel Throughput Charges treated as aeronautical revenue instead of non-aeronautical revenue:

In this connection, we wish to submit that income from Fuel Concession is towards permission granted to suppliers of Aviation Turbine Fuel (ATF) to conduct business at the airport. In no way, MIAL is involved in supplying or trading of ATF to the aircraft at CSMIA. The Authority and the Appellate Tribunal have rejected the above claim without assigning any valid reasons. While passing order for the FCP, one of the arguments given by the Authority was that under Schedule 5 of OMDA vide serial no 17 – "Common hydrant infrastructure for aircraft fueling services by authorized providers" is included as aeronautical services, hence FTC is aeronautical in nature. Argument of the Authority is not correct. Entry No. 17 mentions hydrant infrastructure for aircraft fueling services by authorized providers [*emphasis supplied*], MIAL in no way is an authorized provider as it is not providing any fueling services.

Fuel hydrant system belongs to fuel farm and cost of the same is being included in RAB of the fuel farm for the purpose of tariff determination by AERA.

We request the Authority to reconsider this issue and treat FTC as non-aero revenue.

As such, this issue of FTC is pending for consideration before the Hon'ble Supreme Court of India and our submissions in this response are made without prejudice to the same.

2.6 Issues related to interpretation of SSA / OMDA and AERA Act

MIAL initiated an elaborate exercise to ensure full compliance with provisions of OMDA / SSA and AERA Act, and to ensure that there is no loss of revenue to MIAL due to wrong interpretation of the aforesaid documents. During this exercise it came to notice that inadvertently MIAL had not correctly interpreted provisions regarding:

1. Cost of Equity: Already discussed in para 2.2.1;
2. Cross subsidization of aeronautical charges- interpretation of revenue from RSA; and
3. Calculation of "S" factor for cross subsidization by excluding revenue from Existing Assets.

2.6.1 Computation of 'S' factor in terms of Schedule 1 of SSA

Schedule 1 of SSA prescribes Principles of Tariff fixation.

Aero charges are based on shared till. 30% of gross revenue (S) of MIAL from RSA is used for cross subsidisation. *S is defined as follows S = 30% of the gross revenue generated by the JVC from the Revenue Share Assets. The costs in relation to such revenue shall not be included while calculating Aeronautical Charges.*

Clause 3.1.1 of the SSA provides that '*the Upfront Fee and the Annual Fee paid/ payable by the JVC to AAI under the OMDA shall not be included as a part of costs for provision of Aeronautical Services and no pass through would be available in relation to the same'*.

Annual fees is paid to AAI @38.7%. This part of Gross Revenue does not belong to MIAL. As a result there is no question of cross subsidization from the portion of annual fees not accruing to MIAL. It is quiet logical that for the purposes of cross subsidization i.e. calculation of "S" factor, Gross Revenue has to be reduced by the amount of corresponding annual fees. If this is not considered, it will result into 38.7% of gross revenue from Revenue Share Assets not accruing to MIAL being considered for cross subsidization. While annual fees is not permitted as pass through. It leads to interpretation of provision of SSA which is not rational and justified.

The Authority is requested to consider calculation of "S" factor after deducting corresponding AF @ 38.7%.

2.6.2 Revenue from Existing Assets

MIAL has also analysed the contractual provisions contained in the Operation, Management and Development Agreement (OMDA) dated 04.04.2006 executed between AAI and MIAL and the State Support Agreement (SSA) dated 26.04.2006 executed between The Government of India (GOI) and MIAL which are relevant for treatment of revenue from land lease revenue from the commercial areas for determination of Aeronautical Charges. MIAL also conducted an in-depth analysis of the 'S' a building block for computation of Target Revenue factor under SSA, findings of such study are as below:

I. Under the OMDA, MIAL has been granted the functions of operating, maintaining, developing, designing, constructing, upgrading, modernizing, financing and managing the Chhatrapati Shivaji Maharaj International Airport ("Airport"). In order to perform its functions, MIAL has to perform services and activities constituting Aeronautical Services and Non-Aeronautical Services (but excluding Reserved Activities) at the Airport as envisaged in Clause 2.1.1 and 2.1.2 of the OMDA which reads as under:

"2.1 Grant of Function

2.1.1 AAI hereby grants to the JVC, the exclusive right and authority during the Term to undertake some of the functions of the AAI being the functions of operation, maintenance, development, design, construction, upgradation, modernization, finance and management of the Airport and to perform services and activities constituting Aeronautical Services, and Non-Aeronautical Services (but excluding Reserved Activities) at the Airport and the JVC hereby agrees to undertake the functions of operation, maintenance, development, design, construction, upgradation, modernization, finance and management of the Airport and at all times keep in good repair and operating condition the Airport

*and to perform services and activities constituting Aeronautical Services and Non-Aeronautical Services (but excluding Reserved Activities) at the Airport, in accordance with the terms and conditions of this Agreement (the "**Grant**")."*

2.1.2 Without prejudice to the aforesaid, AAI recognizes the exclusive right of the JVC during the Term, in accordance with the terms and conditions of this Agreement, to:

(i) develop, finance, design, construct, modernize, operate, maintain, use and regulate the use by third parties of the Airport;

(ii) <u>enjoy complete and uninterrupted possession and control of the Airport Site and the Existing Assets for the purpose of providing Aeronautical Services and Non-Aeronautical Services;</u>

(iii) determine, demand, collect, retain and appropriate charges from the users of the Airport in accordance with Article 12 hereto; and

(iv) Contract and/or sub contract with third parties to undertake functions on behalf of the JVC, and sub-lease and/or license the Demised Premises in accordance with Article 8.5.7.

Further, Clause 2.2.3 and 2.2.4 of the OMDA state as under:

"*2.2.3* ***Aeronautical Services, Non-Aeronautical Services and Essential Services***

Subject to the foregoing and to Applicable Law, JVC shall undertake/ provide Aeronautical Services and Essential Services at the Airport Site. JVC may seek to undertake/provide Non-Aeronautical Services at the Airport Site by including them in the proposed (draft) Master Plan, provided however, if the same form a part of the (final) Master Plan then the same shall be undertaken as provided in this Agreement. JVC and AAI shall upon mutual agreement between the Parties update the list of Non-Aeronautical Services to include such other activities, as requested by AAI or JVC.

Notwithstanding anything contained in this Agreement, the JVC shall not undertake any activities at the Airport Site other than the Aeronautical Services, Non-Aeronautical Services and Essential Services.

2.2.4 It is expressly understood by the Parties that JVC shall provide Non-Aeronautical Services at the Airport as above, provided however that the land area utilized for provision of Non- Transfer Assets shall not exceed ten percent (or such different percentage as set forth in the master plan norms of the competent local authority of Mumbai, as the same may change from time to time) of the total land area constituting the Demised Premises. Provided however that the Non-Transfer Assets, if any, that form part of the Carved-Out Assets and/or situated upon the Existing Leases shall be taken into account while calculating the percentage of total land area utilized for provision of Non-Transfer Assets."

The aforementioned services are defined in the OMDA as under:

"Aeronautical Services" *shall have the meaning assigned hereto in Schedule 5 hereto."*

*"**Essential Services**" shall mean those Aeronautical Services and Non-Aeronautical Services that are listed in Schedule 16 hereof and such other services that are mutually agreed to be added to the schedule from time to time.*

*"**Non-Aeronautical Services**" shall mean such services as are listed in Part I and Part II of Schedule 6 hereof."*

In order to provide the aforementioned services, MIAL uses Aeronautical Assets, Non-Aeronautical Assets, Non-Transfer Assets, Existing Assets which are defined in the OMDA as follows:

"*"**Aeronautical Assets**" shall mean those assets, which are necessary or required for the performance of Aeronautical Services at the Airport and such other assets as JVC procures in accordance with the provisions of the Project Agreements (or otherwise on the written directions of the GOI/AAI) for or in relation to, provision of any Reserved Activities and shall specifically include all land (including Excluded Premises), property and structures thereon acquired or leased during the Term in relation to such Aeronautical Assets."*

*""**Existing Assets**" means the physical, tangible, intangible and other assets of whatsoever nature existing at the Airport Site as on the date hereof except working capital assets other than inventory, stores and spares."*

*"**Non-Aeronautical Assets**" shall mean:*

1. *All assets required or necessary for the performance of Non-Aeronautical Services at the Airport as listed in Part I of Schedule 6 and any other services mutually agreed to be added to the Schedule 6 hereof as located at the Airport (irrespective of whether they are owned by the JVC or any third Entity) and;*
2. *All assets required or necessary for the performance of Non-Aeronautical Services at the Airport as listed in Part II od 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, assets 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*

and shall specifically include all additional land (other than the Demised Premises), property and structures thereon acquired or leased during the Term, in relation to such Non-Aeronautical Assets."

"**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."*

The definitions of Transfer Date and Revenue as per OMDA are as under:

*"**Transfer Date**" shall mean the date on which JVC transfers possession (and in respect of such assets that are not owned by AAI, ownership and possession) of the Transfer Assets and/ or Non-Transfer Assets, as the case may be, to AAI or its nominee in accordance with the terms hereof, which shall be the date of termination as per the relevant notice of termination issued by JVC or AAI, as the case may be, or the date of expiry of this Agreement.*

*"**Revenue**" means all pre-tax gross revenue of JVC, excluding the following: (a) payments made by JVC, if any, for the activities undertaken by Relevant Authorities or payments received by JVC for provision of*

electricity, water, sewerage, or analogous utilities to the extent of amounts paid for such utilities to third party service providers; (b) insurance proceeds except insurance indemnification for loss of revenue; (c) any amount that accrues to JVC from sale of any capital assets or items; (d) payments and/or monies collected by JVC for and on behalf of any governmental authorities under Applicable Law (e) any bad debts written off provided these pertain to past revenues on which annual fee has been paid to AAI. It is clarified that annual fee payable to AAI pursuant to Article 11 and Operational Support Cost payable to AAI shall not be deducted from Revenue.

As far as assets owned or belonging to AAI OMDA refers to the same specifically in unambiguous terms which gets clear from the following Article 20.1.1 of OMDA extracted below:

20.1.1 *The JVC hereby agrees and undertakes that from the Effective Date and during the Term and thereafter, it shall indemnify and keep indemnified and otherwise save harmless, AAI, its agents and employees, from and against all claims, demands made against and/ or loss caused and/ or damages suffered and/ or cost, charges/ expenses incurred or put to and/ or penalty levied and/ or any claim due to injury to or death of any person and/ or loss or damage caused or suffered to <u>property owned or belonging to AAI</u>, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by JVC or as a result of failure on the part of JVC to perform any of its obligations under this Agreement or on the JVC committing breach of any of the terms and conditions of this Agreement or on the failure of the JVC to perform any of its statutory duty and/ or obligations or failure or negligence on the part of JVC to comply with any statutory provisions or as a consequence of any notice, show cause notice, action, suit or proceedings, given, initiated, filed or commenced by any third party or Government Authority or as a result of any failure or negligence or default of JVC or its contractor(s) and/ or sub-contractors and/ or invitees as the case may be, in connection with or arising out of this Agreement and/ or arising out of or in connection with JVC's use and occupation of Airport Site and/ or Airport and/ or the provision of Airport Services.*

For MIAL to carry out the functions of operating, maintaining, developing, designing, constructing, upgrading, modernizing, financing and managing the Airport, the AAI agreed to demise in favour of MIAL, Demised Premises in terms of the Lease Deed dated 25.04.2006. It is pertinent to refer to the Article 2.1 (Demised Premises), Article 5.1 (Term), and Article 5.2 (Reversion) of the Lease Deed which are reproduced below:

"2.1 ***Demised Premises***

2.1.1 In consideration of the Lease Rental, OMDA and the covenants and warranties on the part of the Lessee therein and herein, the Lessor, in accordance with the AAI Act and the terms and conditions set forth herein, hereby, <u>demise to the Lessee</u>, commencing from the Effective Date, <u>all the land (along with any buildings, constructions or immovable assets, if any, thereon)</u> which is described, delineated and shown in the Schedule 1 hereto, other than (i) any lands (along with any buildings, constructions or immovable assets, if any, thereon) granted to any third party under any Existing Lease(s) constituting the Airport on the date hereof; and (ii) any and all of the Carved Out Assets and the underlying land together with any buildings, constructions or immovable assets thereon, on an "as is where is basis" together with all Encumbrances thereto, (hereinafter " Demised Premises") to hold the said Demised Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Demised Premises, hereditaments or premises or any part thereof belonging to or in anyway appurtenant

thereto or enjoyed therewith, for the duration of the Term for the sole purpose of the Project, and for such other purposes as are permitted under this Lease Deed."

"5.1 ***Term***

The lease granted in pursuance of this Lease Deed shall be for a period of 30 years from the Effective Date and shall, in the event the lessee renews the term of the OMDA in accordance with Article 18.1(b) therein, be renewed for an additional period of thirty (30) years ("Term"). Notwithstanding anything contained in this Lease Deed, the Term shall be co-terminus with the term of the OMDA, and this Lease Deed shall terminate automatically with the expiry or early termination of the OMDA. The Parties hereby expressly agree that in the event of a Substitution (as defined in the Substitution Agreement) under the provisions of the Substitution Agreement, this Lease Deed shall forthwith terminate.

5.2 ***Reversion***

5.2.1 On expiry of the Term or early termination of this Lease Deed, for any reason whatsoever:

i. the Lessee shall, subject to sub-part (ii) and (iii) of this Article 5.2.1, surrender to the Lessor, the Demised Premises together with all assets, buildings, fixtures, runways, all or any singular rights, liberties, privileges, easements and appurtenances whatsoever to the Demised Premises, hereditaments or premises or any part thereof belonging to or in anyway appurtenant thereto or enjoyed therewith, as constituting the Airport (as such time), without any Encumbrances (except encroachments that have not been removed and are existing on the date hereof. For the purposes hereof, Parties expressly agree that "encroachments existing on the date hereof" and words of similar import shall imply those portions of the Demised Premises that are encroached on the date hereof, as identified in Schedule 2 hereof).

ii. The Lessee shall, in accordance with the OMDA, transfer to the Lessor, all the Transfer Assets together with all or any singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Transfer Assets, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith without any Encumbrances and the Lessor hereby acknowledges and agrees to purchase/accept, in accordance with the terms set out in the OMDA, the aforesaid transfer of all Transfer Assets together with all or any singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Transfer Assets, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith without any Encumbrances.

iii. The Lessor shall have the right, but not the obligation, to purchase from the Lessee, in accordance with the terms and conditions set forth in the OMDA, any and all Non-Transfer Assets (in part or in whole) free and clear of all Encumbrances, and the Lessee hereby undertakes and agrees to transfer to the Lessor, in accordance with the terms and conditions set forth in the OMDA, such Non-Transfer Assets (whether in whole or in part) that the Lessor may elect to purchase, free and clear of all Encumbrances.

Provided however, in the event the Lessor elects not to purchase from the Lessee any and / or all Non-Transfer Assets, then the Parties shall enter into a revised lease deed ("Revised Lease Deed") in relation to such Non-Transfer Assets and the underlying land together with all assets, buildings, fixtures, all or any singular rights, liberties, privileges, easements and appurtenances whatsoever to the such Non-Transfer Assets on such commercial terms and conditions as may be mutually agreeable. Provided however, the terms and conditions of the Revised Lease Deed shall not be inferior to terms and conditions

for leases entered into for comparable immovable property. Any stamp duty, registration charges or other fees, taxes or charges of any kind whatsoever pertaining to the Revised Lease Deed and execution thereof shall be borne by the Lessee. Provided further, in the event the Parties do not, for whatsoever reason, agree on the terms and conditions of such Revised Lease Deed within six (6) months of the expiry or early termination of this Lease Deed, the Lessee hereby undertakes to provide Lessor vacant possession of such land.

iv. Parties hereby expressly recognize that the Lessor shall (without prejudice to its rights of access under the OMDA, and subject to the Revised Lease Deed) have the right to re-enter and take vacant possession of the Demised Premises upon the expiry or early termination of this Lease Deed."

While MIAL is free to fix the charges for Non-Aeronautical Services under OMDA, the charges for Aeronautical Services referred to as Aeronautical Charges, levied by MIAL at the Airport have to be determined as per the provisions of the SSA. In this behalf, it is relevant to refer Article 12.1 and 12.2 of the OMDA which state as under:

"12.1 Tariff

*12.1.1 For the purpose of this Agreement, the charges to be levied at the Airport by the JVC for the provision of Aeronautical Services and consequent recovery of costs relating to Aeronautical Assets shall be referred to as **Aeronautical Charges**.*

12.1.2 The JVC shall at all times ensure that the Aeronautical Charges levied at the Airport shall be as determined as per the provisions of the State Support Agreement. It is hereby expressly clarified that any penalties or damages payable by the JVC under any of the Project Agreements shall not form a part of the Aeronautical Charges and not be passed on to the users of the Airport.

12.2 Charges for Non-Aeronautical Services

Subject to Applicable Law, the JVC shall be free to fix the charges for Non-Aeronautical Services, subject to the provisions of the existing contracts and other agreements."

We also draw your kind attention to the following provisions of the OMDA and SSA which are relevant:

OMDA:

Schedule 11. Insurance. 1.1 Subject to Applicable Law, JVC must at its own cost and expense ensure that the insurances specified in this paragraph are effected from the Effective Date and are maintained in full force for the remainder of the Term.

*(a) Insurances in respect of "**all risks**" as customarily covered by such insurance policies for physical loss or damage to the Airport (including all assets thereon, <u>including but not limited to Aeronautical Assets, Non-Aeronautical Assets and Existing Assets</u>) and all or any structures (including temporary structures), plant (including hired in plant) and equipment including computer equipment and vehicles on the Airport, to their full rebuilding or replacement cost (including allowance for professional fees and removal of debris costs), increased from time to time as necessary to maintain such full rebuilding or replacement cost.*

Schedule 21 Duties of Independent Engineer, *(c) to review development reports submitted by the JVC to assess compliance of works undertaken in relation to the Development Standards and Requirements as detailed in Schedule 1 and with the approved Major Development Plan. <u>In this regard, the Independent Engineer shall ensure that</u>*

<u>(i) owners requirements</u>, Master Plan requirements, specifications and design parameters in any agreement or agreed through OMDA mechanism have been fully addressed/ complied with.

Substitution Agreement, Article 1, definitions 1.1 Substitution, *(v) transfer by the JVC of <u>all assets owned by the JVC</u> to the Selectee;*

8.5.7, (i) Sub-contracting, sub-licensing and licensing, *(d) Without prejudice to the foregoing, every contract entered into by the JVC shall be on an arms-length basis (and comply with contracting procedures set forth in Schedule 12), and shall contain an express provision allowing the transfer of the rights and obligations of the JVC under such contract to the AAI in the event of termination or expiry hereof. Every contract (including any sublease or license arrangement) entered into by the JVC shall contain an express provision recognising the right of the AAI to acquire the Transfer Assets and the Non-Transfer Assets (including reversion of underlying land) in the manner provided herein, and contain an undertaking by the counter-party(ies), licensee/ sub-lessees, or <u>owners of the relevant asset, as the case may be to transfer the relevant Transfer Asset and/ or the Non-Transfer Asset (including the reversion of the underlying land)</u>, as the case may be, upon the exercise of such right by AAI. JVC shall further procure that any contracts entered into by any counter-party (ies), licensees/ sublessees, as the case may be and relatable to any Transfer Asset and/ or the Non-Transfer Asset shall also recognise the right of the AAI to acquire the Transfer Assets and the Non-Transfer Assets in the manner provided herein, and contain an undertaking by the counter-party (ies), sub-licensee, sub-sub-lessees, as the case may be to transfer the relevant Transfer Asset and/ or the Non-Transfer Asset, as the case may be, upon the exercise of such right by AAI.*

19.3.2 *In order to procure the foregoing, in addition to complying with the provisions of Article 8.5.7 hereof, <u>JVC shall procure that in the event any third Entity has any proprietary interest in any Transfer Asset and/ or Non-Transfer Asset (the "Owner Entity"), the arrangements/ agreements entered into by the JVC or another third Entity with such Owner Entity</u> explicitly recognise the right of AAI to acquire the said Transfer Asset and/or Non-Transfer Asset as the case may be, in accordance with the terms hereof, and contain an undertaking from such Owner Entity to transfer the relevant Transfer Asset and/or Non-Transfer Asset as the case may be, to AAI in accordance with the terms hereof.*

SSA

"3.1 ***Airport Economic Regulatory Authority***

3.1.1 GOI's intention is to establish an independent airport economic regulatory authority (the "Economic Regulatory Authority") which will be responsible for certain aspects of regulation (including regulation of Aeronautical Charges) of certain airports in India. GOI agrees to use reasonable efforts to have the Economic Regulatory Authority established and operating within two (2) years from the Effective Date. GOI further confirms that, subject to Applicable Law, it shall make reasonable endeavours to procure that the Economic Regulatory Authority shall regulate and set/ re-set Aeronautical Charges, in accordance with the broad principles set out in Schedule I appended hereto. Provided however, the

Upfront Fee and the <u>Annual Fee paid/ payable by the JVC to AAI under the OMDA shall not be included as a part of costs for provision of Aeronautical Services and no pass through would be available in relation to the same.</u>

…

3.1.3 GOI confirms that till such time as the Economic Regulatory Authority commences regulating Aeronautical Charges, the same shall be approved by GOI in accordance with the broad principles set out in Schedule 1 appended hereto."

We also draw your attention to Clause 12 (c) of National Civil Aviation Policy (NCAP), which is also relevant and the same states as under:

12. Airports developed by State Governments, Private sector or in PPP mode

MoCA will continue to encourage development of airports by the State Governments or the private sector or in PPP mode. MoCA will also encourage the State Governments to develop new airports in their State by forming SPV with Airport Authority of India or with other interested Public Sector Undertakings/ Industry in order to create stake and ownership. Wherever so required, MoCA will endeavour to provide regulatory certainty with the following framework:

a) MoCA will coordinate with AERA, AAI, airlines, airport operators and stakeholders like cargo, MRO, ground handling, etc. to identify ways to bring down airport charges, while abiding by the provisions of existing concession agreements and contracts.

b) MoCA will endeavour that the future airport projects in India, both greenfield and brownfield, have cost efficient functionality with no compromise on safety, security and efficiency.

*c) To ensure uniformity and level playing field across various operators, future tariffs at all airports will be calculated on a 'hybrid till' basis, unless otherwise specified for any project being bid out in future. **<u>30% of non-aeronautical revenue</u>** will be used to cross-subsidise aeronautical charges. In case the tariff in one particular year or contractual period turns out to be excessive, the airport operator and regulator will explore ways to keep the tariff reasonable, and spread the excess amount over the future.*

In terms of Clause 12 of the OMDA read with Clause 3.1 of the SSA, the Aeronautical Charges are to be determined in line with the principles enumerated in Schedule 1 of the SSA which state that the determination of Aeronautical Charges is to be as per shared till inflation -X price cap model. The determination of Aeronautical Charges is preceded by the calculation of Target Revenue and the same is calculated as under:

"***Calculating the aeronautical charges in the shared till inflation – X price cap model***

The revenue target is defined as:

$TR_i = RB_i \times WACC_i + OM_i + D_i + T_i - S_i$

Where *<u>TR</u> = Target Revenue*

<u>RB</u> = regulatory base pertaining to Aeronautical Assets and any investments made for the performance of Reserved Activities etc. which are owned by the JVC, after

incorporating efficient capital expenditure but does not include capital work in progress to the extent not capitalised in fixed assets. It is further clarified that penalties and Liquidated Damages, if any, levied as per the provisions of the OMDA would not be allowed for capitalization in the regulatory base. It is further clarified that the Upfront Fee and any pre-operative expenses incurred by the Successful Bidder towards bid preparation will not be allowed to be capitalised in the regulatory base

WACC = nominal post-tax weighted average cost of capital, calculated using the marginal rate of corporate tax.

OM= efficient operation and maintenance cost pertaining to Aeronautical Services. It is clarified that penalties and Liquidated Damages, if any, levied as per the provisions of the OMDA would not be allowed as part of the operation and maintenance cost.

D = depreciation calculated in the manner as prescribed in Schedule XIV of the Indian Companies Act, 1956. In the event, the depreciation rates for certain assets are not available in the aforesaid Act, then the depreciation rates as provided in the Income Tax Act for such asset as converted to straight line method from the written down value method will be considered. In the event, such rates are not available in either of the Acts then depreciation rates as per generally accepted Indian accounting standards may be considered.

T = corporate taxes on earnings pertaining to Aeronautical Services.

S = 30% of the gross revenue generated by the JVC from Revenue Share Assets. The costs in relation to such revenue shall not be included while calculating Aeronautical Charges. (Emphasis added)

> *"Revenue Share Assets" shall mean (a) Non-Aeronautical Assets; and (b) assets required for provision of aeronautical related services arising at the Airport and not considered in revenues from Non-Aeronautical Assets (e.g.: Public Admission Fee)*
>
> *i = time period (year) i "*

It is therefore clear from the calculation of Target Revenue as per the terms of Schedule 1 of the SSA that, S-factor is 30% of the gross revenue generated by MIAL from Revenue Share Assets. The Revenue Share Assets mainly consist of Non-Aeronautical Assets. Hence, in order to accurately calculate the gross revenue from Revenue Share Assets, the definition of 'Non-Aeronautical Assets' as provided in the OMDA has to be considered and applied.

From the definition of Non-Aeronautical Assets, it is clear that Existing Assets (also known as Demised premises or AAI Assets) lie outside the purview of Non-Aeronautical Assets. As per the said definition, the Non-Aeronautical Assets would include:

(i) All assets required for the performance of Non-Aeronautical Services listed in Part I of Schedule 6.

(ii) All assets required for the performance of Non-Aeronautical Services listed in Part II of Schedule 6, if they are (a) located within terminal building, (b) conjoined to other aeronautical assets and without direct access, or (c) are predominantly servicing/ catering any terminal complex/ cargo complex, and

(iii) All additional land (other than the Demised Premises), property and structures thereon acquired or leased during the Term, in relation to such Non-Aeronautical Assets.

It is important to note the words “irrespective of whether they are owned by the JVC or any third Entity” appearing in the definition of Non-Aeronautical Assets under OMDA. The term Entity has been defined in OMDA as *“any person, body corporate, trust, partnership firm or other association of persons/ individuals whether registered or not”.* The Third Entity obviously means and refers to an entity which is not a party to OMDA. In fact, the Lease Deed defines the term Third Party as “any Entity other than the Parties to this Lease Deed”. As such, the meaning and import of Third Entity is very clear and means an Entity other than JVC and AAI who are parties to OMDA. In other words, AAI is not a Third Entity referred to in the definition of Non-Aeronautical Assets. Also, it is worth noting that wherever a reference to AAI has been made, the same is clearly referred to as AAI. Therefore, the Non-Aeronautical Assets referred only to ‘assets owned’ by either JVC or any Third Entity, and not to any assets owned by AAI. The Existing Assets are neither owned by JVC nor owned by any Third Entity and they are owned by AAI only. The AAI assets/Demised Premises/Existing Assets have been clearly left out in the definition of Non-Aeronautical Assets. There is no doubt that Existing Assets are owned by AAI only.

Incidentally, it is also relevant to note the use of the word ‘irrespective’ and ‘owned’ appearing in the definition of Non-Aeronautical Assets under OMDA. These words have been used in relation to JVC or a third Entity and not in relation to AAI. The word ‘owned’ means any asset that goes into the balance sheet of the JVC or any third Entity. The Existing Assets are owned by AAI and they are in the balance sheet of AAI. It therefore, clear that any asset which is not owned by the JVC or any third Entity is not part of Non-Aeronautical Assets as defined in the OMDA.

The above position is further strengthened as follows:

The methodology for reversion under **Article 5.2 of the Lease Deed** specifies a different mechanism of reversion for Demised Premises (which includes Airport Site as well as Existing Assets) as these are owned by AAI and not by MIAL or by any third Entity and the Lease Deed correctly provides that such Demised Premises shall be surrendered at the end of the Term and not transferred.

The definition of **Transfer Date** under OMDA also, makes a differentiation between methods of transfer of assets which are owned by the MIAL and the ones which are owned by AAI but are leased to MIAL as a part of the Demised Premises. In the case of the former both possession as well as ownership is to be transferred by MAL to AAI on the Transfer Date, where as in the case of the latter, only possession is to be transferred since the ownership of such assets lies with the AAI only.

Schedule 11 of the OMDA which pertains to obtaining insurance for “Aeronautical Assets, Non-Aeronautical Assets and Existing Assets” also provides that Existing Assets are not included in Non-Aeronautical Assets. Schedule 11 envisages three categories of assets, each separate and distinct from the other, i.e., Aeronautical Assets, Non-Aeronautical Assets and Existing Assets. It is therefore clear that Existing Assets are in their own category distinct from Non-Aeronautical Assets.

It is clear from the above observations that the Existing Assets are not Non-Aeronautical Assets and therefore, the same are outside the purview of Revenue Share Assets under SSA.

Further, as per the SSA, since Non-Aeronautical Assets are a part of Revenue Share Assets, revenue from the same are to be included in the calculation of S-factor. However, revenue from Non-Aeronautical Assets is a part of "*non-aeronautical revenue*" and therefore, in terms of the SSA, it is revenue from Non-Aeronautical Assets only which is to be considered for calculation of S-factor and not the non-aeronautical revenue as a whole.

Clause 12(c) of the National Civil Aviation Policy (NCAP), also lays down that for future airports, 30% of the non-aeronautical revenue shall be used for cross-subsidization which is distinct from the mandate of the SSA. Therefore, as far CSMI Airport, Mumbai is concerned, the provisions contained in SSA i.e. 30% of gross revenue from Non Aeronautical Assets should be followed, and not 30% of non-aeronautical revenue. MIAL requests the authority to consider exclusion of the revenues from Existing Assets for the purposes of cross subsidisation, details of which are being submitted separately for FCP, SCP and TCP.

3. True up for Second Control Period

3.1 Weighted Average Cost of Capital (WACC):

3.1.1 Cost of Equity – Grossing up:

Already discussed in para 2.2.1

3.1.2 Cost of Equity – Before the Hon'ble TDSAT

Cost of equity allowed by the Authority is also under appeal pending before the Hon'ble TDSAT. Any positive outcome of the appeal shall have bearing on SCP true up.

3.1.3 Cost of Debt:

Proposed in CP:

Cost of Debt (CoD) computed on total debt without reducing debt on which interest has been capitalized as IDC while corresponding interest has been reduced.

MIAL Response:

The Authority has excluded IDC from the interest cost but has not excluded the borrowings corresponding to such IDC for computation of average cost of debt. This has resulted in decreased numerator (interest) while corresponding denominator (average debt) is not reduced, accordingly cost of debt is lower than actual, and lower WACC.

MIAL requests the Authority to rectify this error and consider CoD at 10.66% as claimed in its MYTP, instead of 10.18% as per Table 50 of CP.

We further point out that the Authority has proposed to consider average loan instead of weighted average loan as it accounts for the outstanding for actual number of days.

Table 4:

Computation of Interest cost as per the Authority: (Rs. in cr.)

Particular	FY 15	FY 16
Interest Cost	562.93	624.31
Average Loan	5,675.98	6,078.55
Average Cost of Debt	9.92%	10.27%

Computation of Interest Cost as per MIAL:

Particular	FY 15	FY 16
Interest Cost	644.75	683.80
Weighted Average Loan	5,538.32	6,101.07
Weighted Average Cost of Debt	11.64%	11.21%

COD to be considered as against erroneously considered by the Authority is as per table below:

Cost of debt	**FY 15**	**FY 16**	**FY 17**	**FY 18**	**FY 19**	**Weighted Average CoD % (FY15 to FY19)**
AERA (Table 50 of CP)	9.92%	10.27%	11.00%	10.02%	9.66%	10.18%
MIAL (MYTP)	11.64%	11.21%	10.93%	9.99%	9.67%	10.66%

3.1.4 Upfront Fee:

Proposed in CP

The Authority has noted the decision of Hon'ble TDSAT in respect of upfront fee and has proposed to include upfront fee of Rs. 150 crores in the equity share capital of MIAL while determining FROR.

MIAL Response

The Authority in the FCP in Order no.32 of 2012-13, excluded the entire Rs.153.85 cr. from equity for computation of WACC. The Authority while computing opening equity of FY15 has not considered entire upfront fees of Rs. 153.85 cr. However, the Authority has considered the same in the closing equity balance for FY15. The Authority is requested to correct opening equity balance of FY15.

3.1.5 Return on Refundable Security Deposit:

Proposed in CP:

The Authority has proposed to consider return on Real Estate Security Deposit (RSD) at weighted average CoD i.e. at 10.18%.

MIAL Response:

The Authority has erred in proposing to consider the return on RSD as Cost of Debt. While doing so the Authority has ignored the fact that RSD is a long term deposit, and there is no restriction on end use of RSD. This amount can be safely invested in equity of other ventures, thereby providing returns applicable for equity.

Further, it may also be noted that, RSD is considered as Quasi Equity by the lenders for the purpose of calculating various parameters like debt equity ratio. In a hypothetical case in absence of such RSD there has to be an equity infusion in lieu of RSD, to maintain norms of the DE ratio of the lenders. Hence, RSD has substituted Equity and not Debt. The very fact that the lenders are considering RSD as equity justifies the return on RSD equivalent to return on equity.

3.2 Regulatory Assets Base (RAB):

3.2.1 Runway and Taxiway resurfacing/strengthening treated as O&M expense amortized over 5 years:

Proposed in CP:

Para No. 3.5.35 – Table no. 39 of CP has dealt with the issue of amortization of runways, taxiways and apron

Referring its decision in Order no.35 of 2017-18 dated 9th January, 2018 In the matter of Determination of Useful life of Airport Assets, the Authority has proposed to treat amount spent on runway and taxiway resurfacing/ strengthening as part of Operation & Maintenance expenditure and to amortize it over the period of five (5) years. The Authority has implemented this order from 1st April, 2017 accordingly the amount spent on resurfacing of runway prior to FY18 has been classified as operating expenditure.

MIAL Response:

The Authority has considered cost of re-carpeting as operating cost. However, Authority has erred in not allowing carrying cost of the expenditure which is being amortized over a period of 5 years. It is undisputed that present value of amortization has to match with actual expenditure. We request the authority to allow carrying cost on the unamortized amounts. Otherwise also in absence of Order no. 35 of the Authority, the entire expenditure had to be allowed in the year of incurrence resulting in higher tariff where ARR is calculated on the basis of NPV.

3.2.2 Gross value of discarded assets reduced from RAB instead of WDV

Proposed in CP:

The Authority in **Para no.3.5.43 and Table 41 of CP** has proposed to reduce the gross value of assets discarded from RAB for the period FY 15 to FY 19 instead of reducing the WDV.

MIAL Response:

The Authority has wrongly reduced gross value of assets discarded Rs.445.26 cr. instead of WDV of Rs.291.09 cr. In SCP, treatment for discarded assets, while calculating RAB, was correctly considered by the Authority.

3.2.3 Shivaji Maharaj Statue and Memorial treated as Non-Aeronautical Asset

Proposed in CP:

The Authority in Para 3.5.43, Table 41, based on the study report on allocation of the Assets at CSMI Airport, Mumbai proposed to classify capex on Shivaji Maharaj Statue amounting to Rs.25.24 cr. as Non-Aeronautical Asset.

M/s R. Subramanian and Company LLP (RSC) in Para 10.2.10 on Shivaji Maharaj statue in their Study on 'Allocation of Assets to Aeronautical and Non-aeronautical Activities' has stated:

"MIAL has incurred expenditure on setting up a statue in honour of Chhatrapati Shivaji Maharaj outside the airport perimeter. The statue is located at the intersection of the elevated corridor and the Western

Express Highway, it surrounded by a garden and decorated sumptuously. The expenditure is not covered under any of the clauses of Schedule 5 of OMDA or in the illustrations provided therein; accordingly, it cannot be classified as Aeronautical."

<u>MIAL Response</u>:

M/s R. Subramanian and Company, LLP have grossly erred while advising that Shivaji Maharaj statue and memorial should be classified as Non-Aeronautical Asset. Undisputedly in no way Shivaji Maharaj Statue comes under definition of Non – Aeronautical Assets, defined in OMDA as follows:

"*Non-Aeronautical Assets*" shall mean:

1. *all assets required or necessary for the performance of Non-Aeronautical Services at the Airport as listed in Part I of Schedule 6 and any other services mutually agreed to be added to the Schedule 6 hereof as located at the Airport (irrespective of whether they are owned by the JVC or any third Entity); and*
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*

and shall specifically include all additional land (other than the Demised Premises), property and structures thereon acquired or leased during the Term, in relation to such Non-Aeronautical Assets.

RSC has further mentioned that statue is outside the airport perimeter, which is also wrong. Airport site is defined in OMDA as below:

"Airport Site" shall mean the underlying land forming part of the Demised Premises (as defined in the Lease Deed) agreed to be demised by AAI in pursuance of this Agreement under the Lease Deed and all land acquired or leased by the JVC during the Term in pursuance of this Agreement under the Lease Deed or otherwise".

From the above definition it is abundantly clear that statue is within the Airport perimeter.

Item 16 of Schedule 5 is reproduced below:

16. Airside and landside access roads and forecourts including writing, traffic signals, signage and monitoring.

The location of statue and memorial is part of the access road network, situated at junction of western express highway and elevated road leading to T2. It is an honour to have this statue at the entrance to the airport access road. It is customary the statues and integrated memorials of national heroes at various airports in India. Across the country there are several airports which had been named after such national heroes like Chhatrapati Shivaji Maharaj, Netaji Subhash Chandra Bose, Sardar Vallabhbhai Patel and various other. In fact other airports in India also have such statues and other tributes where such costs have been incurred and approved as part of aeronautical costs. With due respect to RSC they have taken a very narrow and flawed view on the nature of such asset.

Ministry of Works and Housing in its Memorandum dated 5th June 1972 has allowed up to 2% of the Building Cost to be spent towards art works which includes paintings, sculptures at all public buildings. Shivaji Maharaj Memorial is also a Public building and as already mentioned earlier, it is part of access

road network leading to T2. In fact terminal, access road and Shivaji Maharaj statue and memorial are to be considered as part of integrated facility, though capitalised separately.

Undisputedly cost towards Shivaji Maharaj Memorial and Statue is for aeronautical assets and treating Shivaji Maharaj Statue as Non-Aeronautical Asset is patently wrong as it does not fall in the definition of Non-Aeronautical Assets, as per OMDA. No Non-Aeronautical Service is being provided by this asset, as contemplated in definition of Non-Aeronautical Assets.

We request the authority to consider cost towards Shivaji Maharaj Statute and Memorial as part of Terminal 2 and access road network.

3.2.4 General Aviation (GA) Terminal related Capex:

MIAL Response:

In the MYTP of SCP erroneously common GA Assets worth Rs. 2.10 crores were included in Non-Aeronautical Assets by MIAL. This error needs to be rectified; we request the Authority to do the needful.

3.2.5 HRAB:

Please refer MYTP and para 2.1.

3.3 Depreciation:

3.3.1 Depreciation on RAB for true up of SCP:

Proposed in CP:

The Authority in Para 3.7.5, table 47 of CP has proposed to consider the uniform aeronautical assets allocation ratio of 82.58% for all the years of the Second Control Period. This ratio has been computed based on the Closing Aeronautical Gross Block of Assets against Total Closing Gross Block of assets as on 31st March 2019.

MIAL Response:

The Authority has allowed depreciation by applying uniform assets allocation ratio of 82.58% to the total depreciation for each of the years. Depreciation should have been allowed based on actual classification of assets into aeronautical, non-aeronautical and common assets, details of such actual classification and depreciation is included in the financial model being submitted for the revised working.

3.4 Operation and Maintenance Expenses (O&M):

3.4.1 Expense allocation ratio

Proposed in CP:

Authority has proposed to consider a uniform assets allocation ratio of 82.58% to allocate corporate overhead expenditure between aero and non-aero for all the years of the SCP.

MIAL response:

The Authority while segregating of O&M costs in Aeronautical and Non-Aeronautical expenses, identify cost directly attributable to Aeronautical services, Non Aeronautical services and common cost. Common cost related to terminal operations are apportioned between total terminal area (T1, T2 and GA) and corporate overheads are apportioned between Aeronautical and non-aeronautical in asset allocation ratio.

In MYTP for all the control periods, capital expenditure on Non Transfer Assets and distinct and independent Non-Aeronautical Assets like cargo also have been considered for the purpose of assets allocation, which is not correct method to allocate corporate overheads. As the Authority is excluding cost directly attributable to Non Aeronautical services, therefore, in the allocation ratio also, capital expenditure on Non Transfer Assets and Non Aeronautical Assets should have been excluded.

Details of rectified assets allocation ratio post this correction is as per table below, Authority is requested to rectify asset allocation ratio:

Table 5:

SN	Particulars	FY15	FY16	FY17	FY18	FY19
1	Assets Allocation ratio proposed as per Table 47 of CP	82.58%	82.58%	82.58%	82.58%	82.58%
2	Actual Assets allocation ratio computed based on Report of RSC	88.48%	86.12%	85.46%	84.89%	82.80%
3	Assets allocation ratio post correction of error by excluding Non-transfer Assets and Non-Aeronautical Asset from calculation of ratio	96.58%	93.19%	93.26%	93.30%	94.12%

3.4.2 Allocation of Repair and Maintenance Expenses:

In the MYTP proposal, MIAL has proposed allocation ratio of 97.84% however in the independent study on efficient Operation and Maintenance cost report table no. 17 allocation ratio of 90% is considered by mistake. We request the Authority to rectify this error.

3.4.3 Working capital interest and Financing Charges:

In the Independent study report on Efficient operation and Maintenance cost (Table 51 & Table 53), for FY 2015-16 the Authority has wrongly considered financing charges of Rs 30.84 cr. as interest on working capital at the same time it has wrongly considered interest on working capital of Rs 10.8 cr. as financing charges. We request the Authority to rectify this error.

3.4.4 Utilities (Electricity consumption in Cargo facilities)

While providing detail of consumption of electricity in cargo facilities, instead of 0.51 cr. KWh for the period FY 14-19, MIAL wrongly submitted 0.99 cr. KWh. As a result 0.48 cr. KWh, excess disallowance is considered by the Authority. Details of year wise submission and actual consumption is as follows:

Table 6: Electricity consumption in Cargo Facilities KWh

Particular	FY 15	FY 16	FY 17	FY 18	FY 19	Total
Units submitted in MYTP	0.12	0.11	0.11	0.34	0.31	0.99
Revised Units (Actual Consumption)	0.12	0.11	0.11	0.12	0.05	0.51
Excess Units	-	-	-	0.22	0.26	0.48

The Authority is requested to rectify this error.

3.4.5 CWIP written off not allowed as expense:

Proposed in CP:

The Authority has not allowed write off of expense on Airport Management Building (AEoM) under construction. Relying on the comment in the Study on MIAL Efficient Operation and Maintenance Costs Para No 2.5.17.4 “The loss incurred by MIAL in this regard is not towards operating or maintenance of the airport.” the Authority has not considered this expenditure as part of O&M expenses.

MIAL Response:

MIAL had incurred expenses on construction of Airport Management Building (AEoM) aggregating Rs.13.54 cr., which had to be written off in FY 16. This write off was necessitated in view of MMRDA letter no. TCP (P-2)/ MIA/ Misc/6/1257/2012 dated 25th October 2012 advising MIAL to stop construction of AEOM building in view of opposition by slum dwellers. Accordingly, this project had to be abandoned, Board of MIAL was also duly informed and write off was approved by the Board.

This loss is contingent to operating and maintaining airport. Work of construction was commenced only after receipt of commencement certificate from MMRDA, No. TCP (P-2)/MIAL/CC/3.11/1413/2011 dated 8th December 2011 (Annexure AEoM). Hence expenditure was incurred after due diligence but due to unforeseen circumstances project had to be abandoned. Such contingent costs are permitted by the Authority e.g. bad debts are permitted as expense. Loss on discarding fixed assets is also permitted.

We request the Authority to allow this amount as the project had to be abandoned due to unforeseen events, which cannot be termed as inefficient cost. There was no lack of due diligence before commencement of the work.

3.5 Taxation:

Refer para 2.4 and MYTP.

3.6 Non Aeronautical Revenue:

3.6.1 Other Income treated as part of Revenue from revenue share assets for cross subsidization:

Proposed in CP:

The Authority in Para 3.10.9, table 56 has proposed to consider other Income aggregating Rs.348.29 cr. as revenue from Revenue Share Assets for the purposes of cross subsidization.

MIAL Response:

As per Schedule 1 of the SSA, "S" (quantum of cross subsidisation) means 30% of the gross revenue generated by the JVC from the Revenue Share Assets defined as:

"Revenue Share Assets" shall mean (a) Non-Aeronautical Assets; and (b) assets required for provision of aeronautical related services arising at the Airport and not considered in revenues from Non-Aeronautical Assets (e.g. Public admission fee etc.)

The definition of non-aeronautical assets under the OMDA is as follows:

"*Non-Aeronautical Assets" shall mean:*

1. *all assets required or necessary for the performance of Non-Aeronautical Services at the Airport as listed in Part I of Schedule 6 and any other services mutually agreed to be added to the Schedule 6 hereof as located at the Airport (irrespective of whether they are owned by the JVC or any third Entity); and*

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*

*and shall specifically include all additional land (other than the Demised Premises), property and structures thereon acquired or leased during the Term, in relation to such Non-Aeronautical Assets***."**

By any stretch of imagination other income does not arise from Non-Aeronautical Assets. In fact no revenue share asset is involved for generation of other income. Revenue from RSA requires that such income has to be from RSA and any asset cannot be considered as RSA unless it is Non-Aeronautical Asset. Definition of Non-Aeronautical Assets mandates that only if such asset is required for Non-Aeronautical Services listed in Part I and Part II of Non-Aeronautical Services in Schedule 6 to OMDA it shall be considered as Non-Aeronautical Asset.

Further, it should be noted that similar treatment has not been accorded to Other Income at other major airports. Presumption of the Authority about low revenue share is not based on any evidence. In fact, in none of the Concessions revenue share is lower than being received by any other airport. The Authority intends to penalise MIAL for its excellent contractual skills merely on unfounded assumptions, which is not justified.

In Order no. 13 of 2016-17 in respect of SCP such other income was not considered for the purpose of cross subsidization, when deposits were obtained from cargo and ground handling concessions.

3.6.2 Revenue from Non-Transfer Assets to be excluded from 'S' for cross subsidization:

In MYTP inadvertently revenue of Rs.4.44 cr. from Non-transfer Assets has not been excluded for cross subsidization, such revenue received from Non-transfer Assets needs to be excluded from Revenue from Revenue Share Assets for the purposes of cross subsidization:

3.6.3 FTC treated as aeronautical revenue instead of non-aeronautical revenue:

Please refer MYTP and para 2.5.

4. Third Control Period

4.1 Traffic

Please refer details in Para 1.1.

4.2 Weighted Average Cost of Capital (WACC):

4.2.1 Cost of Equity – Grossing up

Already discussed in para 2.2.1

4.2.2 Cost of Equity – proposed by the Authority

Schedule 1 of SSA provides Principles of Tariff Fixation. Revenue Target is defined as:

$TR_i = RB_i \times WACC_i + OM_i + D_i + T_i - S_i$

Where WACC is nominal post-tax weighted average cost of capital, calculated using the marginal rate of corporate tax.

Hon'ble TDSAT in its order dated 23rd April 2018 in the appeal filed by DIAL for first control period did not interfere with 16% as return on Equity and observed that AERA may redo the exercise through a scientific and objective approach independently. MIAL is of the opinion that establishing this as base for cost of equity, it can be escalated further through adequate scientific and objective approach. It is, therefore, requested that cost of equity at 25.88%, evaluated by CARE should be considered by the Authority for TCP.

We would also like to highlight the inadequacies in the Cost of Equity study by IIM Bangalore. The study has considered 6 companies out of which only 4 have data on share prices movement, i.e. Sydney Airport Limited, Malaysia Airports Holdings Berhad (MAHB), Airports of Thailand Public Company Limited (AoT) and Auckland International Airport Limited and the other two do not have any share price data.

Further, it must also be noted that most of these airports are operating in a developed economy, wherein passenger's air travel pattern is very different from developing nations. And there are only two airport entity which are considered by the Authority in its review, which operates in developing nations, i.e., MAHB and AoT. Referring to such companies from developed economies for the beta computation will result in an inaccurate estimate.

At several occasions various organisation have submitted several reports which have computed CoE for the airport sector all using a scientific and logical approach, as more than 16%. Recently submitted, CARE report, for instance, has estimated CoE at 25.88% for MIAL using the widely accepted Capital Asset Pricing Model (CAPM). It has used a standard CAPM approach of adding an appropriate additional risk premium to the risk free rate and market risk premiums.

CARE has considered 6 airports from China, Malaysia, Thailand and Mexico where Median of Assets Beta (unlevered beta) of these airports is 0.67 while IIM B has considered airports of advanced countries where asset beta is lower at 0.57.

IIM B in its report should also have considered following risk factors while computing risk premium:

1) Systematic risk using well-established CAPM methodology
2) Idiosyncratic and liquidity risk

MIAL, therefore, is of the opinion that a foundation has to be laid through a well-defined systematic approach for defining reasonable rate of CoE and suggests that CoE should be allowed at 23% for the TCP, as requested by MIAL in the MYTP, based on report by CARE which recommended CoE at 25.88%.

4.3 Regulatory Asset Base:

4.3.1 Stakeholders Consultation Meeting

Stakeholders Consultation requirements in connection with major development which are expected to have a capital cost in excess of Rs.100 cr. as per provisions of SSA have not been complied by MIAL.

MIAL Response:

MIAL had planned to hold stakeholder consultation meeting on 16th March, 2020 to discuss the projects with capital cost exceeding Rs.100 cr., however due to Covid-19 pandemic, the meeting could not be held. Further, as mentioned above in our response MIAL has deferred several capital expenditure proposals in view of Covid-19 impact on aviation. The revised capex plan for the third control period will be taken up in the stakeholders consultation through VC in the third week of December, 2020.

4.3.2 Applicability of Normative Approach for determination of building blocks:

Proposed in CP:

Authority has proposed to apply the normative approach for the capex proposed in the TCP.

MIAL Response:

The Authority has proposed to apply the normative cost as mentioned in its Order no.7 0f 2016-17 dated 6th June, 2016. The said order was based on the rates for construction of terminal, runways, taxiways, apron at Cochin airport, which were greenfield developments at the airport. MIAL draws attention of the Authority towards MIAL comments and responses submitted on 8th December, 2014 to the Authority on CP no. 5 / 2014-15 dated 12th June 2014 and reiterates that such normative cost cannot be considered as a benchmark because of variation in costs due to design, location and other considerations.

Further, State Support Agreement (SSA) mandates Principles of Tariff Fixation as enshrined in Schedule 1 to SSA. It mentions "In undertaking its role, AERA will (subject to Applicable Law) observe the principles as listed therein. One of the principles is "Economic Efficiency". There is no provision for fixing normative cost, rather the Authority has to ensure *inter alia* only efficient cost to be recovered through pricing, subject to acceptance of imposed constraints. Section 13 (1) of the AERA Act specifies the functions of the Authority. One of the functions is to determine the tariff for the aeronautical services taking into consideration *inter alia* section 13 (1) (a) (i) of the AERA Act - the capital expenditure incurred and timely investment in improvement of airport facilities. It is abundantly clear the Authority has to consider the capital expenditure incurred, while considering such expenditure the Authority has all the right to ensure economic efficiency. But it does not imply that the Authority can prescribe, unilaterally, normative cost. Hence it is humbly submitted that normative cost approach is ultra-virus the AERA Act and against the principles of Tariff fixation enshrined in SSA.

The function of the Authority relates to the assessment of the veracity and correctness of cost claimed by the airport operator and such costs cannot be fixed beforehand. A common normative cost cannot be made applicable uniformly to all major airports across India, since each of such airport has different set of demands, expectations, traffic profile, etc. and cannot be measured with one yardstick.

The Authority itself has time and again not adhered to normative cost, basis justification submitted by the respective airports. This also proves that, this approach has so far not served any purpose.

Having said so, MIAL has verified cost through a detailed study by engaging M/s. Stup Consultants ltd. Based on BOQ prepared by Stup a document has been prepared titled ***"Comparative Analysis of Costs considered by AERA and MIAL" (attached as Annexure Comparative Analysis of Costs).***

As stated above, the Authority could not justify normative cost and had to accept justified actual cost. Details of the cost allowed by the Authority in CP No.15 of 2020-21 for IGIA Delhi is as per table below:

Table 7: Normative cost comparison

Particulars	**Costs considered (Rs. / sq.mtrs.)**		
	MIAL MYTP FY20	**DIAL CP no. 15**	**CP 35 for MIAL**
Runway, Taxiway, Apron	10,268	10,289	5,583

Note: Normative cost proposed by Authority is for only pavement construction, while work involved in CSMIA includes design consultancy, enabling cost, dismantling of existing pavement, excavation, disposal of debris, preparation of sub-base including AGL.

Authority is requested to approve the cost as submitted by MIAL.

4.3.3 Allocation ratio wrongly applied on already identified aeronautical assets:

Proposed in CP:

The Authority has proposed in Para 4.6, Table 98 to consider capex of Rs 2030.56 cr. arrived at by applying aeronautical ratio of 82.58% (para 4.6.4) on the total addition of Rs. 2508.71 cr. for the third control period.

MIAL Response:

Capex proposal for the TCP as per MYTP consists of aeronautical assets and common assets only. while the Authority has applied assets allocation ratio also on the assets which are already identified aeronautical assets. Hence, we request the Authority to consider the Capex proposed by MIAL as aeronautical assets and common assets only.

4.3.4 1% penalty on project cost on non-completion of projects as per timelines:

Refer Para 1.3.3

4.3.5 Additional Capex which were not included in MYTP

As already mentioned in para 1.3.2 of this response certain capex have been identified for TCP and justification for such capex has already been provided. We request the Authority to allow capex as requested.

4.3.6 Capex approved at lower amount due to normative cost

For certain capex the amount approved by the Authority is lower than the submission made by MIAL in MYTP due to application of normative cost. A comparative analysis of cost proposed by the Authority and MIAL is enclosed as Annexure Comparative analysis of costs.

4.3.7 Capex deferred

Post critical review of capex due to effect of COVID-19 and also to conserve resources, capex worth Rs. 2935 cr. have been deferred.

4.3.8 Capex not approved/ partially not approved by the Authority

Some of the projects which need to be implemented in the TCP but have not been approved by the Authority. Necessity for considering such projects (major only) has been provided hereunder:

Table 8: Proposed capex in MYTP not approved/ partially approved by the Authority but considered by MIAL

SN	Particulars	MYTP	Allowed in CP	Disallowed part of Capex considered in Revised Model
1	Capital repairs to Slum Rehab Bldgs at Kurla	573.16	-	290.20
2	Construction of eastern taxiway (Between E5 and E7) parallel to RWY 14-32	324.56	-	324.60
3	Due to Normative Cost	290.05	119.02	171.03
4	NAD Colony	208.12	-	208.10
5	Land Development including Compound wall for land acquired by relocation of slums	85.54	-	47.40
6	Construction of Parking Stand V2 & V3	91.84	-	91.80
7	CPWD Offices – Kanenagar	34.81	-	33.00
8	Construction of RET E6	29.16	-	29.20
9	Reconstruction of GA Apron	26.31	-	16.00
10	VDGS for Charlie, Delta & Romeo Apron at T1 & T2	20.00	-	10.00
11	Others	75.21	29.26	26.90
	Total	**1,758.76**	**148.28**	**1,248.23**

The Authority is requested to allow the above capex in TCP justification for which and Response by MIAL are given below:

1. Capital repairs to Slum Rehab Bldgs at Kurla: Rs.290.2 cr.

Proposed in CP:

In view of the uncertainty involved in the expected date of completion of this project, the Authority is not inclined to consider this project cost and associated amortization claimed for arriving at target revenues for third control period. This amount is not considered currently would be allowed when actually incurred and the project is completed. The Authority also notes that there is another line item in the capex projections which pertain to land purchase for Rs 85 crores. As it relates to the same matter i.e. clearance of the encroachments, Authority is not considering the same and shall consider in capex when actually incurred.

MIAL Response:

As already informed to the Authority, MoU dated 2nd March, 2019 provides for handing over of 14537 tenements, at Kurla, by SRA to MIAL. These tenements are to be provided free of cost. These tenements require major repair works. Possession of 3962 tenements has already been taken by MIAL and further 3410 tenements are in the process of handing over by SRA to MIAL. In order to avoid uncertainties, the project is proposed to be implemented in two phases. First phase does not involve any purchase of land or other contingency. Second phase will be taken up once underlying contingencies are resolved.

First Phase will involve rehabilitation of slums from 6 pockets, which would release 28.9 acres of land encroached by slum dwellers. Estimated refurbishment cost along with associated costs to make the tenements habitable is Rs.292.15 cr. including GST. Released land shall be used for aeronautical purposes.

As Authority is aware CSMIA is a constrained airport and any opportunity to retrieve land should be fully utilised in order to use it and also to enhance Safety and security of the airport. Proximity of slums is also a grave security threat to the airport. Detail of the proposed pockets to be made free of slums in first phase is as below:

Table 9 : Slum Pockets in first phase

S N	Slum Pocket	Area (Acres)	No. of hutments
1	Shanti Nagar, Sahar	2.57	401
2	Ashok Nagar, Vile Parle	2.43	797
3	Ambedkar Nagar/ Sanjay Gandhi/ Sambhaji Nagar, Vile Parle	3.71	1043
4	Kranti Nagar, Kolekalyan	7.63	1639
5.	Sandesh Nagar Kurla	7.88	2116
6	Vijay Nagar, Kurla	4.76	1363
	Total	**28.98**	**7,359**

Government of Maharashtra is closely monitoring progress of rehabilitation program. MIAL is confident to rehabilitate slum dwellers from 6 identified pockets requiring 7,359 tenements. Phase 1 of the project will be completed in TCP at an estimated cost of Rs. 290.20 cr.

The Authority is requested to allow this capex in the TCP.

2. **Construction of eastern TWY (between E5 and E7) parallel to RWY 14-32**: **Rs.324.60 cr.**

Proposed in CP:

Authority observes that project requires shifting of Air India Cargo building which looks uncertain with its privatization, also due to certain external dependencies, projects has been dropped.

MIAL Response:

Proposed privatisation of Air India will not affect shifting part of Air India building for Eastern TWY. Even with privatization the new incumbent will be willing to integrate cargo facilities which as of now are scattered. Height clearance for cargo building is not an issue any more as height of radar located at CR 1 building has already been increased in December 2018. Confirmation from AAI vide email dated 4th November, 2020 about increase in radar height is enclosed as Annexure Radar height 1.

Construction of this portion of the parallel taxiway is extremely critical to sustain operations during non-availability of main Runway 09/27. Present capacity of 14/32 is not adequate to cater to entire traffic being handled at Runway 09/27. There are instances when airport operations were disrupted on closure of Runway 09/27.

The Authority is requested to allow capex for this project in TCP.

3. Normative Cost Rs.171.0 cr.

Detailed in Annexure 'Comparison of Costs'[5]

4. NAD Colony: Rs. 208.12 cr.

Proposed in CP:

Authority directed MIAL to obtain a confirmation letter from AAI that the construction would commence as per the plan proposed by MIAL. This has not been submitted by AAI. In view of this and the external dependencies prevalent in this project, the Authority proposes to not consider this project cost for arriving at target revenues for third control period. This amount would be allowed at the time of true up after it is incurred and the project is completed. This amount would be allowed as a true up when actually incurred and the project is completed.

MIAL Response:

Proposal for building, design was prepared by MIAL and AAI had given signoff to MIAL proposal on 10th April 2013 (Annexure NAD 1), based on which MIAL had approached statutory body MMRDA for building construction permission. After payment of statutory charges of about Rs. 6.75 cr., MMRDA as statutory

[5] File Name: Comparative analysis of costs considered by AERA and MIAL.pdf

authority had granted approval for construction and layout permission vide letters dated 3rd December, 2015 (Annexure NAD 2a & 2b). MIAL had appointed contractors to start construction at site. However before start of construction, AAI revised its requirements of types of residential quarters and layout. MIAL was asked by AAI to prepare new plans. Therefore MIAL had to re-start design and approval process as per new requirements of AAI, and was required to get sign off from AAI again.

MIAL submitted amended proposal to AAI and received revised signoff on 10th January, 2019 (Annexure NAD 3). Subsequently foundation stone laying ceremony was held on 10th July 2019 to mark beginning of construction.

The revised proposal was submitted to MMRDA by MIAL on 27th May, 2019 MIAL letter dated 5th February 2019 from AAI to MMRDA for expediting the Densification proposal (Annexure NAD 4) for building approval. Subsequently submission of all required documents and formalities (submission of Fire Department NOC, AAI Height NOC) were completed by MIAL. AAI wrote Letters dated 17th May, 2019 and 20th June, 2019 reminding for expediting the approval. (NAD 5 and 6) . However, in late 2019, MMRDA proposed a new Metro Line 7A alignment from Andheri to Terminal 2 of CSMIA, passing through NAD colony area. Due to this the building proposal of NAD Colony was kept on hold by MMRDA, pending approval of AAI and MIAL for the new metro line 7A. These discussions have recently concluded. Building approval from MMRDA is awaited. Once approval is received construction work shall commence in beginning of FY'22 to be completed by FY 24 at a cost of Rs. 208.12 cr. plus taxes, inflation and IDC.

Proposal of the Authority that capex on NAD Colony construction would be permitted as a true up when actually incurred and the project is completed, needs to be reviewed by the Authority as unless approved, it will not be possible for MIAL to raise funds for the project. Otherwise also since now there is certainty about the completion of the project, the Authority is requested to kindly approve this capex in TCP.

5. Land Development including Compound wall for land acquired by relocation of slums: **Rs 47.4 cr.**

Proposed in CP:

Authority are of the view that Land Development including Compound wall for land acquired by relocation of slums shall not be considered in the proposed capital expenditure in view of uncertainties involved in obtaining possession of the land.

MIAL Response:

Cost of this project has been reduced from Rs.85.54 cr. to Rs. 47.4 cr. in view of only 28.98 acres of land to be vacated in first phase. It is essential to secure the land post vacation by slum dwellers. Now phase one of slum rehabilitation will be completed in TCP hence it is essential to protect the vacated land.

The Authority is requested to allow this capex in the TCP.

6. Construction of V2, V3 stands: Rs.91.8 cr.

Proposed in CP:

The Authority has studied the necessity of these stands in detail and considers this project essential to cater to the growing demand of stands in T2, especially at night time. However, the Authority has also

reviewed the land requirement for this project in detail. It was observed that this project can also be carried out only after acquisition of land. Since land which is essential to build these gates is currently not available and MIAL is in the process of obtaining the same, the Authority proposes to allow this capital expenditure only when the same is incurred.

MIAL Response:

Table 10 : Total Cost of construction of V1, V2 and V3 of Rs. 201.70 crores is as below:

Rs. in cr.

Particular	Amount	Remark
Construction of parking stand V1	63.10	Deferred
Construction of parking stand V2	51.40	To be completed in TCP
Construction of parking stand V3	40.40	To be completed in TCP
Bus boarding gate V3	30.90	Deferred
Relocation of AI Centralized Kitchen	15.90	No relocation – only payable compensation to Air India
Total	**201.70**	

Out of these capex for construction of parking stands, one parking stand at V1 has been deferred as land is not in possession of MIAL, while approving capex, the Authority has approved construction of parking stand-V1 instead of parking stand-V3 where underlying land is under possession of MIAL and construction has already commenced. Construction of stand-V3 and stand-V2 are proposed in the TCP. For construction of stand-V2 a dilapidated building in that area shall be removed by the end of FY21. The Authority is requested to approve the capex of Rs.91.80 cr. being the construction cost of parking stand-V3 and stand-V2.

Centralised kitchen required for construction of stands is already in possession of MIAL and there is no relocation issue, instead a compensation has to be provided based on valuation to be conducted by CPWD. Actual compensation will be capitalised with stand-V2 as an enabling cost.

Capex on Bus boarding Gate – V3 has been deferred.

7. CPWD office at Kane nagar: Rs.33 cr.

Proposed in CP:

Due to insufficient details, the Authority has excluded projects worth Rs. 81.09 crores in its re-computed value. Major project in this category is CPWD offices at Kane Nagar.

MIAL Response:

Construction of CPWD office at Kane Nagar costing Rs. 33 cr. has been completed and 'Full Occupancy and Building Completion Certificate' has been issued by Municipal Corporation of Greater Mumbai vide communication no. CHE/ 549/ BP(SPL CELL) /AFN/ 337 / OCC/ 1/ New of 12 June 2019 (attached as Annexure CPWD-1). Handing Over / Taking Over Report dated 6th February, 2012 together with map showing elevated road superimposed over the area and building taken over by MIAL and the MoU entered between CPWD and MIAL stating that *'MIAL will construct, at their own cost, area equivalent to*

the existing office and stores (2552 sq. mts.) at Kane Nagar, Sector VII, SM Plot, Antop Hill, Mumbai.' are attached as Annexure CPWD -2 and 3 respectively.

The Authority is requested to allow in TCP capex of Rs. 33cr. towards the PWD office at Kane Nagar which is already completed and is an enabling cost for construction of elevated road from WEH to T2 which is an access road for T2.

8. Construction of RET E6: Rs.29.2 cr.

Proposed in CP:

Authority understands that requirement of RET E6 will arise if taxiway E6 connecting E5 and E7 is constructed. Since the construction of E6 has been deferred, the associate project of construction of RET E6 also stands deferred.

MIAL Response:

The Authority has deferred construction of RET E-6 because Eastern TWY (between E5 and E7) has been deferred by the Authority. Since this project, as mentioned above, is critical and has to be undertaken in TCP, construction of RET 6 is also necessary.

RET E-6 will be used by all medium category (Code C) aircraft and some of the wide body aircraft to vacate Runway 32 and help in reducing Runway Occupancy Time (ROT) of arriving aircraft. It is essential logical to complete its construction along with construction of Eastern taxiway because constructing it later will require closure of the parallel taxiway and result in disruption of operations and Runway 14/32 cannot be operated efficiently in absence of RET E-6.

The Authority is requested to allow this capex in TCP.

9. Reconstruction of GA (General Aviation) Apron: Rs.16 cr.

Proposed in CP:
Not considered in absence of area information.

MIAL Response:

Information regarding the area and cost is provided in Annexure 'Comparative Analysis of costs' in para 7 under Part B. The Authority is requested to allow this Capex in TCP.

10. Visual Docking Guidance System for Apron C, Apron D and Apron R at T1 and T2: Rs.10.0 cr.

Proposed in CP:
Since it was approved as an operational capex in SCP, but was not completed, it has not been allowed by the Authority.

MIAL Response:

As of today, the remote stands of Terminal T-1 apron (Apron C and Apron D) do not have VDGS. So it is planned to equip these stands with VDGS to enhance safety of operations. Since installation of VDGS

will require cutting of apron pavement for cable laying, it was delayed until reorientation of parking stands of Apron C. Parking stands in this apron have been reoriented in June 2018 to accommodate all kinds of Code C aircraft. Parking stands of Apron D (also called Apron C now) will be reoriented soon to accommodate B737 Max aircraft. After the stands are reoriented, final position of the stands will be determined and then VDGS will be installed. This will avoid cutting of the apron pavement twice and reduce cost and increase the life of the pavement. This capex has now been reduced to Rs.10 cr.

11. Others – Rs.26.9 cr.

<u>Proposed in CP:</u>
Not allowed by the Authority.

<u>MIAL Response</u>:
MIAL has critically reviewed the entire capex and deferred capex of Rs.2933 cr. initially planned in the TCP. Miscellaneous capex items are grouped as others and are essential. The Authority is requested to allow all essential capex grouped as others in TCP, mentioned below:

11.1 Tech refresh of Flight Information Display System T2: Rs. 10 cr.

<u>Proposed in CP</u>:

The Authority understands that MIAL has an arrangement with Wipro for deploying and managing certain IT assets. There is a cap of INR 275 crores for such assets to be brought in by Wipro. Accordingly, replacement of assets deployed by Wipro may have to be done by Wipro from time to time. Considering the above, cost in MIAL books for such assets may be allowed for replacement for adjustment for inflation and quantity change.

<u>MIAL Response</u>:

FAR depicts incorrect number of screen deployed in the airport, as most of the existing screens that are deployed are not in MIAL FAR. The screens deployed are at end of life and no spares are available for maintenance. Hence, replacing the screens is of critical as it directly impacts the airport operations. While the original asset base of screens was funded through Wipro as a part of Rs.275 cr., subsequent technology refresh and replacement of FIDS screens has to be incurred by MIAL.
Rs.275 cr. assets implementation is already disbursed and there is no further amount available for disbursement. Technology and FIDS screen refresh is NOT a part of the Wipro contract.

It is proposed to defer capex of Rs. 14.4 cr., out of Rs.24.4 cr., to be undertaken in next control period and consider balance capex of Rs. 10 cr. is as per details below:

SN	Category	Qty.	Rate	Amount (Rs. in cr.)
1	23” Screen	62	50000	0.31
2	55” Screen	387	143000	5.53
3	43” Screen	397	105000	4.16
				10.00

This pricing is for industrialised rugged screens capable of running 24x7 operations and includes end to end cost of the screens with 3 year extended warranty.

The Authority is requested to allow capex of Rs. 10 cr. as per above details.

11.2 Project to enhance/ build new requirement on IB Information Broker (IB): Rs.6.11 cr.

Proposed in CP:
Authority have proposed to accept the AMS Cost, hence cost of these item has not been evaluated.

MIAL Response:
Current IB is implemented on IBM WebSphere version 8.0 and for hardware on IBM P-Series servers which is going to be at the end of service during current control period. Irrespective of AMS version, this upgrade of both hardware and software is required and necessary interfaces need to be rebuilt. The Authority is requested to allow the capex of Rs.6.1 cr.

11.3 Airport Sweeper/Scrubber: Rs. 2 cr.

The equipment is required for keeping pavements clear of FOD and dust. Old sweeper scrubber was procured in 2012 and the life of the equipment is 10 years. Also, the equipment is being repaired frequently for keeping it serviceable. MIAL has considered only Rs. 2 cr. capex on airport sweeper / scrubber in the TCP.

11.4 Marking machine – 3 nos.: Rs. 4.5 cr.

Required for maintaining the runway, taxiway and apron markings as per mandate in DGCA CAR 4B. The equipment proposed to be replaced was procured in the year 2010 and hence exceeded the life of 10 years.

11.5 Tensa Barrier/ Tensa Tops: Rs. 1.94 cr.

Tensa barriers are regularly required for queue management in both the terminals. Total 6,300 no's of tensa barriers are required, costing Rs. 1.94 cr.

11.6 Miscellaneous: Rs 2.35 cr.

The Authority is requested to allow capex of Rs 2.35 cr. categorized under the Miscellaneous category. These capital expenditures are essential for the operation of the Airport.

The Authority is requested to allow the entire capex grouped under 'Others' for which justifications have been given above.

Table 11: Summary of Capital expenditure proposed above is as follows:

Particulars	**Rs. / cr.**
MYTP - Capex Proposed	**5,636.6**
Less: Adjustments:	
Fully Deferred	2,421.5
Partially Deferred	513.0
Runway Recarpeting:	
- Considered under O&M	259.0
- Dropped related to RWY recarpeting	8.1
	2,434.9
Add: Adjustments:	
New Capex (para 1.3.2)	250.3
Increase in Cost	6.2
Interest during Construction	198.1
Inflation	180.0
Capex Considered in revised model	**3,070.1**

4.4 HRAB:

Please refer MYTP and para 2.1

4.5 Reduction from HRAB on retirement of assets existing on handover of CSMIA by AAI to MIAL:

Proposed in CP:

Para 4.7.2: To remove from HRAB, the amount attributable to old T2 and T1B as determined in Para 4.4.15

Authority is of opinion that, since the Old T2 and T1B buildings and its related assets have already been demolished/ or are proposed to be demolished, the operator ought not to get a return on these assets nor claim depreciation reimbursement on the same. Accordingly, the Authority proposes that cost which is attributable to old T2 and T1B which is included in the HRAB ought to be removed from the HRAB. Impact on HRAB due to reduction in cost of Old T2 & T1B shall be as follows:

Table 12: HRAB reduction

Old T2	Rs.194.74 cr.
T1B	Rs. 34.67 cr.
Total reduction proposed from HRAB (with carrying cost)	Rs.253.12 cr.

MIAL Response:

The Authority, in the CP, while discussing its own view on removing the cost attributable to Old T2 and T1B, has omitted to state the views expressed by MIAL on this issue. Views expressed by MIAL in e-mail dated 28th June 2020 sent to M/s PKF and the Authority, in respect of reduction from HRAB are as follows:

*“**Views on reduction from HRAB for any demolition, etc.**:*

Any attempt to reduce any notional value of an asset from HRAB is completely due to misconception about HRAB. When HRAB was computed by AERA (value of HRAB disputed by MIAL) no reference was made to value of any asset, either book value or market value.

Computation of HRAB was based on revenue and expenses, hence discarding any asset does not trigger reduction of HRAB. If any attempt is made to do so it would be against provisions of SSA since there are no provisions regarding such reduction from HRAB in either SSA or OMDA, i.e. such attempt shall result in disregarding the provisions of concession agreements. It has been upheld that such disregard to provisions of OMDA and SSA cannot be attempted by AERA. There is no provision, in the concession documents, regarding reduction in value of HRAB other than provision of depreciation.

Second argument against removal of any such notional value is that new T2 has been constructed as per provisions of OMDA, where Master Plan and Major Development Plans were submitted to Ministry of Civil Aviation and Airports Authority of India. Construction of New T2 has resulted into demolition of Old T2, hence whatever cost or value is attributable to old T2 shall otherwise also be considered as enabling cost for construction of the New T2, hence there shall be both deduction as well as addition of similar amounts to RAB, which would be a futile exercise.”

The very word hypothetical was not required to be used if there was any reference to assets to estimate RAB at the beginning of first control period. Airport Authority of India was imposing Aeronautical Charges on global basis i.e. Charges were same irrespective of different Airports. This is evident from the fact that aeronautical charges at IGI Airport, Delhi and CSMI Airport, Mumbai were same. Hence there was no relation to actual assets for the purpose of computation of HRAB. HRAB is derived, as stated in SSA, based on revenue, tariff and O&M expenses prevailing at relevant time. HRAB, subject to depreciation, is available in perpetuity. Hence any attempt by the Authority to review it mid-way is illegal, AERA Act itself recognises supremacy of Concession Agreement.

Assuming but not accepting that the Authority is rightly reducing value of old assets demolished / planned to be demolished is correct, even then there is no reason why this cost should not form part of new aeronautical assets created / to be created as enabling cost of such new assets. As an alternative value of demolished assets should be permitted as an expense. There are numerous examples where Authority permitted cost of demolition of assets to be recovered in tariff although as O&M expense. In such case assuming but not accepting that the Authority is correct, then why derived cost of such assets demolished or to be demolished should not be permitted as expense.

It is pertinent to note that value of HRAB does not form part of Fixed Assets in Balance Sheet of the Company. Hence demolition of any old assets will not get reflected in balance sheet.

We request the Authority to reconsider its stand and not to reduce HRAB which is not in line with provisions of the Concession Agreement.

4.6 Operation and Maintenance (O&M) Expenses:

MIAL has critically reviewed O&M expenses. Details of expenses considered by the Authority and revised by MIAL are as follows:

O&M for the FY 20 and FY 21 (till October 20) have been considered on actuals and the balance FY 21 and subsequent years of the third control period have been reviewed as follows:

(a) Repair and maintenance (R&M) expenses:

Proposed in CP:

R&M cost has been considered at 1.10% of the opening gross fixed assets for each year.

MIAL Response:

Authority has ignored the fact that historically R&M Cost is 1.27% of the gross fixed assets. In order to project R&M Cost on rational basis,

R&M cost for existing assets has been taken at 1.27% of gross fixed assets based on historical Percentage of 1.27%. For new assets R&M cost has been taken at 1.1% of such gross fixed assets. Exceptional cost of Rs. 52 crores towards refurbishment of Terminal 1-B has also been included in R&M cost. In view of implementation of counter drone technology / solution, AMC cost of Rs. 17.5 cr. p.a. also has been included in R&M cost over and above the percentages indicated above.

(b) Rents, Rates and Taxes:

Proposed in CP:

The Authority proposed to consider the same cost as proposed by MIAL in MYTP for the third control period.

MIAL Response:

We thank the Authority for accepting proposal of MIAL, however, property tax amount as proposed by MIAL in the MYTP for the third control period, did not mistakenly, include scheduled one time revision in the rates in FY 21 applicable for FY 21 to FY 24. Accordingly, 40% onetime increase in the property tax rate considered in the year FY 21 and same amount is considered for the subsequent years of the third control period.

(c) Insurance Cost:

Proposed in CP:

The Authority proposed to consider the same cost as proposed by MIAL in MYTP for the third control period.

MIAL Response:

We thank the Authority for accepting proposal of MIAL, insurance cost will go up in TCP as compared to proposed cost due to following reasons:

(i) Insurance premium increased in FY 20 due to a) Reinstatement of asset value, by the insurer b) Increase in insurance rate by re-insurer and c) Increase in sum insured for business interruption policy- Rs 5 cr. p.a. for five years.

(ii) Insurance premium for Industrial All Risk Policy was further increased in FY 21 due to COVID 19. As a result, insurance cost for TCP has increased from Rs.25.91 cr. to Rs.79.08 cr. There is increase of Rs. 7 cr. p.a. for each of the four years.

(d) Consumption and store Expenses:

Proposed in CP:

The Authority proposed to link consumable and store expenses with traffic and YoY increase by inflation as proposed by MIAL in MYTP for the TCP.

MIAL Response:

We are thankful that the Authority accepted MIAL proposal to link consumption and stores expenses with traffic however, in the COVID-19 scenario, there is significant decline in the number of passengers. It is not appropriate to link these expenses with passenger traffic as almost 80% consumables are used for purpose other than passengers and remaining only are attributable to passengers. Therefore for FY 21, 80% of consumable store have been projected to increase by inflation considering FY 20 actual cost and remaining 20% based on passenger growth and inflation based on FY 20 actual cost. For FY 22 to FY 24 increase by inflation based on FY 21 estimated cost. Moreover, due to COVID -19, expenses on certain consumables will go substantially in FY 21 to FY23 like Mask, Sanitizer, PPE including face shield, therefore, additional expenditure of Rs.1.5 cr. p.a. has been considered for FY 21-23 over and above estimates.

(e) Working Capital Interest:

Proposed in CP:

Working capital interest: it was not proposed by MIAL in the MYTP for the third control period basis projection with same scenario it is estimated that there will be substantial requirement of working capital.

MIAL Response:

Basis above and expected increase in debtors, it is proposed to consider working capital limits in FY 20 of Rs. 330 cr. and FY 21 onwards to Rs. 501 cr.

Working capital interest has been considered at prevailing rate of 10.3%. This will vary with applicable rate of interest from time to time.

Authority is requested to allow proposed interest on working capital facilities.

(f) Financing Charges:

Proposed in CP:

The Authority proposed to consider financing charges as proposed by MIAL in MYTP for third control period. .

MIAL Response:

We are thankful that the Authority proposes to accept financing charges proposed by MIAL, however due to severe liquidity crunch caused by substantial reduction in revenue, MIAL will not be able to fulfill its debt servicing obligations. MIAL has already approached lenders for restructuring of loans as per extant RBI guidelines. It is estimated that restructuring cost payable would be Rs.55 cr. in addition to the cost considered in the MYTP for the third control period.

The Authority is requested to allow enhanced financing charges as explained above.

(g) Information Technology (IT) expenses:

Proposed in CP:

The Authority has not considered IT expenses as it was not proposed by MIAL in the MYTP for the third control period.

MIAL Response:

On review of expenses on IT, it was observed that due to critical nature of IT infrastructure certain expenses shall be incurred on IT.

(h) **Re-carpeting cost allowed as O&M expense over 5 years, carrying cost of the unamortized expenses to be allowed.**

Please refer para 3.2.1.

(i) Corporate cost allocation:

MIAL is part of a business conglomerate, and MIAL receives several strategic, business treasury related, and services of the Group Corporate team in the areas like security, corporate communication & branding, technology & digitization, HR & IR, Administration, etc. These are specialized services for which sector expertise is required and for this purpose, the support of the Corporate Team is essential in overall functionality of MIAL in this regard. The cost incurred is in nature of indirect cost. Therefore, MIAL proposes to include Corporate cost allocated to it, to be included as part of the forecasted operating expenses.

4.6 Taxation: Annual Fees has been treated as an allowable expense for computation of "T"

Please refer MYTP and para 2.4.

4.7 Non Aeronautical Revenue for TCP:

Please refer para 1.2.

4.7.1 Other Income proposed to be treated as Revenue from RSA for cross subsidization.

Proposed in CP:

The Authority has proposed to consider the other Income as Revenue from RSA:

"The Authority notes that MIAL has obtained significant deposits from concessionaires, which in the Authority's opinion, could have brought down the revenue share that would have been obtained

without the deposit. The Authority believes that such deposits is used for airport purposes and interest on surplus, if any, has been included by MIAL in estimates for interest income being considered by the Authority for cross subsidization and hence does not call for any further adjustment. The Authority will make a final decision on whether any further adjustment is required after stakeholder consultation.

MIAL Response:

First of all the Authority has not provided any detail about Rs.247.50 cr. considered as Other Income for purposes of cross subsidisation.

Assumption of the Authority that because of deposits from concessionaires the revenue share would have been lower is not without any evidence and any cogent argument. In no case other Income can be considered as revenue from Revenue Share Assets, hence cannot be utilised for cross subsidisation.

Further, it should be noted that similar treatment has not been accorded to Other Income at other major airports. Presumption of the Authority about low revenue share is not based on any evidence. In fact, in none of the Concessions revenue share is lower than being received by any other airport. The Authority intends to penalise MIAL for its excellent contractual skills merely on unfounded assumptions, which is not justified.

As per Schedule 1 of the SSA, "S" (quantum of cross subsidisation) means 30% of the gross revenue generated by the JVC from the Revenue Share Assets defined as:

"Revenue Share Assets" shall mean (a) Non-Aeronautical Assets; and (b) assets required for provision of aeronautical related services arising at the Airport and not considered in revenues from Non-Aeronautical Assets (e.g. Public admission fee etc.)

The definition of non-aeronautical assets under the OMDA is as follows:

"*Non-Aeronautical Assets" shall mean:*

1. *all assets required or necessary for the performance of Non-Aeronautical Services at the Airport as listed in Part I of Schedule 6 and any other services mutually agreed to be added to the Schedule 6 hereof as located at the Airport (irrespective of whether they are owned by the JVC or any third Entity); and*

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*

   and shall specifically include all additional land (other than the Demised Premises), property and structures thereon acquired or leased during the Term, in relation to such Non-Aeronautical Assets.**"**

By any stretch of imagination other income does not arise from Non-Aeronautical Assets. In fact no revenue share asset is involved for generation of other income. Revenue from RSA requires that such income has to be from RSA and any asset cannot be considered as RSA unless it is Non-Aeronautical Asset. Definition of Non-Aeronautical Assets mandates that only if such asset is required for Non-

Aeronautical Services listed in Part I and Part II of Non-Aeronautical Services in Schedule 6 to OMDA it shall be considered as Non-Aeronautical Asset.

We would like to point out that such income are not revenue from Revenue Share Assets, hence cannot be considered as part of NAR (RSA) for the purposes of cross subsidization. It would not be out of place to mention that similar treatment has not been accorded to Other Income at other major airports. Also refer para 3.6.1 under SCP.

4.7.2 FTC treated as aeronautical revenue instead of non-aeronautical revenue:

Please refer MYTP and para 2.5

4.7.3 Treatment of Marketing Fund

Proposed in CP:

Authority is of the view that the Marketing fund collected should be considered as Non Aero revenue for cross subsidization citing following reasons:

a. Collections are a source for meeting the expenditure on the marketing and promotional activities that benefit both airport operator and concessionaires.
b. The Nature of the expenditure that is met out of source is not relevant while determining whether a particular collection is revenue in nature.
c. Collection is for growing revenues out of Non Aero activities within the Airport.
d. Indirect tax treatment is also similar to that of revenue.

MIAL Response:

The Authority has given above reasons for treating Marketing Fund as revenue from RSA (the Authority has mentioned it as NAR) for cross subsidization. None of the reasons cited by the Authority is valid as discussed below:

a. Collections are a source for meeting the expenditure on the marketing and promotional activities that benefit both airport operator and concessionaires:

Collected amount does not belong to MIAL, it holds the amount in trust for the concessionaire. Expenditure on marketing and promotional activities is solely for the concessionaires: Undisputedly there may be increase in revenue of concessionaires, benefiting concessionaires directly and indirectly MIAL. How such expenditure is revenue from RSA? It is beyond comprehension. The Authority indirectly conveys the message that if this amount remains unspent then it is not revenue from RSA. Hence, this argument of the Authority is erroneous.

b. The Nature of the expenditure that is met out of source is not relevant while determining whether a particular collection is revenue in nature:

Argument of the Authority that the nature of expenditure does not determine the nature of collection goes against its own argument under (a) above. If it was revenue of MIAL it would have been income of MIAL under income tax Act. Balance of fund is explicitly shown as liability in the balance sheet of MIAL. This amount is kept in trust by MIAL.

c. Collection is for growing revenues out of Non Aero activities within the Airport:

Refer our response to point a) above.

d. Indirect tax treatment is also similar to that of revenue:

The question is not whether the collection is revenue in nature but question is who it belongs to, clearly Collection does not belong to MIAL

The purpose of collection of marketing fund is not to meet any obligation of MIAL. The sole purpose is to consolidate amount through collection from concessionaires and utilize such pool in an efficient and effective way to promote concessionaires business. Any benefit to concessionaires reflects in an increased revenue of concessionaire thereby ensuring higher revenue to MIAL and such higher revenue leads to higher cross subsidization of aeronautical charges. In absence of pooling of funds, individual concessionaire would be spending on sales promotion in a fragmented way or may not at all spend any amount on promotion or advertisement, etc. In both the cases, no amount will be available for cross subsidization of aeronautical charges. There is no reason that MIAL should be penalized for ensuring a better management of sales promotion and advertisement activities of concessionaires to enhance non aeronautical revenue leading to higher cross subsidization of aeronautical charges. If MIAL does avoid collection of marketing fund directly and mandates respective concessionaire to meet expenses directly, then such amount will not be available for cross subsidization. Therefore, it can never be treated as non-aeronautical revenue of MIAL.

Hypothetically, in case part of Marketing fund is utilized for advertisement of concessionaires at the Airport through advertisement concessionaire, in such case, to the extent of revenue received by MIAL from advertisement concessionaire will be utilized twice for cross subsidization. Once by treating Marketing fund as non-aeronautical revenue of MIAL and secondly on account of revenue received from advertisement concessionaire by MIAL. We are confident that intent of the Authority is not to lead to such absurdity.

We would like to mention that some of the airport operators create a Trust specifically for managing the contribution from the concessionaires to the Marketing Fund. Such Trust receives the contribution from the concessionaires and also manages the expenses on promotional activities for the benefit of the concessionaires. In such cases, the contribution by the concessionaires to the Marketing Fund is not treated as a revenue from the Revenue Share Assets or otherwise.

MIAL argument is that in no case collection to Marketing Fund is revenue from Revenue Share Assets for MIAL.

In view of the above, the Authority is requested not to treat the collection of Marketing Fund as non-aeronautical revenue and not to cross subsidize the aero charges through this.

5 Annual Tariff Plan

5.1 Ad-hoc UDF:

Due to unprecedented adverse impact on traffic, cargo and non-aeronautical revenues, there is severe cash crunch. Revenues generated are not sufficient to meet cash obligations of the Company. Unless the Authority permits remedial measure, it will be impossible to ensure economic and viable operation of the Airport. One of the functions of the Authority mandated under Section 13(1) (a) (iv) of the AERA Act, 2008 is to ensure economic and viable operation of the Airport. MIAL has already proposed in Annual tariff Plan submitted to the Authority, Ad-hoc UDF on Domestic Passengers @ Rs 200 and International passengers @ Rs 500 respectively. As already mentioned in our letter MIAL/CEO/047 dated 15th October 2020, there is precedent of providing such measure, please refer AERA Order No. 08/2014-15 dated 10th June, 2014 permitting higher UDF to be retained for capex requirements for Kempegowda International Airport, Bengaluru. Similarly, Authority had permitted collection of DF as a measure of last resort both in case of CSMI Airport, Mumbai and IGI Airport, New Delhi for meeting capex where other means of finances viz. debt and equity were not available. There is specific provision for collection of DF in Section 22A (ii) of the AAI Act, 1994. Similarly, Section 13(1)(b) of AERA Act, 2008 empowers the Authority for determining development fees in respect of major Airports. Undisputedly development fee includes user development fee. MIAL has proposed collection of UDF for limited period commencing from 1st January 2021 to 31st March 2023.

Ad-hoc UDF is in nature of temporary funding to partly bridge the cash shortfall of MIAL. We request the Authority that adjustment of this Ad-hoc UDF in future is made without the carrying cost.

The Authority is requested to analyze the projected cash flows for MIAL based on the final decisions concluded by the Authority, and accordingly allow Ad-hoc UDF to be collected w.e.f. 1st January, 2021 till 31st March, 2023 to ensure that CSMI Airport, Mumbai is able to have economic and viable operations.

6 Financial Model incorporating the points raised in this Response:

Financial model submitted along with this Response is based on the model shared by the Authority with CP, adjusted for the issues raised in the Response. Submission of the financial model is without prejudice to the issues raised by MIAL and does not mean that MIAL has accepted all issues considered by the Authority in the CP and the financial model shared with us, especially in case of following:

1. HRAB: which should be based on the single till methodology;
2. Cost of equity should be at 23%;
3. Fuel Throughput charges should be considered as Non aeronautical Revenue;
4. Aeronautical Corporate taxes should be computed without considering Annual Fee as an allowable expense;
5. Issues related to interpretation of SSA / OMDA and AERA Act:
    a. Cost of Equity – grossing up: discussed in para 2.2.1;
    b. Cross subsidization of aeronautical charges - interpretation of revenue from RSA; and
    c. Calculation of “S” factor for cross subsidization by excluding revenue from Existing Assets.

We shall also be submitting the financial model based on our MYTP submission adjusted for the changes as per CP as well as our Response shortly.

7 Redacting of commercially sensitive information:

The Authority is kindly requested redact certain commercially sensitive information contained in this Response, these have been highlighted in yellow.