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26 April 2016

To,
The Chairperson,
Airports Economic Regulatory Authority of India
AERA Building, Administrative Complex,
Safdarjung Airport, Aurobindo Marg,
New Delhi – 110003.

Kind Attention: Shri S. Machendranathan

Subject: Comments & submissions of the Federation of Indian Airlines (FIA) tendered in response to the Authority's Consultation Paper No. 10/2015-16 dated 16.03.2016 ("*the Consultation Paper*") for the period 01.04.2014 – 31.03.2019 (*"2nd Control Period"*)

Dear Sir,

On behalf of the member airlines, Federation of Indian Airlines (***"FIA"***) is hereby placing submissions in response to the Consultation Paper No.10/2015-16 dated 16.03.2016 ("***the Consultation Paper***") for the period 01.04.2014 – 31.03.2019 (***"2nd Control Period"***), issued by the Airports Economic Regulatory Authority (***"the Authority"***).

FIA notes that the Authority proposes to recalculate the CPI-X factor w.e.f 01.05.2016. Further, the Authority has calculated the actual target revenue based on ARR for the 2nd Control Period, resulting in increase of -7.20% in CPI-X, with X-factor of 12.30%. FIA also observes that certain proposals and contents of the Consultation Paper may be revisited as part of the consultation process to reduce the burden on the consumers, and bring regulatory clarity.

Enclosed are FIA's Comments along with the Index and attachments for Authority's kind perusal, while reserving rights to file additional response in case more requisite information/documents are made available.

Thanking You,

Yours Sincerely,

For and on behalf of the Federation of Indian Airlines,

Ujjwal Dey
Associate Director

SUBMISSIONS ON BEHALF OF THE FEDERATION OF INDIAN AIRLINES

I. Introduction

1. On behalf of the member airlines, Federation of Indian Airlines (***"FIA"***) is hereby placing submissions in response to the Consultation Paper No.10/2015-16 dated 16.03.2016 ("***the Consultation Paper***") for the period 01.04.2014 – 31.03.2019 (***"2nd Control Period"***), issued by the Airports Economic Regulatory Authority (***"the Authority"***) while reserving its rights to file a more detailed response once requisite information/documents are made available.

2. FIA notes that the Authority proposes to recalculate the CPI-X factor w.e.f 01.05.2016. Further, the Authority has calculated the actual target revenue based on ARR for the 2nd Control Period, resulting in increase of -7.20% in CPI-X, with X-factor of 12.30%.[1] FIA also observes that certain proposals and contents of the Consultation Paper may be revisited as part of the consultation process to reduce the burden on the consumers, and bring regulatory clarity. FIA is therefore providing its comments on the Consultation Paper.

3. It is submitted that the following gaps/lacunae must be addressed before concluding the present proceedings:-

3.1 The Consultation Paper does not make any specific reference to the Appeal No. 11 of 2013 ("***the Appeal***") which is pending before the Airport Economic Regulatory Authority Appellate Tribunal (***"the Appellate Tribunal"***). The Appeal has been filed by FIA challenging the legality and validity of the Authority's order numbered 32/ 2012 – 13 dated 15.01.2013 ("***the Previous Order***"). In the said Appeal, FIA has, *inter alia,* prayed to dismiss the Shared Till Approach adopted by the Authority as the same is in violation of statutory framework which lays down the Single Till Approach. It is submitted that the Authority ought to have made the outcome of the Consultation Process subject to the decision of the Appellate Tribunal in the aforesaid Appeal.

3.2 The Authority has proceeded to accept the submissions of MIAL with regard to the Project Cost and accordingly proposes to allow escalation thereof. In terms of Paragraph No. 5.39 of the Consultation Paper, the revised project cost computed by the Authority works out to be Rs. 11,894.31 crores (excluding the cost disallowed & deferred during first control period). Further, capital and operational capital expenditure of Rs 754 cr and Rs 857 cr respectively are proposed to be considered as part of RAB in second control period without any independent technical evaluation

3.3 With specific reference to MIAL's claim of this revenue stream under revenue from non-transfer assets, Authority has noted that the revenue is from land lease, and the concerned land was leased before the formation of the MIAL JV. Authority has stated that it is not clear that these assets novated to MIAL by AAI fall under the land earmarked for commercial development. However, assuming that these properties fall under the commercial area, the Authority has not taken these revenues into consideration for tariff determination for the time being. However, in case it is proved that these assets fall outside the commercial area, these revenues will have to be taken as part of Non-aeronautical revenue and 30% of the same shall have to be taken towards

[1] Refer Pages 306-307 of the Consultation Paper

tariff determination. **The Authority has proposed that the Authority will consider the views of the Ministry of Civil Aviation (*"MoCA"*) and the AAI**. Pursuant to the same, the Authority will decide the issue of applying the proceeds of land monetization towards the computation of aeronautical tariff. The Authority may exemplify the 'Non – Transfer Asset' as defined in the Operation, Management and Development Agreement (***"OMDA"***), and its practical implementation. Considering the fact that the Authority has agreed with the fact commercial development has taken place on the land which is a non – transfer asset, the Authority ought to have included the amounts of land monetization towards the computation of aeronautical tariff.

3.4 **Highly inflated RAB recovered over a shorter period of ~ 14 years whereas the concession period is of 30 years.** MIAL has adopted depreciation rates as per useful life of assets specified in The Companies Act 2013, as per the provisions of the Concession Agreement (OMDA and SSA), which is not representative of the economic useful life of the asset. Also, as per Companies Act, 2013 there is sharp decline in the accounting life of assets, which has significantly increased depreciation expense. , consequently impacting aeronautical tariff. The Authority ought to have considered the issue of depreciation in the light of the provisions of the Companies Act, 2013 ("***the Companies Act***") It is submitted that Part B Schedule II of the Companies Act stipulates that the useful life of an asset which may be arrived at by a regulatory authority shall be considered for the purposes of depreciation. However, the Authority is yet to notify the applicable rate of depreciation for the aviation sector. Proviso to the Section 129(1) of the Companies Act requires the financial statements to be prepared in accordance with the accounting standards. Therefore, pending the Authority arriving at the applicable rate of depreciation for the aviation sector, the Authority should consider arriving at the depreciation rates, as per the provisions of the Companies Act, read with the relevant accounting standards.

3.5 **Non Aeronautical Revenues projected on a broad basis:** Per para 14.66 of CP10/2015-16, Non-aeronautical revenue has been divided into 4 sub-categories – retail licenses revenue, rent & services revenue and cargo revenue and other income. The evaluation of each head under these sub-categories has been done a case by case basis by the Authority. The Compounded Average Growth Rate (CAGR) for Non-aeronautical revenues comes out to be 10% in the second control period whereas CAGR in the first control period works out to be 15% as reflected in tables below, hence, it appears that Authority has considered lower growth projections for non aeronautical revenues for second control period. It is submitted that the Authority should reasonably estimate or appoint a consultant to determine revenue from these services as it may not be appropriate to burden the airlines and passengers with higher tariff in this control period and provide relief for the same in subsequent period.

3.6 **Without considering past trends, productivity improvements and cost drivers, the Authority has determined Operating Expenditure on a very broad basis**: Per proposal 12.C of the consultation paper, the Authority has considered actual operating and maintenance costs for FY2014-15 as the base for projection of operation and maintenance costs for the second control period. Authority has adopted different attributes (CPI inflation, agreements executed, % of fixed assets) for forecasting operating expenditure and in most of the cases relied on projections made

by MIAL. Operating expenditure is one of the major component for determining ARR(~ 49% of ARR), hence, the Authority should have evaluated these expenses in detail rather than broadly relying on projections and basis provided by MIAL. Hence, the approach of the Authority for reviewing the operating expenditure is not in line with provision of Airport Guidelines and even international regulatory procedures.

3.7 Due to delay in submission of relevant information for determination of aeronautical tariff has delay the tariff fixation process and already diminished the effective Control Period by atleast 2 years. It will eventually lead to exponential increase in aeronautical tariff and the burden of which is loaded on passengers. However, we would recommend authority to load the additional burden on account on delay in tariff fixation on airport operator/MIAL instead of loading it on passengers

3.8 The relevant documents which have been referred in the Consultation Paper have not been made available to the stakeholders. Many of the documents have been redacted or are not provided by the Authority citing that the documents are not relevant for consideration. In the absence of the documents and the documents being redacted, the stakeholders will not be able to make an informed decision on the proposals made by the Authority. FIA had sent a letter dated 11.04.2016 to the Authority requesting for the missing documents. However, no response from the Authority has been received till date.

3.9 The Authority has proceeded to determine the asset allocation ratio of 84.25:15.75 (aeronautical: non – aeronautical) arrived in the Previous Order. The asset allocation ratio is also a subject matter of the Appeal. Further, the Authority has not appreciated the fact that the asset allocation ratio has been challenged by the FIA in the Appeal and the same is sub-judice. Therefore, there may be a change in the asset allocation ratio depending on the outcome of the Appeal.

II. CONTEXT OF THE CONSULTATION

4. To assist the Authority in appreciating these submissions on the Consultation Paper, FIA deems it necessary to place on record the following set of material facts:-

4.1 The airport operator/concessionaire was selected to operate, maintain and develop Mumbai Airport in April, 2006 with the governing terms and conditions reflected in:-

(a) The OMDA executed between AAI and the special purpose vehicle incorporated by the successful consortium, MIAL on 04.04.2006, included:-

  (i) Chapter VII shows that:-

    (1) Prior to the execution of OMDA and after a complete and careful examination, MIAL made an independent evaluation of the CSI Airport as a whole and each of its facilities, buildings, assets, machinery, equipment, personnel and know-how and has determined the nature and extent of the difficulties, upgradations, inputs, costs, time, resources, risks and hazards that are likely to arise or may be faced by it in the course of the performance of its obligations under this Agreement and the extent and manner of modernisation required.

(2) MIAL shall be fully and exclusively responsible for and shall bear the financial technical and other risks in relation to the design, financing, modernization, construction, completion, commissioning, maintenance, operation, management and development of the Airport.

(ii) Chapter VIII of OMDA provides that MIAL is obliged to comply with applicable Law in operation, maintenance, development and management of CSI Airport in accordance with 'Good Industry Practice' and any revision in Master Plan can be sought only if the airport is facing passenger, cargo and other capacity constraints in consultation with the Stakeholders.

(iii) Chapter XII of the OMDA provides for tariff regulation and casts obligation upon the operator to levy Aeronautical Charges as per the provisions of SSA. It further provides that the operator is free to fix the charges for non-Aeronautical services subject to the applicable law.

(iv) Chapter XIII mandates and casts an obligation upon MIAL to arrange for **financing and/or meeting all financing requirements through suitable debt and equity contributions** in order to comply with the obligations under OMDA **including the development of Airport.** It is relevant to note that Schedule 5 and 6 define and specify the Aeronautical and non-Aeronautical services in OMDA.

(b) State Support Agreement **("SSA")** executed between the Ministry of Civil Aviation **("MoCA")** and MIAL on 26.04.2006 to record the additional support to be extended by the Government of India (**"GoI"**) to MIAL, including:-

(i) ***CAPEX:***

(1) Clause 3.1.1 of the SSA empowered the Authority with the responsibility of certain aspects of regulation including regulation of aeronautical charges in accordance with the broad principles set out in Schedule 1.

(2) Clause 3.1.2 provides that the Aeronautical Charges shall be calculated as per Schedule 6, and **such Aeronautical Charges will not be negotiated post bid** after the selection of the successful bidder and will not be altered by JVC (MIAL) under any circumstances.

(ii) ***TARIFF:*** While fixing tariff, the Authority is required to observe the principles set out in Schedule 1. Some of the principles are as follows:-

(1) Transparency: The Authority shall adopt a transparent approach and keep all the **information documented** to enable all stakeholders to make submissions. The Authority is required to give reasoned decisions.

(2) MIAL is entitled to impose only those charges which are consistent with the pricing principles set out in this Schedule including:-

Cost Reflectivity- Any charges incurred by the MIAL shall be allocated across users in a manner that is fully cost reflective and relates to

facilities and services that are used by the Airport users.

Usage- In general Aircraft operators, Passengers and other users should not be charged for facilities and services that they do not use.

4.2 Pursuant to the enactment of the Airports Economic Regulatory Authority of India, Act, 2008 ("***AERA Act***"), the Authority is statutorily mandated to perform the functions vested to the Authority under the AERA Act, including under Section 13, which includes determination of tariff for aeronautical services, viz.-

(a) Section 2(a) of the AERA Act provides for various services that are considered aeronautical service.

(b) Section 13 (1) of the AERA Act provides that the tariff for such aeronautical service at a major airport is to be determined by the Authority after taking into consideration various factors, being:-

(i) The capital expenditure incurred and timely investment in improvement of airport facilities;

(ii) The service provided, its quality and other relevant factors;

(iii) The cost for improving efficiency;

(iv) **Economic and viable operation of major airports**;

(v) **Revenue received from services other than the aeronautical services**;

(vi) The concession offered by the central government in any agreement or memorandum of understanding or otherwise; and

(vii) Any other factor which may be relevant for the purposes of this Act.

4.3 It is noteworthy that the Authority is under a bounden duty to determine the tariff in terms of:-

(a) Section 13 of the AERA Act.

(i) Section 13(1)(a) of the AERA Act requires the Authority to 'determine' the tariff for aeronautical services. Any 'determination' by a statutory authority must clearly show the application of mind and analysis carried out by the Authority. However, in the present case, the Authority has proposed increase in various charges (for instance FTC, Landing Charges, Parking Charges etc) but has failed to provide any justification of its own or analysis for the same. In this regard judgment of the Hon'ble Supreme Court in the case of ***Ashok Leyland Ltd. Vs. State of Tamil Nadu and Anr.*** [(2004) 3 SCC 1 (FB) at Para 94)] is noteworthy. Hon'ble Supreme Court has held that the word 'Determination' must also be given its full effect to, which pre-supposes application of mind and expression of the conclusion. It connotes the official determination and not a mere opinion or finding. The Hon'ble TDSAT has also held that determination

requires application of mind in the Judgment dated 16.12.2010 in Appeal No. 3(C) of 2010 titled as ***ZEE Turner Ltd. Vs. TRAI & Ors.*** (At Para 150);

(ii) It is submitted that Section 13(1)(4)(c) of the AERA Act mandates that any decision by the Authority must be fully documented and explained.

(b) AERA (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011 ("***Guidelines***");

(c) Regulatory jurisprudence and settled principles of law creating a level playing field to foster competition, plurality and private investments.

4.4 The Authority issued the Consultation Paper No. 22/ 2012 – 13 titled "Determination of Aeronautical Tariff in respect of CSI Airport, Mumbai for the 1st Control Period on 11.10.2012 (***"the Previous Consultation Paper"***). Pursuant to the receipt of the comments from the stakeholders, the Authority pronounced the Previous Order.

4.5 Pursuant to the completion of the 1st Control Period, the Authority has sought stakeholders' comments on the Consultation Paper. The Consultation Paper analyses MIAL's claims on aeronautical tariff and the Authorities' analysis of the same. Based on the Authority's analysis, the Authority has proposed the Authority's views on the computation of the building blocks and the resultant aeronautical tariff.

III. ISSUES FOR CONSIDERATION OF THE AUTHORITY

5. In the above context, it is submitted that the present consultation process raises the following important and critical questions for consideration of the Authority:-

(a) Whether the proposals made by the Authority in the Consultation Paper are in consonance with the provisions of the AERA Act and the relevant judicial precedents?

(b) Whether the computation of the building blocks has been made under the extant laws and the transaction structure comprising the financial model, rights and obligations of the AAI, GoI, the state government and MIAL, with respect to the concession granted to MIAL?

(c) Whether the Hypothetical Regulated Assets Base ("***HRAB***") should continue to be included as part of the Regulatory Asset Base ("***RAB***") in absence of any statutory provision?

(d) Whether pending the receipt of reports, clarifications or views from various bodies like MoCA, AAI or MIAL, the approach most favourable to the stakeholders has been considered?

(e) Whether revenues of MIAL from alternate sources may be considered for the determination of aeronautical revenue on the fact that a natural resource (land in this case) has been granted by the sovereign in the interest of public good?

(f) Whether there may be commercial/financial/economic impact due to MIAL's failure to firm up its business plan for monetization of land? Further, in view of the same, should the stakeholders/consumers be made to suffer in the current control/regulatory period?

(g) Whether the forecast for non-aeronautical revenue be accepted as proposed by MIAL without Authority's independent evaluation in this regard?

(h) Whether it is justified to forecast the future capital expenditure, operating expense, non-aeronautical revenue, traffic projections without evaluating the same in detail?

(i) Whether the Authority can at this stage allow a further increase in the Project Cost, accepting MIAL's submissions, without conducting any independent study of the figures submitted, this being in violation of Section 13(4) of the AERA Act?

(j) Whether the Authority has conducted prudence check on each claim of capex along the lines of the established accounting standards and practices, and documentary proof submitted for consideration, thereby disallowing unreasonable, unfair or extravagant expenditure?

IV. ISSUE-WISE SUBMISSIONS IN RESPONSE

A. Authority is bound by the AERA Act

6. It is submitted that the Authority has been created under Section 3 of AERA Act to perform the functions vested in terms of Section 13 to 16 of the AERA Act. MIAL's request for aeronautical tariff has to be evaluated in context of the following legal framework:-

(a) Section 13(1), (2) and (4), Section 14, Section 15 and Section 16 of the AERA Act.

(b) Relevant provisions of the OMDA dated 04.04.2006, Chapter VII, Chapter XII and Chapter XIII.

(c) Relevant provisions of the SSA dated 26.04.2006, Para. 3.1.1, 3.1.2, 3.1.3, 3.3.5, Schedule I and Schedule VI.

(d) Decision of the Authority to adopt the Single Till Approach with Price Cap Incentive Regulation.

7. Being a creature of statute, the Authority-

(a) Has been empowered with several powers under the AERA Act. While exercising those powers, the Authority is obliged to ensure transparency by holding due consultations and providing reasonable opportunity to make submissions[2].

(b) Must ensure that all the documents on which the Authority is relying upon for the purposes of its decisions are made available to the stakeholders.

(c) Must scrupulously follow the principles of natural justice and transparency – providing adequate time to make submissions on the Consultation Paper. It is pertinent to mention that:-

(i) The Authority took 27 months to consider MIAL's submissions (first submission was filed by MIAL on 26.12.2013 and the present Consultation Paper was issued on

[2] Section 13(4) of the AERA Act.

16.03.2016) but it has allowed only 32 (approximately) days to stakeholders to respond to the proposals of MIAL and Authority's analysis of the same.

It has been held by the Hon'ble Supreme Court in the judgment of ***Uma Nath Pandey v. State of UP*** [(2009)12 SCC)] that *Natural justice is another name for commonsense justice. The adherence to* ***principles of natural justice*** *is of supreme importance than quasi-judicial body embarks on determining disputes between the parties. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet.* ***Time given for the purpose should be adequate so as to enable him to make his representation.*** *In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Justice should not only be done but should manifestly be seemed to be done.*

Relevant extract of the judgment of the Hon'ble Supreme Court in Uma Nath Pandey v. State of UP is annexed hereto and marked as **Attachment – 1**.

(ii) It is pertinent to take note of the fact that a substantial number of documents on which reliance has been placed by the Authority are not available for stakeholder's perusal. It is submitted that FIA had circulated a list of missing/ redacted documents to the Authority on 12.04.2016. FIA is awaiting response from the Authority with regard to the missing documents.It is further submitted MIAL is operating a public asset and therefore the stakeholders have the right to be aware of the contents of the documents submitted by MIAL.

(iii) The issues concerning the project cost continues to remain unresolved and the bid documents are relevant to evaluate the project cost. In view of the same, it is submitted that the bid documents may be provided to us.

(iv) The Authority has sought certain clarifications from MIAL. However, some of the clarifications/ certificates from MIAL are still awaited. It is submitted that the stakeholders have the right to review the clarifications/ certificates provided by MIAL to provide an informed opinion on the Consultation Paper. The instances of the Authority seeking clarifications/ certifications and MIAL not providing the same are detailed as follows:

(1) Paragraph 3.42: Clarifications by MIAL explaining the reasons for abnormal increases in costs relating to consultancy, legal and travel expenses, and the steps taken to control such expenses.

(2) Paragraph 3.49: Specific claim along with working details and supporting evidence with respect to financing charges.

(3) Paragraph 4.14: Details of the break-up for the entire area of the terminal building of 4,44,203 square metres and detailed break-up of its uses, to enable the Authority to reconsider asset allocation for the 2nd Control Period.

(4) Paragraph 5.49: Minutes of OIOC Meeting held on 19.12.2013 as well as the basis of arriving at estimated compensation cost, along with Board Resolution regarding the Air India Hangar Project, to enable the Authority to consider the expense towards capital expenditure in the 2nd Control period.

(5) Paragraph 5.75: Comprehensive Study by MIAL on utilization of T2 and T1 in order to consider the refurbishment of Terminal 1A/1B.

(6) Paragraph 5.93: Proper justification of disallowed capex along with details of whether the work can be reprioritized or scheduled in a different phased manner.

(7) Paragraph 5.97: Adequate documentary evidence by MIAL with regard to reimbursement of capitalised amount of Rs. 309.97 crores into the PSF (SC) escrow account.

(8) Paragraph 5.108: Audited figures of actual capitalisation for the first 9 months of FY 2015-16 to justify the capitalisation corresponding to the start of domestic operations by Jet Airwards w.e.f. 01.10.2015.

(9) Paragraph 12.47: Clarifications by MIAL regarding incurring of Airport Operator Fee beyond FY 2012-13 till the year FY 2018-10.

(10) Paragraph 12.56: Details regarding methodology for calculation of the working capital in order to consider an amount of Rs. 6.30 crores as working capital interest for each year in the 2nd Control Period.

(11) Paragraph 12.62: Supporting documents with respect to VRS expenses as well as schedule of payments by MIAL.

(v) The Authority has premised various proposals on the receipt of inputs from the MoCA and/ or the AAI. The inputs solicited from MoCA or AAI could have been obtained prior to the issue of the Consultation Paper in the interest of time. Further, consideration of the proposals pending the inputs of MoCA or AAI may result in lack of certainty in tariff. The instances of the Authority seeking clarifications from MoCA and AAI are detailed as under:

(1) Paragraph 3.57: The Authority has requested MoCA and AAI to provide clarification as to whether the land lease revenue from the commercial areas should be taken as income from non-transfer assets or not.

(2) Paragraph 5.97: Clarification from AAI and MoCA with regard to reimbursement of capitalised amount of Rs. 309.97 crores into the PSF (SC) escrow account.

(3) Paragraph 12.62: Reconciliation by AAI with respect to VRS expenses as well as schedule of payments by MIAL.

8. It is noteworthy that the Authority is mandated to analyse the documents and conduct

prudence check to ensure balance between reasonable recovery of efficient and prudent costs while preventing usurious windfalls, viz.-

(a) Section 13 (1)(a)(i) of the AERA Act envisages that the Authority shall consider the actual expenditure incurred.

(b) Section 13(1)(a)(v) provides that the revenue received from services other than the aeronautical services will also be considered for determining tariff, thereby ensuring that there are no windfall profits received by any utility. It is the intention of the Statute that the Authority performs its functions properly, and follows an approach which is viable for the aviation industry.

(c) It is submitted that prudence check is an intrinsic and essential part of the process of tariff determination as is also evident from Section 13 of the AERA Act. Any expenditure incurred by MIAL cannot be accepted by the Authority on the face of it and passed on to the consumers. The Authority is required to evaluate the claims made by MIAL and only after satisfying itself through a rigorous prudence check which involves:-

   (i) Scrutiny of the expenditure made by MIAL and assessment of whether the same has been reasonably and properly incurred.

   (ii) Examining the resultant benefit from the said expenditure in terms of enhanced efficiency.

   (iii) Appraising the working parameters of the utility with the prevalent norms, benchmarks and standards.

B. Single Till approach

9. It is submitted that the Single Till Approach as enshrined under Section 13(1)(a)(v), read with Section 13(1)(b), has been adopted by the Authority in its Order No. 13/2010-11 dated 12.01.2011 warrants a comprehensive evaluation of the economic model and realities of the airport – both capital and revenue elements. MIAL's approach of hybrid till deserves to be discarded.

10. Considering the legislative and judicial precedents on the Single Till Approach, and the fact that the Appeal is pending before the Appellate Tribunal, the Authority ought to have made a reference to the Single Till Approach in the Consultation Paper. Further, the Authority ought to have acknowledged that there may be a scenario for the change in approach from Shared Till to Single Till. The Consultation Paper could have highlighted the preparedness of the Authority to migrate to Single Till approach, in the event the Appeal is decided during the 2nd Control Period.

11. It is submitted that FIA on innumerable occasions has stated that increase in aeronautical tariff may decrease the passenger traffic. Accordingly, the Single Till Approach, which is beneficial to the consumers, be adopted to encourage air travel, which may result in increased passenger traffic.

12. FIA craves liberty to expand its submissions on the Single Till Approach, if the Authority so desires.

C. Aeronautical and Non Aeronautical Assets have been apportioned on a wrong basis

13. The Authority has proposed to proceed with the aeronautical to non-aeronautical asset allocation decided in the Previous Order, with slight modification, which is 84.52:15.48. The issue of asset allocation is a subject matter of the Appeal pending before AERAAT. The asset allocation ratio is therefore subject to the outcome of the Appeal.

14. The Authority in the Previous Order had, in absence of any other relevant basis for allocation, decided to accept the proposal made by MIAL on allocation of assets into aeronautical and non-aeronautical assets on the basis of area. Further, the Authority had decided to commission an independent study in this behalf and take corrective action, as may be necessary, at the commencement of the next control period commencing with effect from 01.04.2014.

15. On the contrary, as is evident from Paragraph 4.15 of the Consultation Paper, the Authority has once again proposed that it will consider the issue of asset allocation, and take corrective action, as may be necessary, based on the independent study to be conducted to determine the allocation of assets in respect of CSI Airport, Mumbai, in the 3rd Control Period. It is submitted that asset allocation ratio is an important criteria which has a bearing on various other building blocks of the Target Revenue. It is pertinent to note that:

(a) MIAL has continued to provide studies which support MIAL's claim on asset allocation ratio;

(b) Studies commissioned by the Authority have considered studies submitted by MIAL's consultants as a reference point;

(c) Due to the lack of any independent analysis of the asset allocation ratio, the consumers were subjected to increased charges, as MIAL's consultants suggested a skewed asset allocation ratio favouring MIAL;

(d) Authority's review of the asset allocation ratio does not seem to take into account the construction of new assets. It is submitted that one of the key issues which was raised with respect to the Previous Consultation Paper was increased capex of MIAL.

16. It is submitted that order passed by an administrative authority, affecting the rights of parties, must be a speaking order supported with reasons. Attention is invited to the judgment of the Hon'ble Supreme Court in the case of ***Kranti Associates Private Limited & Another vs. Masood Ahmed Khan & Others***, reported as (2010) 9 SCC 496, which highlights the need to pass speaking and reasoned orders. Relevant extract of the judgment of the Hon'ble Supreme Court in Kranti Associates Private Limited & Another vs. Masood Ahmed Khan & Others is annexed hereto and marked as **Attachment – 4**.

17. In view of the foregoing submissions, it is submitted that the Authority ought to pass a reasoned order on issues like 'bifurcation of assets into aeronautical & non aeronautical'

18. The below table shows the mismatch between allocation of assets and revenue generated from those assets in case of MIAL. Based on the below table it is submitted that 45% of the total revenue (i.e. the non – aeronautical revenue) is generated by 15% of asset base. Therefore, there is a clear mismatch with respect to asset allocation and the revenues realized.

Revenue and asset share – Aero and Non Aero			
Particulars	Asset bifurcation as proposed to be adopted	Total revenue during the control period	% share
Aeronautical	84.52%	7,568.55	54.80%
Non-aeronautical revenue	15.48%	6,225.05	45.20%
Total	100%	13,793.60	100%

19. As per para 6.6 of the Previous Order, FIA had suggested 70:30 between aeronautical and non-aeronautical service. FIA further submitted further submitted that available data from European airports shows that the proportion of assets allocated to the aeronautical category averages around 70%. Hence at least 70: 30 should have been accepted in the tariff order subject to the determination by the experts appointed by the Authority. Other comparable international airports with same model of tariff determination have assumed ratio of Aeronautical asset base which range from approximately 49% to 82% of total asset base. Hence, FIA has adopted a mesial ratio of 70:30 between aeronautical and non-aeronautical service to analyse impact on target revenue. The analysis indicates that if ratio of aeronautical to non-aeronautical assets changes to 70:30, target revenue will reduce. However, the Authority has decided to defer proper study and analysis of this issue to the next control period, as is evident from Paragraph No. 4.15 of the Consultation Paper. Without prejudice, it is submitted that there would not be any need of allocation of assets if the Authority adopts Single Till approach.

D. Lack of Mechanism to Commission Independent Studies

20. It is submitted that the reports submitted by MIAL or any operator may be coloured by the approach proposed to be taken by MIAL. Therefore, the Authority may consider to commission studies/ reports through independent consultants. The Authority may consider the following while suggesting such course of action:

(a) The consultant should report to the Authority only; and

(b) All communications/ interactions between the consultant and MIAL should be with the knowledge of the Authority; and

21. It is submitted that the report so prepared may be subject to scrutiny by stakeholders as well as MIAL. The above approach may help provide a neutral opinion on the building blocks forming the aeronautical tariff determination mechanism.

E. Depreciation computed over a shorter period whereas the Concession Period is of 30 years

22. The Authority has proposed to adopt depreciation rates as per useful life of assets specified in the Companies Act 2013 except in case of Runway, Taxiway and Apron. The provisions of the Companies Act do not stipulate the useful life of the assets specific to the aviation industry. Further,

pursuant to the enactment of the Companies Act, there has been a sharp decline in the useful life of assets when compared to the Companies Act, 1956.

Average RAB and Depreciation for the first and second control period

Reference from table # 7 and # 30 from CP 10/2015-16

Particulars	FY10	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19
Average RAB (including HRAB)	1,765.63	2,179.80	2544.21	2748.55	3604.27	5,720.95	6550.34	7222.44	6874.84	6801.49
Depreciation	95.55	128.85	151.31	165.17	141.45	503.28	442.74	499	496.14	494.39
Depreciation %	5.41%	5.91%	5.95%	6.01%	3.92%	8.80%	6.76%	6.91%	7.22%	7.27%
Average depreciation over the control period					5.44%					7.39%
Average depreciable life [1/Dep rate] - in years					**18.38**					**13.53**

23. Economic life of an infrastructure asset such as an airport has a longer useful life, which is also evidenced by the fact that the tenure of the Concession Agreement is of 30 years with an option to extend for an additional period of 30 years. Below we have presented the impact of change in useful life of asset on target revenue:

Impact of change in useful life of Assets

Rs Crores

Sr #	Particulars	FY15	FY16	FY17	FY18	FY19	Total
A	**Depreciation (HRAB + RAB)**	**503**	**443**	**499**	**496**	**494**	**2,436**
B	Net Regulatory Assets Base (Average HRAB + Average RAB)	5,721	6,550	7,222	6,875	6,801	
C	Average rate of depreciation (A/B)	9%	7%	7%	7%	7%	
D	Average useful life of assets (1/C)*	11	15	14	14	14	
E	Opening RAB (Gross including HRAB)	6,047	5,705	7,396	7,049	6,700	
F	Capitalization during the year	(148)	2,133	153	147	697	
	Considering useful life as 30 years						
G	Depreciation charge considering 30 years useful life ((E+F/2)/30)	199	226	249	237	235	
H	Net decline in depreciation considering useful life as 30 years (A-G)	304	217	250	259	259	
I	Increase in ROCE due to accelerated depreciation (H*11.75%)	36	25	29	30	30	
J	***Net decline in TR due to accelerated depreciation (H-I)***	***268***	***192***	***221***	***228***	***229***	***1,138***
	% Impact (considering Total TR at 7,640 cr)						***15%***
	Considering useful life as 60 years						
K	Depreciation charge considering 60 years useful life ((E+F/2)/60)	100	113	125	119	117	
L	Net decline in depreciation considering useful life as 60 years (A-K)	404	330	374	377	377	
M	Increase in ROCE due to accelerated depreciation (L*10.77%)	47	39	44	44	44	
N	***Net decline in TR due to accelerated depreciation (L-M)***	***356***	***291***	***330***	***333***	***333***	***1,644***
	% Impact (considering Total TR at 7,640 cr)						***22%***

** Assuming residual value as 'Nil'*

Note: In absence, of detailed financial model, aforementioned sensitivity analysis is carried out on best effort basis after taking certain assumptions as per the data provided in

24. Though the long term impact in terms of present value of revenues cannot be ascertained due to non-availability of information, based on the available data, estimated impact on target revenues during the current regulatory period could be ascertained. Based on the data evaluated in the above table, it is submitted that increase in useful life of the asset to 30 years would reduce the target revenues.

Further, our review of useful life of assets at various international airports indicated that some of the airport assets have useful life of as long as 100 years:

Useful life of assets considered at various international airports

		Useful life						
Asset Category	**Companies Act 2013**	**London Heathrow**	**London Gatwick**	**Manchester Airport**	**Sydney Airport**	**Melbourne Airport**	**Changi Airport, Singapore**	**Amsterdam Schiphol Airport**
Terminal building, pier and satellite structures	10 - 30 years	20 - 60 years	20 - 60 years		5 - 60 years	10 - 40 years	15 - 30 years	20-60 years
Runway surfaces	20 years	10 - 15 years	10 - 15 years				30 years	15-60 years
Runway bases		100 years	100 years	5 - 75 years	6 - 99 years	13 - 80 years	30 years	15-60 years
Taxiways and aprons	20- 30 years	50 years	50 years	5 - 75 years	6 - 99 years	13 - 80 years	30 years	Taxiways: 15-60 years Aprons: 30-60 years
Source: Annual report for year ended		*Dec-14*	*Mar-15*	*Mar-15*	*Dec-14*	*Jun-14*	*Dec-14*	*Mar-14*

25. As discussed above, the useful life of the airport asset is 60 years. Consequently, the depreciation rate may be accordingly modified in view of the useful life of the airport asset being 60 years. It is further submitted that useful life of aeronautical asset being 60 years is also supported by the provisions of the Companies Act. Therefore, pending the study to arrive at the depreciation rates for the aeronautical assets the Authority ought to negate the submissions of MIAL. Further, the Authority should have considered 60 years as the useful life of the airport assets. It is submitted that the Authority should appropriately consider economic substance and life of a long term infrastructure asset for tariff determination.

F. Depreciation rate for the Reinforced Concrete Cement frame structure not computed as per the Companies Act

26. The Authority has proposed to consider useful life of assets as adopted by MIAL except in case of Runway, Taxiway and Apron. The Authority has accepted estimated useful life of Buildings as 30 years, on the basis that the same is in accordance with the Companies Act. However, as per Part "C" of Schedule II of the Companies Act 2013 useful life of buildings (other than factory buildings) having Reinforced Concrete Cement ("***RCC***") frame structure is 60 years. Buildings (other than factory buildings) other than RCC frame structure are to be depreciated over a period of 30 years. There is no mention in MIAL's submission regarding the structure of buildings, although it is highly unlikely that terminal buildings are not built with RCC technology. It is submitted that the Authority should consider obtaining the details of building structure and allow depreciation accordingly.

G. Depreciation Rates as per the provisions of the Companies Act

27. The Authority has relied on MIAL's submissions with respect to depreciation. It is pertinent to note that MIAL has mechanically considered the rates mentioned in the Companies Act 2013. It is submitted that as per proviso to Section 129(1) of the Companies Act, 2013companies are required to abide by the accounting standards. Therefore, the provisions of the Companies Act should be read with the relevant accounting standards. It is submitted that pending the commissioning of the study to arrive at the depreciation rates for various aeronautical assets, the Authority ought to have considered the provisions of the Companies Act and the relevant accounting standards to arrive at the depreciation rates for the assets controlled by MIAL.

28. Hon'ble Supreme Court in the judgment of ***JK Industries Ltd. v. UOI*** [(2007) 13 SCC 673] has held that accounting standards are binding on the companies in India. Relevant excerpts of the judgment are reproduced below:

> *"23. It is important to note that Section 211 read with Part I and Part II of Schedule VI prescribes the form and contents of balance-sheet and P&L a/c. However, Section 211(1), inter alia, states that every balance-sheet of a company shall subject to the provisions of that section, be in the form set out in Part I of Schedule VI.* ***The words "subject to the provisions of this section" would mean that every sub-section following Sub-section (1) including Sub-sections (3A), (3B) and (3C) shall have an overriding effect and consequently every P&L a/c and balance-sheet shall comply with the Accounting Standards. Therefore,***

implementation of the Accounting Standards and their compliance are made compulsory and mandatory by the aforestated Sub-sections (3A), (3B) and (3C)*.*

……..

25. Several Accounting Standards prescribed by the Institute have been made mandatory. The Institute has, however, clarified that the expression "mandatory in nature" implies that while discharging their functions, it will be the duty of the Chartered Accountants who are members of the Institute to examine whether the said Accounting Standard has been complied with in the presentation of financial statements covered by their audit (See: Section 227(3)(d)). In this regard it may be noted that under Section 227(3)(d) it is the duty of the auditor, to state in his audit report whether the P&L a/c and the balance-sheet complies with the Accounting Standards referred to in Section 211(3C). ***Before introduction of Sub-sections (3A), (3B) and (3C) in Section 211 (w.e.f. 31.10.98), these Standards were not mandatory. Therefore, the companies were then free to prepare their annual financial statements, as per the specific requirements of Section 211 read with Schedule VI. However, with the insertion of Sub-sections (3A), (3B) and (3C) in Section 211 the P&L a/c and the balance-sheet have to comply with the Accounting Standards. For this purpose the expression "Accounting Standards" shall mean the standards of accounting recommended by the Institute as may be prescribed by the Central Government in consultation with NAC on Accounting Standards. Thus, the Accounting Standards are prescribed by the Central Government Thus, the Accounting Standards prescribed by the Central Government are now mandatory qua the companies and non-compliance with these Standards would lead to violation of Section 211 inasmuch as the annual accounts may then not be regarded as showing a "true and fair view"***"

Relevant extract of the judgment of the Hon'ble Supreme Court in JK Industries Ltd. v. UOI is annexed hereto and marked as **Attachment – 6**. In view of the above judgment of the Hon'ble Supreme Court, the Authority ought to have considered the provisions of the Companies Act read with AS – 6 while arriving at the value of depreciation.

29. The relevant accounting standard which the Authority is required to rely on is AS – 6 titled Depreciation Accounting ("***AS – 6***"). Relevant extract of AS – 6 titled Depreciation Accounting is annexed hereto and marked as **Attachment – 5**.

30. It is pertinent to note that AS – 6 allows for considering the useful life of the assets as per the terms of the agreement, if any. Paragraph 7(1)(i) of AS – 6 may be referred in this regard, which reads as follows:

"*7. The useful life of a depreciable asset is shorter than its physical life and is:*

(i) ***pre-determined by legal or contractual limits, such as the expiry dates of related leases***

……."

It is pertinent to further note that OMDA allows for a period of 30 years, which is extendable by another 30 years, as the term of the Grant. Therefore, the total Term of the Grant is 60 years. In view of the same, the useful life of the assets may be considered as 60 years.

31. It may also be noted that paragraph 24 of the AS – 6 allows for the treatment of the individual elements of the assets. Paragraph 24 of AS – 6 reads as follows:

> "24. ***Any addition or extension which becomes an integral part of the existing asset should be depreciated over the remaining useful life of that asset****. The depreciation on such addition or extension may also be provided at the rate applied to the existing asset.* ***Where an addition or extension retains a separate identity and is capable of being used after the existing asset is disposed of, depreciation should be provided independently on the basis of an estimate of its own useful life***."

Based on the above, it is submitted that the assets which do not have independent existence may be considered to be a part of the airport assets of MIAL. Therefore, useful life of 60 years may be allowed for such assets. In view of the above, aprons, runways and tramways do not have a separate identity. Therefore, aprons, runways and tramways may be considered as part of the assets of MIAL having a useful life of 60 years. As per the provisions of AS – 6, useful life of all the other assets which do not have independent existence may also be considered as 60 years. There is significant decline in the accounting life of all the assets due to adoption of the Companies Act, 2013. However, there would not be any change in the economic useful life of the asset. Hence, it is submitted that the Authority should not consider the accounting life of asset for computing the depreciation.

H. Depreciation up to 100% is contrary to the AERA Guidelines

32. Paragraph 5.3.3 of the Guidelines stipulates that depreciation may be allowed up to a maximum of 90% of the original cost of the asset on straight line basis. The Authority has proposed to consider useful life of assets as adopted by MIAL for computing the depreciation. Depreciation has been computed up to 100% of the value of the asset based on the assumption that no compensation will be received towards the value of the net block of assets upon transfer of the airport upon completion of term. Hence, approach followed by the Authority is in contravention of the Airport Guidelines Para 5.3.3 which allows depreciation to be calculated to the extent of 90% of the assets. Sensitivity analysis comparing the allocation of 90% of the original cost vis-à-vis 100% of the original cost is provided in the table below.

Impact of change in residual value from 'Nil' to 10%

Rs Crores

Sr #	Particulars	FY15	FY16	FY17	FY18	FY19	Total
A	**Depreciation (HRAB + RAB)**	**503**	**443**	**499**	**496**	**494**	**2,436**
B	Net Regulatory Assets Base (Average HRAB + Average RAB)	5,721	6,550	7,222	6,875	6,801	
C	Average rate of depreciation (A/B)	9%	7%	7%	7%	7%	
D	Average useful life of assets (1/C)*	11	15	14	14	14	
E	Opening RAB (Gross including HRAB)	6,047	5,705	7,396	7,049	6,700	
F	Capitalization during the year	(148)	2,133	153	147	697	
	Considering residual value as 10%						
G	Depreciation charge considering residual value at 10% ((E+F/2)*90%/D)	473	226	249	237	235	
H	Net decline in depreciation considering useful life as 30 years (A-G)	30	217	250	259	259	
I	Increase in ROCE due to accelerated depreciation (H*11.75%)	4	25	29	30	30	
J	***Net decline in TR due to accelerated depreciation (H-I)***	***27***	***192***	***221***	***228***	***229***	***896***
	% Impact (considering Total TR at 7,640 cr)						***12%***

** Assuming residual value as 'Nil'*

Note: In absence, of detailed financial model, aforementioned sensitivity analysis is carried out on best effort basis after taking certain assumptions as per the data provided in

I. Further escalation of Project Cost is sought to be allowed by the Authority.

33. The Authority has proceeded to accept the submissions of MIAL with regard to the Project Cost and accordingly proposes to allow escalation thereof. In terms of Paragraph No. 5.39 of the Consultation Paper, the revised project cost computed by the Authority works out to be Rs. 11,894.31 crores.

34. It is noteworthy that Planning Commission in its 'Report of the Task Force Financing Plan for Airports'[3] issued in July, 2006 has mentioned project cost of CSI Airport at Rs. 6,187 crores. In November 2007, MIAL had estimated the project cost at Rs. 9,802 crores as in the revised Master Development Plan. However, MIAL has enhanced its claim towards the project cost to Rs. 12,380 crores, out of which Rs. 11,647 crores is tentatively approved by the Authority on the basis of inputs provided by the Technical and Financial auditor. Such escalated Project Cost is already subject matter of challenge before AERAAT. A decision on the allowable Project Cost is yet to taken.

35. In this context following points are noteworthy:

(a) Under the OMDA, MIAL is **fully and exclusively responsible for financial, technical, commercial, legal and other risks in relation to the Project** as evident from the following relevant clauses:

"7.1.2- JVC acknowledges that prior to the execution of this agreement, it has, after a complete and careful examination, made an independent evaluation of the Airport as a whole and each of its facilities, buildings, assets, machinery, equipment, personnel and know-how and has ***determined the nature and extent of the difficulties, upgradations, inputs, costs, time, resources, risks and hazards that are likely to arise or may be faced by it in the course of the performance of its obligations under this Agreement and the extent and manner of modernization required.*** *JVC further acknowledges that it shall have no recourse against the AAI if it is, at a later date, found that the Demised Premises or any building or structure thereon, is/are deficient in any manner whatsoever ("Deficiency").* ***If a Deficiency is found, the JVC hereby acknowledges and agrees that it shall, at its own cost and at no cost to the AAI, take all appropriate measures to remedy the same.***

7.2.1- *Subject to the provisions of this Agreement, the* ***JVC shall be fully and exclusively responsible for, and shall bear the financial, technical, commercial, legal and other risks in relation to the design, financing, modernization, construction, completion, commissioning, maintenance, operation, management and development of the Airport*** *and all its other rights and obligations under or pursuant to this Agreement regardless of whatever risks, contingencies, circumstances and/or hazards may be encountered (foreseen or not foreseen) and notwithstanding any change(s) in any of such risks, contingencies, circumstances and/or hazards on exceptional grounds or otherwise and whether foreseen or not foreseen and* ***none of the JVC shall have any right whether express or implied to bring any claim against, or to recover any compensation or other amount from, the AAI, GOI and/or any of their agencies other than in respect of those matters in respect of which express provision is made in this Agreement."***

(b) Clause 13.1(a) of OMDA mandates MIAL to meet all its financing requirements through suitable debt and equity contribution:

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

(c) Further, the Airport Operator cannot seek review in the Project Cost, even if the 'Master

[3] **Annexure F-3:** 'Report of the Task Force Financing Plan for Airports' issued in July, 2006

Plan' is sought to be revised and approved. It is pertinent to note that though the definition of 'Master Plan' in the OMDA provides for upgradation, it cannot be construed to keep the channel open for increase in capital expenditure. Definition of Master Plan is reproduced here for ease of reference:-

"Master Plan" means the master plan for the development of the Airport, evolved and prepared by the JVC in the manner set forth in the State Support Agreement, which sets out the plans for the staged development of the full Airport area, covering Aeronautical Services and Non-Aeronautical Services, and which is for a twenty (20) year time horizon and which is updated and each such updation is subject to review/ observations of and interaction with the GOI in the manner described in the State Support Agreement."

(d) It is also noteworthy that under Clause 8.3.2 of OMDA, any significant deviation in the Master Plan from the Initial Development Plan needs to be fully explained. In the present case, MIAL has failed to seek views from the Stakeholders for revising its Master Plan. However, even under Clause 8.3.2 no provision for increase in capital expenditure has been made in view of such deviations. Clause 8.3.2 of OMDA pertaining to Master Plan is reproduced below for ease of reference:-

"8.3.2 The first Master Plan for the Airport must be consistent with the Initial Development Plan and must incorporate the Mandatory Capital Projects. Any significant deviations from the Initial Development Plan must be fully explained. The Master Plan shall be made pursuant to full consultation with all major stakeholders, including but not limited to airlines, passenger groups and GOI."

(e) Proviso to Clause 8.3.5 of OMDA categorically provides that the revision in Master Plan can be sought only if the airport is facing passenger, cargo and other capacity constraints. Clause 8.3.5 of OMDA pertaining to Master Plan is reproduced below for ease of reference:-

"8.3.5 Notwithstanding the provisions of Article 3 hereof and subject to the Successful Bidder being provided immediate access to the Airport, the JVC hereby undertakes to submit the initial Master Plan to the AAI for its information, and to the Ministry of Civil Aviation ("MCA") for its review and comments before the expiry of six (6) months from the date of execution of this Agreement, which thereafter must be updated and resubmitted to the AAI for its information and to the MCA for its review and comments periodically, every 10 years. Provided however that the Master Plan shall be updated at shorter intervals, if the JVC finds that the traffic growth is such as to require more frequent updates or for any other reasonable reason, or at such intervals as may be notified by AAI or MCA in the event the Airport reaches passenger capacity, cargo capacity and other capacity restraints."

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

(a) Key issues raised by the technical auditor appointed by AAI i.e. Engineer's India Limited (**"EIL"**) are:

(i) No regular monitoring of cost by Project Management Consultant (*para 7.7 of EIL's*

report).

(ii) MIAL has not taken any approval of various changes made during execution stage (*para 2 executive summary of EIL's report*).

(iii) Due to high risk involved in the Project, the percentage of risk premium considered by Principal contractor and sub-contractor are also high which are totally borne by MIAL resulting into further increase in project cost *(para 2 executive summary of EIL's report).*

(iv) All sub-contract work packages were awarded by Larsen & Toubro **("L&T")**along with MIAL's team without any prior estimation. Negotiations were done on random basis. MIAL did not have their own cost estimates to compare the quotes given by Sub-contractors (*para 7.3 of EIL's report).*

(v) The company needs to further strengthen its system of processing of bids to bring the project cost further down (*para 8.5 of EIL's report).*

(vi) The project cost including design should have been capped to avoid cost overrun, but unfortunately no steps have been taken to contain the project cost *(para 8.6 of EIL's report).*

(b) Key issues raised by the financial auditor appointed by AAI i.e. Ved Jain and Associates **("VJA")** are:

(i) Change in approach of awarding the contracts (splitting the contracts in to small activities) leading to indefinite cost of project *(para 10.2.1.2 of financial audit report).*

(ii) Contract with EPC contractor (L&T) is a cost plus contract, this approach makes cost control difficult *(para 10.2.1.2 of financial audit report).*

(iii) Further, EPC contractor has been selected on the basis of rough estimate of contract cost of Rs. 5,000 crores.

(iv) No cap on site overheads payable to L&T, the same is to be recovered on actual basis (*para 10.2.1.3 of financial audit report).*

(c) Further, the audit reports indicate that:

(i) Construction of memorial of Chhatarpati Shivaji Maharaj has not been mandated by any authority. MIAL has claimed Rs. 25 crores towards such cost.

(ii) The following are some of the costs claimed by MIAL, which have not been commissioned yet and are conditional to further submission of documentary evidences for inclusion of the same in the project cost:

(1) Amount of Rs. 200 crores towards cost of ATC Tower and Technical Building.

(2) Amount of Rs. 32.34 crores towards 'Airside Projects'.

(3) Amount of Rs. 110.0 crores towards Slum Rehabilitation and NAD Colony

Development.

(4) A sum of Rs. 30 crores towards the cost of settlement of disputes of land

(iii) MIAL has claimed Rs. 166 crores towards contribution to Maharashtra Metropolitan Region Development Authority (**"MMRDA"**) for widening of elevated access road. It is noteworthy that initial estimate for the same was Rs. 154 crores and the MIAL had assumed that MMRDA will bear the entire cost. However, MIAL failed to communicate this cost and its assumption to its Board, AAI or Ministry of Civil Aviation, although the same was known to the Management of MIAL.

(iv) DF has mainly arisen due to cost overrun which are directly attributable to commission and omission of MIAL as also the poor structuring of the Engineering, Procurement and Construction (**"EPC"**) Contracts. In this regard, MIAL has overlooked the effect of 'cost plus fixed fee percentage' approach adopted by itself in awarding the EPC Contracts, which is widely accepted as riskiest approach as the contractors are inclined to enhance the project cost to gain higher percentage/share of return on such enhancements.

(v) The 'Avoidable Costs' like 'Penalty Paid', 'Airport Ground Handling', 'Art Effect', 'Change in Design', 'Demolished Structure' etc.

(vi) An amount of Rs. 4,278 crores was uncommitted as on 30.09.2011 by the MIAL. Further, MIAL has introduced certain parts of the Project to be concessioner out on 'Build Own Operate and Transfer' (**"BOOT"**) basis, in order to reduce the cost. In the BOOT model, MIAL intends to recover the cost from such third party vendors. Accordingly, such cost should also be excluded from the project cost. It is noteworthy that the decision for transfer of Cargo Operations to BOOT basis was not intimated to the Authority.

(vii) An amount of Rs. 2 crores towards the realignment of 'Drain below the forecourt road' should be excluded as the same was not necessitated for development of the airport.

(viii) Amount of Rs. 48 crores should be excluded from the total project cost as claimed by MIAL due to MIAL's imprudent approach in selecting CH2M Hills, as the Project Management Consultant.

The aforesaid aspects are relevant as the Authority has tentatively accepted the project cost. Further, in the last control period, the Authority after allowing all the escalation has capped the total project cost to Rs 12,068.80 crores (para 5.15 of CP 10/2015-16) which included Rs 11,647.46 cr for first control period and Rs 422.34 cr deferred for second control period. However, even after capping the cost in first control period, following additions are proposed during second control period:

- Additional cost of Rs 157 cr is allowed on the basis that it is mandatory for MIAL to incur such cost:

Additional cost allowed in Second Control Period	
Extract from table # 18 from CP 10/2015-16	
Description	**Amount**
CENVAT credit disallowance	45
Due to inability to avail EPCG benefit	17
Increase in cost of imported equipment	103
Contribution to MMRDA for Sahar Elevated Access Road	20
Cost of settlement for land	32
	217
Less: Savings on ATC Tower	-60
Total	157

- Additional interest of Rs 140 cr is allowed, incurred by the MIAL to meet funding gap
- Further, escalation of Rs 130 cr is allowed on the basis of

Second escalation allowed in Second Control Period	
As per Para 5.32 & 5.33 of CP 10/2015-16	
Description	**Amount**
Increase due to withdrawal of service tax exemption	50
Increase in cost of settlement of land	18
Interest during construction (IDC) on account of additional loan raised	14
Interest during construction on account of delay in completion of fuel line work and subsequent pavement	48
Total	**130**

Further, following additional capital and operational capital expenditure is proposed in second control period without any independent technical evaluation:

Capital Expenditure

New Projects in Second Control Period		
Extract from table # 24 from CP 10/2015-16		
Description	**Submission by MIAL**	**Allowed by Authority**
Metro Stations	518	-
Taxiway 'M' (Only Slum Rehab cost)	157	157
Air India Code 'C' Hangar	51	53
South East Pier (between Grid RE 29 - PE 12)	395	409
Meteorological Farm	12	13
	1,133	**631**
Soft Cost (IDC & Preoperative)	171	122
Total	**1,304**	**754**

In case of Air India Code 'C' Hanger, South East Pier and Meteorological Farm above, cost allowed is more than amount submitted by MIAL. Also, there is no explanation about soft cost.

In addition, the Authority has also proposed Rs 857 cr of operational capital expenditure during second control period

37. Further, it is submitted that Authority is an independent sectoral regulator and should ***scrutinize incremental capex on technical and economic grounds before considering it as additions to RAB,***, analyse its implications and conduct prudence check before allowing any cost to be included, even at a later period.

J. Proceeds from the Monetization of Land have not been applied towards Determination of Aeronautical Tariff

38. It is submitted that the Authority has extensively discussed the issue of monetization of land. However, there are certain key terms which should be evaluated and decided upon as a preliminary

step to ascertain the issue monetization of land. It is submitted that Authority may kindly elaborate and clarify the meanings of the following terms by citing examples from the Airport and the Airport Site itself:-

(a) Non – Transfer Assets;

(b) Non – Aeronautical Services; and

(c) Transfer Assets.

Since, the issue of monetization of land and the treatment of the same in the determination of aeronautical revenues has remained a contentious issue, it is relevant that the Authority clarifies the above terms as a preliminary step to decide the above issue.

39. AAI has provided about 2,000 acres of land at an annual lease rent of Rs.100 to MIAL. Further, AAI has allowed MIAL to commercially exploit and monetize around 195 acres of land. As per Paragraph 8.4 of Consultation Paper, MIAL has till date floated a tender for leasing of only 8.75 acres of land consisting of four Plots. MIAL has not yet firmed up the real estate business plan which is impacting the tariff determination.

40. It is submitted that the lease rentals received on monetization of the land have not been applied towards the computation of aeronautical tariff. In the event the lease rentals from monetization of land are allowed same will reduce the burden on the consumers. Therefore, the interest of the consumers and the stakeholders requires that the lease rentals from the monetization of the land be appropriated towards the determination of aeronautical tariff. Based on risk profiling of the airport operator, the Authority ought to determine revenue/ value of commercial property to be factored in determination of tariff in order to ensure tariff levels are benchmarked to international airports.

41. The Authority has referred to DIAL's Consultation Paper No. 16/2014-15 wherein the instant issue was discussed in detail. The Authority had illustrated three hypothetical scenarios/ modes for land monetization. The Authority had stated that Mode 3 is the only instance recognized by the Authority which delinks the proceeds of land monetization from the determination of aeronautical tariff. It is submitted that even under Mode 3 which is revenue sharing arrangement, the revenues from land monetization should be considered in the determination of aeronautical tariff. It is further submitted that a revenue share arrangement would include the factors like:

(a) The contribution of MIAL in the said property development. It needs to be ascertained whether the said contribution is related to the services or mere sub – lease of land as a contribution; and

(b) Expenses incurred by MIAL in providing MIAL's contribution to the said property developments. In the event MIAL is not incurring expenses, it is evident that the contribution is limited to land only. Therefore, the revenue share merely factors the contribution of land.

Assuming, without admitting, that MIAL is providing services and not merely providing the land in the said commercial venture, then the nature of services may be compared with the

Schedule - VI of OMDA, and evaluated whether MIAL is providing any services the revenue of which should be apportioned towards the determination of aeronautical tariff.

42. Based on the above, it is submitted that even when there is a revenue sharing arrangement and MIAL is providing certain services, the revenue share will take into account:

(a) Land; and

(b) Services provided by MIAL to the extent the services relate to the Schedule VI of OMDA and the AERA Act.

Therefore, the land in question is ought not to be treated as a non – transfer asset the revenue arising from the contribution of land should be considered towards the determination of aeronautical tariff, in every scenario/ mode discussed by the Authority.

43. Land has been provided by the government. Further, participation in such business venture only arises from the fact that MIAL has been allowed to do so under the terms of OMDA and the Lease Deed. Therefore, any receipts arising from the land (not being a non – transfer asset), which has been granted by a sovereign, cannot be allowed to be appropriated by a private person. In view of the same in all the instances, the Authority ought to have considered the proceeds of land monetization towards the determination of aeronautical tariff.

44. It is submitted that MIAL is operating the airport which is a public asset. Further, assets like airport are inherently monopolistic. Therefore, the concern of the stakeholders should be of primacy when compared to the concern of the entity controlling such asset. It is submitted that in certain instances where the Authority cannot decide the approach, as an interim measure the Authority ought to consider that the interest of stakeholders is paramount. Similar views have been expressed by the Hon'ble Supreme Court in the matter of ***In Re: Special Reference No. 1 of 2012*** [(2012) 10 SCC 1], wherein a five judge bench has held that:

> *"200. I would therefore conclude by stating that no part of the natural resource can be dissipated as a matter of largess, charity, donation or endowment, for private exploitation.* ***Each bit of natural resource expended must bring back a reciprocal consideration****.* ***The consideration may be in the nature of earning revenue or may be to "best subserve the common good"****. It may well be the amalgam of the two.* ***There cannot be a dissipation of material resources free of cost or at a consideration lower than their actual worth. One set of citizens cannot prosper at the cost of another set of citizens, for that would not be fair or reasonable****."*

Relevant extract of the judgment of the Hon'ble Supreme Court in In Re: Special Reference No. 1 of 2012 is annexed hereto and marked as **Attachment – 8**. Based on the above, it is submitted that land is a natural resource. Land has been given at a price of Rs.100/- per acre, under the terms of Lease Deed, which is a highly depreciated value. The reciprocal consideration is that land monetized has to be appropriated towards the determination of aeronautical tariff. Therefore, notwithstanding the reservation expressed by the Authority, the revenue arising from land monetization should be used to compensate the consumer. Further, even when the Authority is awaiting the comments from AAI and MoCA, the above judgment of the Hon'ble Supreme Court is binding on the Authority. The Authority is required to ensure MIAL's reciprocal

consideration to reduce the burden on the consumers as per the decision of the Hon'ble Supreme Court in In Re: Special Reference judgment.

K. Revenues from Cargo and Ground handling services considered as non - aeronautical

45. It is submitted that the Authority has proposed to treat revenues of cargo and ground handling as non – aeronautical revenue. However, the Authority has considered the cargo and ground handling services as aeronautical services. It is submitted that the Authority has, followed the approach adopted in the Previous Order, and considered the treatment of cargo and ground handling services on the basis of the MoCA's letters dated 09.03.2012 and 10.09.2012, wherein MoCA has stated that the cargo and ground handling services should be considered as non – aeronautical services. It is submitted that Authority has not provided any analysis of the above letters of the MoCA. The Authority ought to have arrived at its own conclusion with respect to the cargo and ground handling services in terms of the AERA Act. It is further submitted that the Authority has taken a curious position stating that though the services are aeronautical, the revenues may non – aeronautical. This approach of the Authority does not address the issue at hand. The services associated with the services should be considered in accordance with the nature of the revenue. These services are clearly 'Aeronautical Services' in terms of the AERA Act, 2008. Therefore, the revenue being realized from such services should be treated as aeronautical revenue in the hands of MIAL.

46. FIA has carried out analysis to understand the impact of treating revenue from cargo and ground handling as aeronautical revenues rather than non-aeronautical. As per the analysis detailed in the table below, the target revenue will reduce by 17% by considering revenue from cargo and ground handling services as aeronautical revenue (without any adjustment towards cost & RAB).

Impact of treating revenue from cargo and ground handling as aeronautical revenue

Extract from table # 48 & 54 from CP 10/2015-16

	Particulars	FY15	FY16	FY17	FY18	FY19	Total	ARR as per CP 10/2015-16	% Change
	Cargo revenues	238	262	272	281	292	1,344		
	Ground handling	90	94	100	106	112	501		
A	Total	328	357	371	387	403	1,846		
B	Cross subsidization @ 30%	98	107	111	116	121	554		
(A-B)	Amount by which target revenue would decrease	229	250	260	271	282	1,292	7,640	**17%**

L. ITP Services not detailed or clarified by the Authority

47. It is submitted that the Authority has considered the Into the Plane ("***ITP"***) services as non – aeronautical in the Previous Order. However, in the Consultation Paper the Authority has considered ITP as aeronautical services. It is submitted that the Authority has cited only the fuel related services under ITP. There may be other instances which may qualify as ITP for instance in-flight catering. The Authority may consider other instances of ITP and provide views on the treatment of ITP with respect to the specific service. It is submitted that the Authority is considering a bundle of services under ITP and considering such services as aeronautical services. It is further submitted that the Authority ought to have illustrated separate instances of the services comprising the ITP and should have categorized the services as aeronautical or non – aeronautical as the case may be.

M. Service quality should be monitored and true up to be made as per the ratings received

48. Clause 9.1.3(c) of OMDA stipulates that in the event MIAL fails to maintain the rating stipulated under OMDA which is 3.75 in the present case for two successive quarterly surveys, MIAL is liable to pay a penalty to AAI. Therefore, OMDA stipulates a mechanism to review the ratings and imposes penalty on default. In view of the same, it is submitted that with respect to the 2nd Control Period, the Authority may consider the provisions of OMDA and provide for true ups based on the ratings of the Airport. Further, the Authority may consider the impact of the liquidated damages, if any, imposed on MIAL and MIAL compensate the stakeholders/ consumers, in the event any liquidated damages are levied on MIAL under the terms of OMDA. The Authority should ensure that the quality of services should be maintained by MIAL. Further, the Authority should ensure that details pertaining to the service quality in the past and the projections of savings or reduction of losses should be should be made available to the stakeholders. Further, the Authority should ensure that MIAL should achieve the projections.

N. Computation of HRAB

49. The Authority proposes to consider the HRAB at Rs.966.03 crores at the end of FY 2009-10, pending outcome of the appeal by MIAL (*@Para 9.5 & 9.6 of the Consultation Paper*). As per the Previous Order, HRAB is proposed to depreciate at a rate, which is the average rate of depreciation of aeronautical assets every tariff year. Accordingly, the Authority proposes to consider closing HRAB at the end of FY 2013-14 as Rs.763.99 crores. The SSA indicates the components of the HRAB but it does not give the method of capitalizing the resultant revenue stream, hence the computation of HRAB for 1st Control Period by the Authority does not seem to be in concurrence with SSA. **Per para 12.25 of the Previous Order, the Authority had requested the MoCA to indicate the objective and mechanism for computation of HRAB**. However, the MoCA have not intimated the Authority in the matter.

50. It is submitted that there is an increase in depreciation and return on RAB of airport operator, since the HRAB is included in RAB which would consequently increase the target revenue. Schedule 1 of the SSA provides for principles to be followed by the Authority in undertaking its role in tariff fixation. It is submitted that principles laid out in the SSA with respect to HRAB are inconsistent with the Authority's regulatory philosophy and approach as stated in its Airport Order and Airport Guidelines. In the Authority's previous order and guidelines for tariff determination, there is no concept of HRAB. Hence, it is submitted that the Authority should not have considered HRAB as part of target revenue:-

(a) As the principles laid out in the SSA are inconsistent with the Authority's regulatory philosophy;

(b) In the absence of any intimation from MoCA with respect to HRAB computation; and

O. Without considering Past Trends, Allocation, Productivity Improvements and Cost Drivers, the Authority has determined Operating Expenditure on a very broad basis

51. Per proposal 12.C of CP10/2015-16, the Authority has considered actual operating and maintenance costs for FY2014-15 as the base for projection of operation and maintenance costs for the second control period. Authority has adopted different attributes (CPI inflation, agreements executed, % of fixed assets) for forecasting operating expenditure and in most of the cases relied on projections made by MIAL.

52. Following table depicts the operating expenses as considered by the Authority for the second control period –

Operating expenses in the second control period										
Extracts from table # 45 from CP 10/2015-16							YoY increase			
Particulars	**CAGR**	**FY15**	**FY16**	**FY17**	**FY18**	**FY19**	**FY15 to FY16**	**FY16 to FY17**	**FY17 to FY18**	**FY18 to FY19**
Utilities Expenses (Net off)	19.8%	100.32	171.23	183.34	194.67	206.76	70.7%	7.1%	6.2%	6.2%
Employee Cost	11.2%	113.52	130.55	143.60	157.96	173.76	15.0%	10.0%	10.0%	10.0%
Repair & Maintenance Expense	12.7%	105.50	128.09	143.37	154.34	170.22	21.4%	11.9%	7.7%	10.3%
Operating Expenditure	16.2%	62.51	79.16	88.45	100.43	114.15	26.6%	11.7%	13.5%	13.7%
Administrative Expenses	5.1%	49.45	59.58	54.62	57.41	60.34	20.5%	-8.3%	5.1%	5.1%
Loss on scrapping of assets		207.48	-	-	-	-				
Rents, Rates & Taxes	11.7%	25.60	37.55	38.27	39.04	39.84	46.7%	1.9%	2.0%	2.0%
Others	4.0%	59.32	81.88	65.23	67.05	69.36	38.0%	-20.3%	2.8%	3.4%
Total Operating & Maintenance Expenses	**3.6%**	**723.70**	**688.04**	**716.88**	**770.90**	**834.43**	-4.9%	4.2%	7.5%	8.2%

53. The Authority has proposed to consider the actual costs incurred by MIAL for FY2010-11 as the efficient O&M costs on the basis of the independent study by ICWAI. However, the Authority has considered FY2014-15 as appropriate base for projection of operating costs for the second control period. Hence, it is clearly evident that the base of FY2014-15 taken for projections does not represent the efficient O&M costs.

54. The Authority has not considered other recommendations of the O&M efficiency study conducted by ICWAI which suggested that cost control measures may be taken by management of MIAL to mitigate increase in controllable costs

55. As per clause 5.4.2 of Airport Guidelines, while reviewing forecast of operating expenditure the Authority has to assess (a) baseline operation and maintenance expenditure based on review of actual expenditure indicated in last audited accounts and check for underlying factors impacting variance over the preceding year; and (b) efficiency improvement with respect to such costs based on review of factors such as trends in operating costs, productivity improvements, cost drivers as may be identified, and other factors as maybe considered appropriate

56. However, the Authority has allowed majority of the operating expenditure on a very broad basis without (a) going in details regarding their technical and commercial feasibility (b) without considering past trends, productivity improvements, cost drivers which is not in line with the provisions of Airport Guidelines.

57. Further we noted that in case of Gatwick Airport, the operating expenditure has been determined by the CAA(Civil Aviation Authority) as follows (Source - Economic regulation at Gatwick from April 2014 : Notice granting the license) :

a) Airport operator submitted the initial business plan

b) Airport operator and the airlines engaged for almost 6 months to highlight the areas of agreement and disagreement

c) Post the discussion, CAA commissioned several consultancy studies to assess the forecasts mentioned in the initial business plan submitted by the airport operator. The following table contains the studies commissioned by the CAA –

Independent consulting studies commissioned by the CAA	
Topic	**Consultant**
Assessment of maintenance and renewal costs at Heathrow and Gatwick	Steer Davies Gleave
Advice on the calculation of long-run incremental costs	Europe Economics
Other operating expenditure at Heathrow and Gatwick	Steer Davies Gleave
Central support costs	Helios
Comparing and capping airport charges at regulated airports	Leigh Fisher
Employment cost study at Heathrow, Gatwick and Stansted	IDS Thomson Reuters
Review of distribution of economic rents	SLG economics
Review of pension costs for Gatwick Airport	Government Actuary's Department

d) On conclusion of these studies, operating expenditures estimates were shared with stakeholders for their review.

58. Operating expenditure is one of the major component for determining ARR(~ 49% of ARR), hence, the Authority should have evaluated these expenses in detail rather than broadly relying on projections and basis provided by MIAL. Hence, the approach of the Authority for reviewing the operating expenditure is not in line with provision of Airport Guidelines and even international regulatory procedures.

Q Non Aeronautical Revenues projected on a broad basis, an independent study for technical evaluation is required

59. Per para 14.66 of CP10/2015-16, Non-aeronautical revenue has been divided into 4 sub-categories – retail licenses revenue, rent & services revenue and cargo revenue and other income. The evaluation of each head under these sub-categories has been done a case by case basis by the Authority.

60. The Compounded Average Growth Rate (CAGR) for Non-aeronautical revenues comes out to be 10% in the second control period whereas CAGR in the first control period works out to be 15% as reflected in tables below, hence, it appears that Authority has considered lower growth projections for non aeronautical revenues for second control period. It is submitted that the Authority should reasonably estimate or appoint a consultant to determine revenue from these services as it may not be appropriate to burden the airlines and passengers with higher tariff in this control period and provide relief for the same in subsequent period.

Non aeronautical revenue to be considered in the second control period						
Table # 48 from CP 10/2015-16						
Particulars	**CAGR**	**FY15**	**FY16**	**FY17**	**FY18**	**FY19**
Retail Licenses Revenue	12.3%	617.28	674.68	795.05	884.99	983.46
Rent & Services Revenue	12.8%	145.23	167.23	195.72	210.05	235.48
Cargo Revenue	5.3%	237.56	262.13	271.59	281.39	291.55
Other Income		29.74	-	-	-	-
Less: Revenue from Non Transfer Assets		(10.00)	(10.75)	(11.56)	(12.42)	(13.35)
Total Non-aeronautical revenue considered		**1,019.81**	**1,093.29**	**1,250.80**	**1,364.01**	**1,497.14**
Y-o-Y growth total	***10.1%***		***7.21%***	***14.41%***	***9.05%***	***9.76%***

Actual Non-aeronautical revenue as per first control period						
Table # 12 from CP 10/2015-16						
Particulars	**FY10**	**FY11**	**FY12**	**FY13**	**FY14**	**CAGR**
Non Aero revenue including Other income	515.35	688.34	801.49	865.10	888.78	
Growth % YoY		34%	16%	8%	3%	**15%**
Other income	6.91	4.89	6.6	17.92	18.61	
Growth % YoY		-29%	35%	172%	4%	**28%**

61. Further, in case of Gatwick Airport, London, for the purpose of determining tariff for 'Q6 price control period', CAA has appointed an independent consultant, Steer Davies Gleave to conduct study in order to determine commercial revenues at Heathrow and Gatwick airport (Source - Economic regulation at Gatwick from April 2014 : Notice granting the license)

62. Per para 14.64 and 14.66 of CP10/2015-16,the Authority has noted that MIAL has earned 21.47 crore from Other Income in FY15.For the remaining years in the control period, Other income has been considered as Nil and will be reconsidered under true-up post the second control period . Other income during the first control period aggregated to Rs 55 crore with a CAGR of 28% .This suggests that MIAL would generate significant quantum of other income in the second control period. Hence, it is hereby submitted that the Authority should include other incomes on the basis of past trends and cash flow management of the company.

63. Non Aeronautical revenue is one of the major component for determining ARR, hence, the Authority should have evaluated it in detail and on line-by-line basis rather than broadly relying on projections and basis provided by MIAL. It is submitted that the Authority should conduct an independent study for determination of non-aeronautical revenues.

P MIAL's projections accepted without Technical Evaluation

63. It is submitted that the Authority is a sectoral regulator. The Authority should not come at the conclusion based on the submissions made by MIAL without conducting any independent analysis. Since, MIAL is controlling a public asset, the comments of the stakeholders, like the passengers, should be taken into account, prior to accepting MIAL's submissions and projections. It is further submitted that pending the submissions of the stakeholders, the Authority should consider the scenario which is beneficial to the consumers and the stakeholders. In view of the same, it is submitted that the Authority ought not to have accepted the following based on MIAL's projections:

(a) The Authority has accepted MIAL's projections with respect to future capital expenditure without conducting any technical evaluation.

(b) Per para 15.16.1, the Authority has only considered 5-year CAGR growth for forecasting passengers. Accodingly, the Authority has proposed to consider a CAGR of 7.73% for domestic passengers and 6.78% for international passengers

Projected traffic in the second control period

Extracts from table # 52 from CP 10/2015-16

Traffic Category	CAGR	FY15 (Actual)	FY16	FY17	FY18	FY19
Domestic	7.7%	25.21	27.15	29.25	31.51	33.95
International	6.8%	11.43	12.2	13.03	13.92	14.86
Total	7.4%	36.63	39.36	42.28	45.43	48.81

(c) The Authority should take note of this fact as the traffic forecasts is the base for determining the ARR and UDF. It is submitted that the Authority should consider commissioning a fresh independent

study to get more accurate traffic forecasts for second control period which can comprehensively cover all the major dependent factors for calculating the traffic projections. Also, while determining the traffic forecast for the Gatwick airport, CAA considers not only the GDP but also the airlines capacity plans, average aircraft size and passenger load factor, network plans and flight frequency (Source - Economic regulation at Gatwick from April 2014 : Notice granting the license) **SFuture**

capital expenditure projections accepted, without any evaluation

65. The Authority has accepted MIAL's submission despite the known fact that neither standard estimation methodology for estimating the capital expenditure has been adopted and nor stakeholders have been consulted. This depicts that very casual approach which has been adopted by the Authority in evaluating the future capital expenditure. Also, MIAL's submissions are accepted as it is without a detailed study on technical and economical grounds by an independent agency.

Q. True Up mechanism dis-incentivize airport operator to make effort in bringing any operational cost savings

66. It is submitted that instead of deliberating on cost and revenue finalization, true up is allowed for most of the components of tariff determination. Truing up mechanism not only insulate the operators from any risk, however, it also dis-incentivize airport to make effort in bringing any operational cost savings. Hence, we would recommend Authority to follow a pragmatic approach and may consider following aspects in determining tariff:

a) Independent consultants could be hired in order to cover all the critical areas

b) Annual monitoring of price cap

c) Quality of service standards could be monitored against standard benchmark and rebate mechanism should be followed to incentivize passengers in case of any failure

R. Discrepancies in the Consultation Paper No.10/2015-16

67. No detailed tariff model has been made available in the Consultation Paper. Following are some instances where information is not adequately provided or discrepancies are noticeable:-

(a) X factor determination: Computation of X factor is not provided

(b) Project Cost to RAB: Tracing of total RAB cost to the total project cost and amount recorded in financial statements

68. Delay in tariff fixation burdening passengers: The Authority has failed to consider that the airport operator has caused inordinate delay in submitting relevant information with respect to projections for the 2nd Control Period which were submitted till as late as February 2016. This delay in submission has already diminished the effective control period from 60 months to 36 months. Accordingly, in view of the aforesaid, FIA is seeking urgent reconsideration of certain issues by the Authority also, load the additional burden on account on delay in tariff fixation on airport operator/MIAL instead of loading it on passengers

S. FIA craves liberty to make additional submissions at a later stage, if necessary.

Dated: April 25th, 2016

Before the Hon'ble Airport Economic Regulatory Authority

at New Delhi

Re: AERA's Consultation Paper No.10/2015-16

"Determination of Aeronautical Tariffs in respect of Chhatrapati Shivaji International Airport, Mumbai, for the Second Control Period (01.04.2014 – 31.03.2019)"

INDEX

Federation of Indian Airlines

ATTACHMENT-1

hold that the subject goods were freely importable during the relevant period. Accordingly, we answer the first question in favour of the assessee and against the Department.

Our findings on Question (b)

3. The goods were examined in the first instance in the presence of the Chartered Engineers. Vide report dated 7-10-2004 the Chartered Engineers stated that the overall condition of the photocopying machines tallied with the suppliers' invoice. They have further stated that the machines were old and obsolete. They have further stated that the said photocopying machines were non-functional without modified circuitries to suit the Indian Standard Electrical Regulation. Suffice it to state that the report has not been accepted by the adjudicating authority.

4. There is no material on record (except the information from the website) to enhance the value. The year of manufacture is not available. The year of comparable imports as alleged is not available. The website information is in respect of some other model of photocopying machines. In the circumstances, we find no infirmity in the order passed by the Tribunal. Accordingly, Question (*b*) is also answered in favour of the assessee(s) and against the Department.

5. Accordingly, the civil appeals filed by the Department stand dismissed with no order as to costs.

(2009) 12 Supreme Court Cases 40

(BEFORE DR. ARIJIT PASAYAT AND A.K. GANGULY, JJ.)

UMA NATH PANDEY AND OTHERS .. Appellants;

Versus

STATE OF UTTAR PRADESH AND ANOTHER .. Respondents.

Criminal Appeal No. 471 of 2009†, decided on March 16, 2009

Criminal Procedure Code, 1973 — Ss. 397 and 401 — Revision — Notice to respondent(s) — Necessity — High Court allowing revision petition filed by Respondent 2, without issuing notice to appellants and other parties — Impugned order passed by High Court by only hearing Respondent 2 — Impermissibility — Relying on the position of law, impugned order set aside and matter remitted back to High Court for consideration afresh after issuing notice to respondents in revision

(Paras 3 and 4)

Canara Bank v. *V.K. Awasthy*, (2005) 6 SCC 321 : 2005 SCC (L&S) 833; *Suresh Chandra Nanhorya* v. *Rajendra Rajak*, (2006) 7 SCC 800, *followed*

Cooper v. *Wandsworth Board of Works*, (1863) 143 ER 414; *R.* v. *Loc. Govt. Board*, (1914) 1 KB 160 : 83 LJKB 86; *General Medical Council* v. *Spackman*, 1943 AC 627 : (1943) 2 All ER 337 (HL); *Board of Education* v. *Rice*, 1911 AC 179 : 80 LJKB 796 (HL); *Arthur*

† Arising out of SLP (Crl.) No. 6382 of 2007. From the Judgment and Order dated 23-8-2007 of the High Court of Judicature at Allahabad in Crl. R. No. 2163 of 2007

17. 1964 AC 40 : (1963) 2 WLR 935 : (1963) 2 All ER 66 (HL), *Ridge* v. *Baldwin* 47*d*
18. (1963) 1 QB 539 : (1962) 2 WLR 716 : (1962) 1 All ER 834 (CA), *Ridge* v. *Baldwin* 45*f*
19. 1959 NZLR 1014, *McCarthy* v. *Grant* 47*c*
20. 1943 AC 627 : (1943) 2 All ER 337 (HL), *General Medical Council* v. *Spackman* 43*h*
21. (1914) 1 KB 160 : 83 LJKB 86, *R.* v. *Loc. Govt. Board* 43*g-h*
22. 1911 AC 179 : 80 LJKB 796 (HL), *Board of Education* v. *Rice* 44*b*
23. (1890) 24 QBD 712, *Hopkins* v. *Smethwick Local Board* 45*e-f*
24. (1885) 55 LJQB 39 (CA), *Voinet* v. *Barrett* 45*e-f*, 45*f*
25. (1885) 10 AC 229 : 54 LJMC 81 (HL), *Arthur John Spackman* v. *Plumstead District Board of Works* 44*f*, 45*e*
26. (1878) 3 AC 614 (PC), *James Dunbar Smith* v. *R.* 45*d-e*
27. (1863) 143 ER 414, *Cooper* v. *Wandsworth Board of Works* 43*d-e*
28. (1855) 2 Macq 1, *Drew* v. *Drew and Leburn* 45*d-e*
29. (1605) 12 Co Rep 114 : 77 ER 1390, *Earl of Derby's case* 46*c*
30. (1605) 6 Co Rep 48 b : 77 ER 326, *Boswel's case* 46*e-f*

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J.— Leave granted. Challenge in this appeal is to the order passed by a learned Single Judge of the Allahabad High Court allowing the revision petition filed by Respondent 2.

2. Though various points were urged it is not necessary to go into those in detail as the revision petition was allowed even without issuing notice to the present appellants and to the other parties. The learned Single Judge only heard the counsel for Respondent 2 and passed the impugned order. Learned counsel for Respondent 2 submitted that the High Court has taken note of the applicable legal position and therefore there is no scope for interference.

3. "*7.* The crucial question that remains to be adjudicated is whether principles of natural justice have been violated; and if so, to what extent any prejudice has been caused. It may be noted at this juncture that in some cases it has been observed that where grant of opportunity in terms of principles of natural justice do not improve the situation, 'useless formality theory' can be pressed into service.

8. Natural justice is another name for common sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

9. The expressions 'natural justice' and 'legal justice' do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice

relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.

10. The adherence to principles of natural justice as recognised by all civilised States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the 'Magna Carta'. The classic exposition of Sir Edward Coke of natural justice requires to 'vocate, interrogate and adjudicate'. In the celebrated case of *Cooper* v. *Wandsworth Board of Works*[1] the principle was thus stated: (ER p. 420)

> '[E]ven God himself did not pass sentence upon Adam before he was called upon to make his defence. "Adam" (says God), "where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat?".'

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

11. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

12. What is meant by the term 'principles of natural justice' is not easy to determine. Lord Summer (then Hamilton, L.J.) in *R.* v. *Loc. Govt. Board*[2] (KB at p. 199) described the phrase as sadly lacking in precision. In *General Medical Council* v. *Spackman*[3] Lord Wright observed that it

1 (1863) 143 ER 414
2 (1914) 1 KB 160 : 83 LJKB 86
3 1943 AC 627 : (1943) 2 All ER 337 (HL)

ATTACHMENT - 2

Federation of Indian Airlines
Old Vayudoot Building, First Floor,
Room.No. 105, Air India Complex,
Safdarjung Airport, Aurobindo Marg,
New Delhi – 110003.
Tel Fax: 011-24643914
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12 April 2016

4976
12/4/16

To,
The Hon'ble Chairman,
Airports Economic Regulatory Authority of India,
AERA Building, Administrative Complex,
Safdarjung Airport,
New Delhi – 110003.

Kind Attention: Shri. S Machendranathan

Sub: Seeking missing documents referred to in the AERA CP. NO. 10/2015-16 DATED 16.03.2016 RE. Determination of Aeronautical Tariffs in respect of Chhatrapati Shivaji International Airport, Mumbai, for the Second Control Period (1.04.2014 – 31.03.2019)

Dear Sir,

While analyzing the captioned i.e. CP.No.10 of 2015-16: Determination of Aeronautical Tariffs in respect of CSIA Airport, Mumbai for the second control period (01.04.2014–31.03.2019), the Federation of Indian Airlines (FIA) noticed that many Documents/Letters/Communications mentioned in the said CP thereto are missing and the said CP does not share 15 Documents/Letters/Communications as mentioned in the CP, which is enclosed with this letter separately.

In the absence of the aforesaid Documents/Letters/Communications, FIA will not be able to provide detailed, well informed and holistic view point on CP.No.10 of 2015-16; therefore, it is vital for FIA to analyze those Documents/Letters/Communications in order to provide its comments.

Accordingly, we would be obliged if your kind self could grant FIA an **extension of time (3 Weeks) after we receive the documents**. We look forward to receiving a favourable response to our request for the Missing documents and the time to review the same after its receipt, such that a well-informed and detailed response can be provided to AERA.

Thanking You,

Yours Sincerely,

For and on behalf of the Federation of Indian Airlines,

Ujjwal Dey

Ujjwal Dey
Associate Director

LIST OF 15 MISSING DOCUMENTS IN CP. NO. 10/2015-16 DATED 16.03.2016 RE. Determination of Aeronautical Tariffs in respect of Chhatrapati Shivaji International Airport, Mumbai, for the Second Control Period (1.04.2014 – 31.03.2019)

S.No	LETTER	FROM/TO
1.	Dated 24.11.2009 (Referred in Para 2.2 at Page 18 of the CP)	Authority referred to the letter of MoCA
2.	Dated 27.02.2009 (Referred in Para 2.2 at Page 18)	Authority Referred to letter of MoCA
3.	Letter no.- AERA/20010/MYTP/DIAL/CP-II/2013-14/Vol II/8350 dated- 12.05.20115, 10.07.2015 and 07.09.2015 (referred in Para 3.57 at Page-58)	From Authority-Has sought a clarification from MoCA and AAI
4.	Letter-25.02.2016 (referred in Para 4.12 at Page 69)	From MAIL to the Authority
5.	Letter dated 18.12.2013 (referred in Para 5.1 at Page 76)	Copy of letter received from BCAS dated 18th December, 2013
6.	Letter dated 24.12.2013 (referred in Para 5.1 at Page76 ,point3)	Letter received from BCAS dated 24th December, 2013 4
7.	Letter No. MIAL/CEO/138 dated 18.11.2013 (referred in para 5.1 at Page 77 ,3rd Line from top)	From MIAL to Secretary, MoCA

S.No	LETTER	FROM/TO
8.	Letter dated 29.03. 2014 (referred in Para 5.6 at page 83 ,paragraph 3)	From MIAL to MoCA
9.	Letter dated-20.08.2015 (Referred in Para 5.9 at Page 90; above (a))	From MIAL
10.	letter No. 24011/25/2014-AD dated 21.04.2015 (Referred in Para 5.43 at Page 106)	From MoCA
11.	Letter dated 31.05.2015 (Referred Para 5.94 at Page 138)	From MIAL to The Authority
12.	Letter No.AV.24032/037/2011-AD dated 12.03.2012 (Referred in Para 9.3 at Page 174)	From Stakeholders to the Authority
13	Letter no. MLAL/VPR/10 dated 10.03.2014 (Referred in Para 14.56 at page no. 286 in point (b))	MIAL To the Authority
14	Letter no G-17018/7/2001-AAI (referred in para 18.8 at Page 308)	From MoCA
15.	Press Release 88444 dated 16.10.2012 (referred in para 2.3 at page no. 19)	

ATTACHMENT - 3

31. In the present case the appellate court appears to have decided against remanding the matter to the Single Judge on the ground of absence of reasons in the order passed by the latter because any such remand would have only prolonged the agony of the parties. From a reading of the impugned order of the appellate court it is clear that the appellate court was conscious of the fact that the litigation had been prolonged for many years. It, therefore, decided to resolve the matter on merits rather than remitting the same back for a fresh disposal by the learned Single Judge. Inasmuch as the appellate court adopted that approach it did not, in our opinion, commit any mistake to warrant our interference under Article 136 of the Constitution. The litigation between the parties having continued for three decades, the discretion vested in the appellate court and was rightly exercised by it. The submissions made by Mr Kapoor that the appellate court ought to have remitted the matter back to the Single Judge must, therefore, fail and are hereby rejected.

32. In the result this appeal fails and dismissed but in the circumstances without any order as to costs.

(2010) 9 Supreme Court Cases 496

(BEFORE G.S. SINGHVI AND A.K. GANGULY, JJ.)

KRANTI ASSOCIATES PRIVATE LIMITED AND ANOTHER .. Appellants;

Versus

MASOOD AHMED KHAN AND OTHERS .. Respondents.

Civil Appeals No. 7472 of 2010† with No. 7474 of 2010‡, decided on September 8, 2010

A. Consumer Protection — Consumer forums — Exercise of power — Nature and manner of exercise of power — Duty to record reasons — Importance and necessity of — Principles for, restated — Dismissal of revision petition by National Commission by cryptic, non-reasoned order by just affirming State Commission's order — Unsustainability — Held, reasons have virtually become as indispensable a component of decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies — A quasi-judicial authority like National Commission must record reasons in support of its conclusions — Insistence on recording of reasons is meant to serve the wider principle that justice must not only be done it must also appear to be done — Consumer Protection Act, 1986, Ss. 21, 20 and 23 — Practice and Procedure — Revision (Paras 48 to 51)

† Arising out of SLP (C) No. 20428 of 2007. From the Judgment and Order dated 31-8-2007 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 2889 of 2007

‡ Arising out of SLP (C) No. 12766 of 2008

B. **Consumer Protection — Consumer forums — Jurisdiction and powers of — Jurisdiction of consumer forums (National Commission) — Nature of — Held, Commission has trappings of a civil court and is a high-powered quasi-judicial forum for deciding a lis between the parties — Consumer Protection Act, 1986, Ss. 2(1)(k), 9, 12, 13, 14, 21 and 22 — Scheme of the Act** **(Paras 5 to 11)**

C. **Administrative Law — Administrative action — Quasi-judicial function — Compliance with principles of natural justice — Duty to give reasons — Position under Indian law, examined — Case law discussed — Comparison with English and American law — Administrative Law — Natural justice — Duty to give reasons/Recording of reasons/Speaking order — General principles**

D. **Natural Justice — Reasoned order/Speaking order necessity — General principles — Principles summarised — Administrative Law — Courts, Tribunals and Judiciary — Judicial process — Exercise of power — Natural Justice/Reasons/Application of mind — Practice and Procedure — Judgment — Reasons**

E. **Armed Forces — Court Martial — Extent of applicability of principles of natural justice — Constitution of India — Arts. 33, 136(2) and 227(4) — Natural Justice — Reasoned order/Speaking order necessity — Exception — Non-speaking orders — Instances — Court Martial**

Held :

The necessity of giving reasons by a body or authority in support of its decision has come up for consideration before the Supreme Court in several cases. Initially the Court recognised a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point. The Supreme Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the "inscrutable face of a sphinx". (Paras 12, 14 and 15)

A.K. Kraipak v. *Union of India*, (1969) 2 SCC 262; *Keshav Mills Co. Ltd.* v. *Union of India*, (1973) 1 SCC 380; *R.* v. *Gaming Board for Great Britain, ex p Benaim*, (1970) 2 QB 417 : (1970) 2 WLR 1009 : (1970) 2 All ER 528 (CA); *Harinagar Sugar Mills Ltd.* v. *Shyam Sunder Jhunjhunwala*, AIR 1961 SC 1669; *Bhagat Raja* v. *Union of India*, AIR 1967 SC 1606; *Mahabir Prasad Santosh Kumar* v. *State of U.P.*, (1970) 1 SCC 764, *relied on*

Ridge v. *Baldwin*, 1964 AC 40 : (1963) 2 WLR 935 : (1963) 2 All ER 66 (HL), *cited*

Only in cases of Court Martial, has the Supreme Court struck a different note wherein it held that reasons are not required to be recorded for an order confirming the finding and sentence recorded by the Court Martial. Court martial as a proceeding is sui generis in nature and the Court of court martial is different, being called a court of honour and the proceedings therein are slightly different from other proceedings. Our Constitution also deals with court-martial proceedings differently as is clear from Articles 33, 136(2) and 227(4) of the Constitution. (Paras 38, 39 and 40)

Som Datt Datta v. *Union of India*, AIR 1969 SC 414 : 1969 Cri LJ 663; *S.N. Mukherjee* v. *Union of India*, (1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445, *relied on*

In England there was no common law duty of recording of reasons. But, however, the present trend of the law has been towards an increasing recognition of the duty of court to give reasons. It has been acknowledged that this trend is consistent with the development towards openness in the Government and judicial administration. It has been held that justice will not be done if it is not apparent to the parties why one has won and the other has lost. In the United States the courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers. Such recording of reasons is required as the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review.

(Paras 41, 44 and 46)

Travancore Rayon Ltd. v. *Union of India*, (1969) 3 SCC 868; *Woolcombers of India Ltd.* v. *Workers Union*, (1974) 3 SCC 318 : 1973 SCC (L&S) 551; *Union of India* v. *Mohan Lal Capoor*, (1973) 2 SCC 836 : 1974 SCC (L&S) 5; *Siemens Engg. and Mfg. Co. of India Ltd.* v. *Union of India*, (1976) 2 SCC 981; *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248; *Rama Varma Bharathan Thampuram* v. *State of Kerala*, (1979) 4 SCC 782; *Gurdial Singh Fijji* v. *State of Punjab*, (1979) 2 SCC 368 : 1979 SCC (L&S) 197; *Bombay Oil Industries (P) Ltd.* v. *Union of India*, (1984) 1 SCC 141; *Star Enterprises* v. *City and Industrial Development Corpn. of Maharashtra Ltd.*, (1990) 3 SCC 280; *S.N. Mukherjee* v. *Union of India*, (1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445; *North Range Shipping Ltd.* v. *Seatrans Shipping Corpn.*, (2002) 1 WLR 2397 : (2002) 4 All ER 390 : (2002) 2 All ER (Comm) 103 (CA), *relied on*

H.H. Shri Swamiji of Shri Amar Mutt v. *Commr., Hindu Religious and Charitable Endowments Deptt.*, (1979) 4 SCC 642 : 1980 SCC (Tax) 16; *Ram Chander* v. *Union of India*, (1986) 3 SCC 103 : 1986 SCC (L&S) 383 : (1986) 1 ATC 47; *Maharashtra State Board of Secondary and Higher Secondary Education* v. *K.S. Gandhi*, (1991) 2 SCC 716; *M.L. Jaggi* v. *MTNL*, (1996) 3 SCC 119; *Charan Singh* v. *Healing Touch Hospital*, (2000) 7 SCC 668 : 2000 SCC (Cri) 1444; *R.* v. *Civil Service Appeal Board, ex p Cunningham*, (1991) 4 All ER 310 (CA); *English* v. *Emery Reimbold and Strick Ltd.*, (2002) 1 WLR 2409 : (2002) 3 All ER 385 (CA); *Cullen* v. *Chief Constable of the Royal Ulster Constabulary*, (2003) 1 WLR 1763 : (2004) 2 All ER 237 (HL), *considered*

Stefan v. *General Medical Council*, (1999) 1 WLR 1293 (PC); *R.* v. *Immigration Appeal Tribunal, ex p Khan (Mahmud)*, 1983 QB 790 : (1983) 2 WLR 759 : (1983) 2 All ER 420 (CA); *Securities and Exchange Commission* v. *Chenery Corpn.*, 87 L Ed 626 : 318 US 80 (1942); *Dunlop* v. *Bachowski*, 44 L Ed 2d 377 : 421 US 560 (1974), *referred to*

Broom's Legal Maxims (1939 Edn., p. 97); *Winthrop in Military Law and Precedents*, *referred to*

The principles on the recording of reasons can be summarised as follows:

(*a*) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(*b*) A quasi-judicial authority must record reasons in support of its conclusions.

(*c*) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(*d*) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(*e*) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(*f*) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(*g*) Reasons facilitate the process of judicial review by superior courts.

(*h*) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(*i*) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(*j*) Insistence on reason is a requirement for both judicial accountability and transparency.

(*k*) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(*l*) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(*m*) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny.

(*n*) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence.

(*o*) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process". (Para 47)

Ruiz Torija v. *Spain*, (1994) 19 EHRR 553; *Anya* v. *University of Oxford*, 2001 EWCA Civ 405 (CA), *considered*

Defence of Judicial Candor, (1987) 100 Harvard Law Review 731-737, *referred to*

F. **Consumer Protection — Consumer Forums — Appeal — Separate appeal — Right to be heard independently (Paras 49 to 51)**

Appeals allowed B-D/46743/CV

Advocates who appeared in this case :

Krishnan Venugopal, Senior Advocate (Dr. Sarabjit Sharma, Ms Seema Agarwal, Sumit Sharma, Dr. S.K. Verma, Anshu Mahajan, Gaurav Kejriwal, Anilendra Pandey, Ms Priya Kashyap and M.P. Shorawala, Advocates) for the appearing parties.

Chronological list of cases cited ***on page(s)***

29. AIR 1969 SC 414 : 1969 Cri LJ 663, *Som Datt Datta* v. *Union of India* 508*d*, 508*e-f*
30. AIR 1967 SC 1606, *Bhagat Raja* v. *Union of India* 504*b-c*
31. 1964 AC 40 : (1963) 2 WLR 935 : (1963) 2 All ER 66 (HL), *Ridge* v. *Baldwin* 503*c*
32. AIR 1961 SC 1669, *Harinagar Sugar Mills Ltd.* v. *Shyam Sunder Jhunjhunwala* 503*e*, 504*a*, 504*a-b*
33. 87 L Ed 626 : 318 US 80 (1942), *Securities and Exchange Commission* v. *Chenery Corpn.* 510*d*

The Judgment of the Court was delivered by

A.K. GANGULY, J.— Leave granted. These two appeals, one at the instance of the builder and the other at the instance of Corporation Bank, have been filed impugning the order of the National Consumer Disputes Redressal Commission (hereinafter "the said Commission").

2. In the case of the builder, the said Commission has not given any reason and dismissed the revision petition by passing a cryptic order dated 31-8-2007 which reads as under:

> "Heard.
>
> In view of the concurrent findings of the State Commission, we do not find any force in this revision petition.
>
> The revision petition is dismissed."

3. Insofar as the case of the builder is concerned, this Court is of the opinion that the said Commission cannot, considering the way it is structured, dismiss the revision petition by refusing to give any reasons and by just affirming the order of the State Commission.

4. The said Commission has been defined under Section 2(*k*) of the Consumer Protection Act, 1986 (hereinafter "the CP Act") as follows:

> "2.(1)(*k*) 'National Commission' means the National Consumer Disputes Redressal Commission established under clause (*c*) of Section 9;"

5. Under Section 9(*c*) of the CP Act, the said Commission has been established by the Central Government by a notification. The composition of the said Commission has been provided under Section 20 of the CP Act and wherefrom it is clear that the said Commission is a high-powered adjudicating forum headed by a sitting or a retired Judge of the Supreme Court. Section 21 of the CP Act provides for the jurisdiction of the said Commission.

6. In order to appreciate the questions involved in this case, the provision relating to jurisdiction of the said Commission is set out hereunder:

> "21. *Jurisdiction of the National Commission.*—Subject to the other provisions of this Act, the National Commission shall have jurisdiction,—
>
> (*a*) to entertain,—
>
> (*i*) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore; and
>
> (*ii*) appeals against the orders of any State Commission; and

(*b*) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity."

7. Under Section 23 of the CP Act, an appeal would lie against the order of the said Commission passed in exercise of its powers under Section 21(*a*), to this Court, within 30 days, subject to extension of time by this Court on sufficient cause being shown. Under Section 21(*b*), the said Commission exercises revisional power over orders of the State Commission.

8. The power and procedure applicable to the said Commission has been provided under Section 22 of the CP Act. A perusal of Section 22(1) would show that Sections 12, 13 and 14 of the CP Act, with necessary modification, are applicable to the decision-making process by the said Commission. Under Section 13 of the CP Act, the District Forum has been vested, in certain matters, with the powers of a civil court while trying a suit. Section 13(4) of the CP Act is applicable to the said Commission in view of Section 22(1) thereof. Similarly, Sections 13(5), (6) and (7) will also apply to the said Commission in view of Section 22(1).

9. On a perusal of Sections 13(4), (5), (6) and (7) of the CP Act, it is clear that the said Commission has been vested with some of the powers of a civil court. The following powers have been vested on the said Commission:

"13. (4) For purposes of this section, the District Forum shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely—

(*i*) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;

(*ii*) the discovery and production of any document or other material object producible as evidence;

(*iii*) the reception of evidence on affidavits;

(*iv*) the requisitioning of the report of the analysis or test concerned from the appropriate laboratory or from any other relevant source;

(*v*) issuing of any commission for the examination of any witness; and

(*vi*) any other matter which may be prescribed."

10. Under Section 13(5) of the CP Act, every proceeding of the said Commission will be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Penal Code, 1860, and the said Commission shall be deemed to be a civil court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure.

11. The above provisions make it clear that the said Commission has the trappings of a civil court and is a high-powered quasi-judicial forum for deciding lis between the parties.

12. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognised a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in *A.K. Kraipak* v. *Union of India*[1].

13. In *Keshav Mills Co. Ltd.* v. *Union of India*[2] this Court approvingly referred to the opinion of Lord Denning in *R.* v. *Gaming Board for Great Britain, ex p Benaim*[3] and quoted him as saying "that heresy was scotched in *Ridge* v. *Baldwin*[4]".

14. The expression "speaking order" was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of the writ of certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See pp. 1878-97, Vol. 4, Appeal Cases 30 at 40 of the Report).

15. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the "inscrutable face of a sphinx".

16. In *Harinagar Sugar Mills Ltd.* v. *Shyam Sunder Jhunjhunwala*[5], the question of recording reasons came up for consideration in the context of a refusal by Harinagar to transfer, without giving reasons, shares held by Shyam Sunder. Challenging such refusal, the transferee moved the High Court contending, inter alia, that the refusal is mala fide, arbitrary and capricious. The High Court rejected such pleas and the transferee was asked to file a suit. The transferee filed an appeal to the Central Government under Section 111(3) of the Companies Act, 1956 which was dismissed. Thereafter, the son of the original transferee filed another application for transfer of his shares which was similarly refused by the Company. On appeal, the Central Government quashed the resolution passed by the Company and directed the Company to register the transfer. However, in passing the said order, the Government did not give any reason. The Company challenged the said decision before this Court.

1 (1969) 2 SCC 262 : AIR 1970 SC 150
2 (1973) 1 SCC 380 : AIR 1973 SC 389
3 (1970) 2 QB 417 : (1970) 2 WLR 1009 : (1970) 2 All ER 528 (CA)
4 1964 AC 40 : (1963) 2 WLR 935 : (1963) 2 All ER 66 (HL)
5 AIR 1961 SC 1669

17. The other question which arose in *Harinagar*[5] was whether the Central Government, in passing the appellate order acted as a tribunal and is amenable to Article 136 jurisdiction of this Court.

18. Even though in *Harinagar*[5] the decision was administrative, this Court insisted on the requirement of recording reason and further held that in exercising appellate powers, the Central Government acted as a tribunal in exercising judicial powers of the State and such exercise is subject to Article 136 jurisdiction of this Court. Such powers, this Court held, cannot be effectively exercised if reasons are not given by the Central Government in support of the order (AIR pp. 1678-79, para 23).

19. Again in *Bhagat Raja* v. *Union of India*[6] the Constitution Bench of this Court examined the question whether the Central Government was bound to pass a speaking order while dismissing a revision and confirming the order of the State Government in the context of the Mines and Minerals (Development and Regulation) Act, 1957, and having regard to the provision of Rule 55 of the Mineral Concession Rules. The Constitution Bench held that in exercising its power of revision under the aforesaid Rule the Central Government acts in a quasi-judicial capacity (see AIR p. 1610, para 8). Where the State Government gives a number of reasons some of which are good and some are not, and the Central Government merely endorses the order of the State Government without specifying any reason, this Court, exercising its jurisdiction under Article 136, may find it difficult to ascertain which are the grounds on which the Central Government upheld the order of the State Government (see AIR p. 1610, para 9). Therefore, this Court insisted on reasons being given for the order.

20. In *Mahabir Prasad Santosh Kumar* v. *State of U.P.*[7], while dealing with the U.P. Sugar Dealers' Licensing Order under which the licence was cancelled, this Court held that such an order of cancellation is quasi-judicial and must be a speaking one. This Court further held that merely giving an opportunity of hearing is not enough and further pointed out where the order is subject to appeal, the necessity to record reason is even greater. The learned Judges held that the recording of reasons in support of a decision on a disputed claim ensures that the decision is not a result of caprice, whim or fancy but was arrived at after considering the relevant law and that the decision was just. (See SCC p. 768, para 7 : AIR p. 1304, para 7.)

21. In *Travancore Rayon Ltd.* v. *Union of India*[8], the Court, dealing with the revisional jurisdiction of the Central Government under the then Section 36 of the Central Excises and Salt Act, 1944, held that the Central Government was actually exercising judicial power of the State and in exercising judicial power reasons in support of the order must be disclosed on two grounds. The first is that the person aggrieved gets an opportunity to

5 *Harinagar Sugar Mills Ltd.* v. *Shyam Sunder Jhunjhunwala*, AIR 1961 SC 1669
6 AIR 1967 SC 1606
7 (1970) 1 SCC 764 : AIR 1970 SC 1302
8 (1969) 3 SCC 868 : AIR 1971 SC 862

demonstrate that the reasons are erroneous and secondly, the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power (see SCC p. 874, para 11 : AIR pp. 865-66, para 11).

22. In *Woolcombers of India Ltd.* v. *Workers Union*[9] this Court while considering an award under Section 11 of the Industrial Disputes Act insisted on the need of giving reasons in support of conclusions in the award. The Court held that the very requirement of giving reason is to prevent unfairness or arbitrariness in reaching conclusions. The second principle is based on the jurisprudential doctrine that justice should not only be done, it should also appear to be done as well. The learned Judges said that a just but unreasoned conclusion does not appear to be just to those who read the same. Reasoned and just conclusion on the other hand will also have the appearance of justice. The third ground is that such awards are subject to Article 136 jurisdiction of this Court and in the absence of reasons, it is difficult for this Court to ascertain whether the decision is right or wrong (see SCC pp. 320-21, para 5 : AIR p. 2761, para 5).

23. In *Union of India* v. *Mohan Lal Capoor*[10] this Court while dealing with the question of selection under the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations held that the expression "reasons for the proposed supersession" should not be mere rubber-stamp reasons. Such reasons must disclose how mind was applied to the subject-matter for a decision regardless of the fact whether such a decision is purely administrative or quasi-judicial. This Court held that the reasons in such context would mean the link between materials which are considered and the conclusions which are reached. Reasons must reveal a rational nexus between the two (see SCC pp. 853-54, paras 27-28 : AIR pp. 97-98, paras 27-28).

24. In *Siemens Engg. and Mfg. Co. of India Ltd.* v. *Union of India*[11] this Court held that it is far too well settled that an authority in making an order in exercise of its quasi-judicial function, must record reasons in support of the order it makes. The learned Judges emphatically said that every quasi-judicial order must be supported by reasons. The rule requiring reasons in support of a quasi-judicial order is, this Court held, as basic as following the principles of natural justice. And the rule must be observed in its proper spirit. A mere pretence of compliance would not satisfy the requirement of law (see SCC p. 986, para 6 : AIR p. 1789, para 6).

25. In *Maneka Gandhi* v. *Union of India*[12] which is a decision of great jurisprudential significance in our constitutional law, Beg, C.J. in a concurring but different opinion held that an order impounding a passport is a

9 (1974) 3 SCC 318 : 1973 SCC (L&S) 551 : AIR 1973 SC 2758
10 (1973) 2 SCC 836 : 1974 SCC (L&S) 5 : AIR 1974 SC 87
11 (1976) 2 SCC 981 : AIR 1976 SC 1785
12 (1978) 1 SCC 248 : AIR 1978 SC 597

quasi-judicial decision (SCC p. 311, para 34 : AIR p. 612, para 34). The learned Chief Justice also held, when an administrative action involving any deprivation of or restriction on fundamental rights is taken, the authorities must see that justice is not only done but manifestly appears to be done as well. This principle would obviously demand disclosure of reasons for the decision.

26. Y.V. Chandrachud, J. (as His Lordship then was) in a concurring but a separate opinion in *Maneka Gandhi*[12] also held that refusal to disclose reasons for impounding a passport is an exercise of an exceptional nature and is to be done very sparingly and only when it is fully justified by the exigencies of an uncommon situation. The learned Judge further held that law cannot permit any exercise of power by an executive to keep the reasons undisclosed if the only motive for doing so is to keep the reasons away from judicial scrutiny. (See SCC p. 317, para 39 : AIR p. 613, para 39.)

27. In *Rama Varma Bharathan Thampuram* v. *State of Kerala*[13] V.R. Krishna Iyer, J. speaking for a three-Judge Bench held that the functioning of the Board was quasi-judicial in character. One of the attributes of quasi-judicial functioning is the recording of reasons in support of decisions taken and the other requirement is following the principles of natural justice. The learned Judge held that natural justice requires reasons to be written for the conclusions made (see SCC p. 788, para 14 : AIR p. 1922, para 14).

28. In *Gurdial Singh Fijji* v. *State of Punjab*[14] this Court, dealing with a service matter, relying on the ratio in *Capoor*[10], held that "rubber-stamp reason" is not enough and virtually quoted the observation in *Capoor*[10] to the extent that: (*Capoor case*[10], SCC p. 854, para 28)

> "*28.* ... Reasons are the links between the materials on which certain conclusions are based and the actual conclusions." (See AIR p. 377, para 18.)

29. In a Constitution Bench decision of this Court in *H.H. Shri Swamiji of Shri Amar Mutt* v. *Commr., Hindu Religious and Charitable Endowments Deptt.*[15] while giving the majority judgment Y.V. Chandrachud, C.J. referred to (SCC p. 658, para 29) *Broom's Legal Maxims* (1939 Edn., p. 97) where the principle in Latin runs as follows:

> "Cessante ratione legis cessat ipsa lex."

30. The English version of the said principle given by the Chief Justice is that: (*H.H. Shri Swamiji case*[15], SCC p. 658, para 29)

> "*29.* ... 'reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself'." (See AIR p. 11, para 29.)

12 *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248
13 (1979) 4 SCC 782 : AIR 1979 SC 1918
14 (1979) 2 SCC 368 : 1979 SCC (L&S) 197
10 *Union of India* v. *Mohan Lal Capoor*, (1973) 2 SCC 836 : 1974 SCC (L&S) 5
15 (1979) 4 SCC 642 : 1980 SCC (Tax) 16 : AIR 1980 SC 1

31. In *Bombay Oil Industries (P) Ltd.* v. *Union of India*[16] this Court held that while disposing of applications under the Monopolies and Restrictive Trade Practices Act the duty of the Government is to give reasons for its order. This Court made it very clear that the faith of the people in administrative tribunals can be sustained only if the tribunals act fairly and dispose of the matters before them by well-considered orders. In saying so, this Court relied on its previous decisions in *Capoor*[10] and *Siemens Engg.*[11] discussed above.

32. In *Ram Chander* v. *Union of India*[17] this Court was dealing with the appellate provisions under the Railway Servants (Discipline and Appeal) Rules, 1968 condemned the mechanical way of dismissal of appeal in the context of requirement of Rule 22(2) of the aforesaid Rules. This Court held that the word "consider" occurring in Rule 22(2) must mean that the Railway Board shall duly apply its mind and give reasons for its decision. The learned Judges held that the duty to give reason is an incident of the judicial process and emphasised that in discharging quasi-judicial functions the appellate authority must act in accordance with natural justice and give reasons for its decision (SCC pp. 106-07, para 4 : AIR p. 1176, para 4).

33. In *Star Enterprises* v. *City and Industrial Development Corpn. of Maharashtra Ltd.*[18] a three-Judge Bench of this Court held that in the present day set-up judicial review of administrative action has become expansive and is becoming wider day by day and the State has to justify its action in various fields of public law. All these necessitate recording of reason for executive actions including the rejection of the highest offer. This Court held that disclosure of reasons in matters of such rejection provides an opportunity for an objective review both by superior administrative heads and for judicial process and opined that such reasons should be communicated unless there are specific justifications for not doing so (see SCC pp. 284-85, para 10).

34. In *Maharashtra State Board of Secondary and Higher Secondary Education* v. *K.S. Gandhi*[19] this Court held that even in domestic enquiry if the facts are not in dispute non-recording of reason may not be violative of the principles of natural justice but where facts are disputed necessarily the authority or the enquiry officer, on consideration of the materials on record, should record reasons in support of the conclusion reached (see SCC pp. 738-39, para 22).

35. In *M.L. Jaggi* v. *MTNL*[20] this Court dealt with an award under Section 7 of the Telegraph Act and held that since the said award affects

16 (1984) 1 SCC 141 : AIR 1984 SC 160
10 *Union of India* v. *Mohan Lal Capoor*, (1973) 2 SCC 836 : 1974 SCC (L&S) 5
11 *Siemens Engg. and Mfg. Co. of India Ltd.* v. *Union of India*, (1976) 2 SCC 981
17 (1986) 3 SCC 103 : 1986 SCC (L&S) 383 : (1986) 1 ATC 47 : AIR 1986 SC 1173
18 (1990) 3 SCC 280
19 (1991) 2 SCC 716
20 (1996) 3 SCC 119

public interest, reasons must be recorded in the award. It was also held that such reasons are to be recorded so that it enables the High Court to exercise its power of judicial review on the validity of the award. (See SCC p. 123, para 8.)

36. In *Charan Singh* v. *Healing Touch Hospital*[21] a three-Judge Bench of this Court, dealing with a grievance under the CP Act, held that the authorities under the Act exercise quasi-judicial powers for redressal of consumer disputes and it is, therefore, imperative that such a body should arrive at conclusions based on reasons. This Court held that the said Act, being one of the benevolent pieces of legislation, is intended to protect a large body of consumers from exploitation as the said Act provides for an alternative mode for consumer justice by the process of a summary trial. The powers which are exercised are definitely quasi-judicial in nature and in such a situation the conclusions must be based on reasons and held that requirement of recording reasons is "too obvious to be reiterated and needs no emphasising". (See SCC p. 673, para 11 : AIR p. 3141, para 11 of the Report.)

37. Only in cases of Court Martial, this Court struck a different note in two of its Constitution Bench decisions, the first of which was rendered in *Som Datt Datta* v. *Union of India*[22] where Ramaswami, J. delivering the judgment for the unanimous Constitution Bench held that provisions of Sections 164 and 165 of the Army Act do not require an order confirming proceedings of Court Martial to be supported by reasons. This Court held that an order confirming such proceedings does not become illegal if it does not record reasons. (AIR pp. 421-22, para 10 of the Report.)

38. About two decades thereafter, a similar question cropped up before this Court in *S.N. Mukherjee* v. *Union of India*[23]. A unanimous Constitution Bench speaking through S.C. Agrawal, J. confirmed its earlier decision in *Som Datt*[22] in *S.N. Mukherjee case*[23], SCC p. 619, para 47 : AIR para 47 at p. 2000 of the Report and held that reasons are not required to be recorded for an order confirming the finding and sentence recorded by the Court Martial.

39. It must be remembered in this connection that the court martial as a proceeding is sui generis in nature and the Court of Court Martial is different, being called a court of honour and the proceedings therein are slightly different from other proceedings. About the nature of Court Martial and its proceedings the observations of *Winthrop in Military Law and Precedents* are very pertinent and are extracted hereinbelow:

> "Not belonging to the judicial branch of the Government, it follows that Courts Martial must pertain to the executive department; and they

21 (2000) 7 SCC 668 : 2000 SCC (Cri) 1444 : AIR 2000 SC 3138

22 AIR 1969 SC 414 : 1969 Cri LJ 663

23 (1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445 : AIR 1990 SC 1984

are in fact simply instrumentalities of the executive power, provided by Congress for the President as Commander-in-Chief, to aid him in properly commanding the Army and Navy and enforcing discipline therein, and utilised under his orders or those of his authorised military representatives."

40. Our Constitution also deals with court-martial proceedings differently as is clear from Articles 33, 136(2) and 227(4) of the Constitution.

41. In England there was no common law duty of recording of reasons. In *Stefan* v. *General Medical Council*[24] it has been held: (WLR p. 1300)

the established position of the common law is that there is no general duty imposed on our decision makers to record reasons.

It has been acknowledged in the Justice Report, Administration Under Law (1971) at p. 23 that:

"No single factor has inhibited the development of English administrative law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions."

42. Even then in *R.* v. *Civil Service Appeal Board, ex p Cunningham*[25], Lord Donaldson, Master of Rolls, opined very strongly in favour of disclosing of reasons in a case where the Court is acting in its discretion. The learned Master of Rolls said: (All ER p. 317)

"... '... it is a corollary of the discretion conferred upon the Board that it is their duty to set out their reasoning in sufficient form to show the principles on which they have proceeded. Adopting Lord Lane, C.J.'s observations [in *R.* v. *Immigration Appeal Tribunal, ex p Khan (Mahmud)*[26] All ER at p. 423, QB at pp. 794-95], the reasons for the lower amount is not obvious. Mr Cunningham is entitled to know, either expressly or inferentially stated, what it was to which the Board were addressing their mind in arriving at their conclusion. It must be obvious to the Board that Mr Cunningham is left with a burning sense of grievance. They should be sensitive to the fact that he is left with a real feeling of injustice, that having been found to have been unfairly dismissed, he has been deprived of his just desserts (as he sees them).' "

43. The learned Master of Rolls further clarified by saying: (*Civil Service Appeal Board case*[25], All ER p. 317)

"... '... Thus, in the particular circumstances of this case, and without wishing to establish any precedent whatsoever, I am prepared to spell out an obligation on this Board to give succinct reasons, if only to put the mind of Mr Cunningham at rest. I would therefore allow this application.' "

44. But, however, the present trend of the law has been towards an increasing recognition of the duty of court to give reasons (see *North Range*

24 (1999) 1 WLR 1293 (PC)
25 (1991) 4 All ER 310 (CA)
26 1983 QB 790 : (1983) 2 WLR 759 : (1983) 2 All ER 420 (CA)

Shipping Ltd. v. *Seatrans Shipping Corpn.*[27]). It has been acknowledged that this trend is consistent with the development towards openness in the Government and judicial administration.

45. In *English* v. *Emery Reimbold and Strick Ltd.*[28] it has been held that justice will not be done if it is not apparent to the parties why one has won and the other has lost. The House of Lords in *Cullen* v. *Chief Constable of the Royal Ulster Constabulary*[29], Lord Bingham of Cornhill and Lord Steyn, on the requirement of reason held: (WLR p. 1769, para 7)

> "7. ... First, they impose a discipline ... which may contribute to such refusals being considered with care. Secondly, reasons encourage transparency ... Thirdly, they assist the courts in performing their supervisory function if judicial review proceedings are launched."

46. The position in the United States has been indicated by this Court in *S.N. Mukherjee*[23] in SCC p. 602, para 11 : AIR para 11 at p. 1988 of the judgment. This Court held that in the United States the courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers. It was further held that such recording of reasons is required as "the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review". In *S.N. Mukherjee*[23] this Court relied on the decisions of the US Court in *Securities and Exchange Commission* v. *Chenery Corpn.*[30] and *Dunlop* v. *Bachowski*[31] in support of its opinion discussed above.

47. Summarising the above discussion, this Court holds:

(*a*) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(*b*) A quasi-judicial authority must record reasons in support of its conclusions.

(*c*) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(*d*) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(*e*) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

27 (2002) 1 WLR 2397 : (2002) 4 All ER 390 : (2002) 2 All ER (Comm) 103 (CA)

28 (2002) 1 WLR 2409 : (2002) 3 All ER 385 (CA)

29 (2003) 1 WLR 1763 : (2004) 2 All ER 237 (HL)

23 *S.N. Mukherjee* v. *Union of India*, (1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445

30 87 L Ed 626 : 318 US 80 (1942)

31 44 L Ed 2d 377 : 421 US 560 (1974)

(*f*) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(*g*) Reasons facilitate the process of judicial review by superior courts.

(*h*) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(*i*) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(*j*) Insistence on reason is a requirement for both judicial accountability and transparency.

(*k*) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(*l*) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(*m*) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor*[32].)

(*n*) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija* v. *Spain*[33] EHRR, at 562 para 29 and *Anya* v. *University of Oxford*[34], wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(*o*) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law,

32 (1987) 100 Harvard Law Review 731-37
33 (1994) 19 EHRR 553
34 2001 EWCA Civ 405 (CA)

requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

48. For the reasons aforesaid, we set aside the order of the National Consumer Disputes Redressal Commission and remand the matter to the said forum for deciding the matter by passing a reasoned order in the light of the observations made above. Since some time has elapsed, this Court requests the forum to decide the matter as early as possible, preferably within a period of six weeks from the date of service of this order upon it.

49. Insofar as the appeal filed by the Bank is concerned, this Court finds that the National Consumer Disputes Redressal Commission in its order dated 4-4-2008 has given some reasons in its finding. The reasons, inter alia, are as under:

> "We have gone through the orders of the District Forum and the State Commission, perused the record placed before us and heard the parties at length. The State Commission has rightly confirmed the order of the District Forum after coming to the conclusion that the petitioner and the builder, Respondents 3 and 4 have colluded with each other and hence, directed them to compensate the complainant for the harassment caused to them."

50. From the order of the State Commission dated 26-7-2007 in connection with the appeal filed by the Bank, we do not find that the State Commission has independently considered the Bank's appeal. The State Commission dismissed the Bank's appeal for the reasons given in its order dated 6-7-2007 in connection with the appeal of the builders.

51. This Court is of the view that since the Bank has filed a separate appeal, it has a right to be heard independently in support of its appeal. That right has been denied by the State Commission. In that view of the matter, this Court quashes the order dated 26-7-2007 passed by the State Commission as also the order of the National Commission dated 4-4-2008 which has affirmed the order of the State Commission.

52. This case is remanded to the State Commission for hearing on merits as early as possible, preferably within a period of six weeks from the date of service of this order to the State Commission. It is expected that the State Commission will hear out the matter independently and give adequate reasons for its conclusions. We, however, do not make any observations on the merits of the case.

53. Both these appeals are allowed. No order as to costs.

ATTACHMENT-4

(2007) 13 Supreme Court Cases 673

(BEFORE S.H. KAPADIA AND B. SUDERSHAN REDDY, JJ.)

J.K. INDUSTRIES LIMITED AND ANOTHER .. Appellants;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Civil Appeals No. 3761 of 2007† with Nos. 3478-80 and 3482 of 2007, decided on November 19, 2007

A. **Corporate Laws — Companies Act, 1956 — Ss. 642(1), 641, 211(1), (3-A) & (3-C), 210-A(1), 227(3)(d) and Sch. VI — Companies (Accounting Standards) Rules, 2006 — Rr. 3 & 2(a) — Accounting Standard 22 (AS 22) — Accounting for taxes on income — Provision in AS 22 Para 9 for including Deferred Tax Liabilities (DTL) in determination of net profit, held, intra vires S. 642(1)**

B. **Interpretation of Statutes — External aids — Rules framed under the Act — Companies (Accounting Standards) Rules, 2006, framed under S. 642 of Companies Act, 1956, held, are a legitimate aid to construction of the Companies Act as contemporanea expositio — Corporate Laws — Companies Act, 1956 — S. 642 — Companies (Accounting Standards) Rules, 2006 — Held, are a legitimate aid to construction of the Act — So also AS 22**

C. **Corporate Laws — Companies Act, 1956 — Ss. 642(1), 211(3-C) and 210-A(1) — Companies (Accounting Standards) Rules, 2006 — Rr. 3 & 2(a) — Accounting Standard 22 (AS 22) — Nature of — Held, mandatory — Accountancy/Accounts/Accounting**

The appellant was a public limited company. It carried on the business of manufacture and sale of certain products. It challenged Accounting Standard 22 (AS 22) issued by the Institute of Chartered Accountants of India (the Institute) which had been made mandatory for all companies listed in stock exchanges in India in preparation of their accounts for Financial Year 2001-2002 onwards. In exercise of the powers conferred by Section 642(1)(*a*) of the Companies Act read with Section 211(3-C) and Section 210-A(1), the Central Government in consultation with NAC on Accounting Standards made the Companies (Accounting Standards) Rules, 2006 by the impugned Notification dated 7-12-2006. AS 22 earlier specified by the Institute was adopted therein in the form of a rule. Before that date, AS 22 had been challenged in writ petitions before various High Courts which were later, by an order of Supreme Court, transferred to Calcutta High Court. The High Court decided against the writ petitioners. The appellant and certain other companies then filed the present appeals.

Before the Supreme Court, the appellants contended that Para 9 of AS 22, insofar as it provided for the inclusion of DTL in the determination of the net profit (loss), was contrary to and inconsistent with Part II of Clause 3(*vi*) of Schedule VI, and consequently it amounted to excessive exercise of the powers conferred under Section 211 read with Section 642(1) of the Companies Act and

† From the Judgment and Order dated 19-4-2007 of the High Court of Calcutta in WP No. 10608 (W) of 2002

forma of P&L account. Part I of Schedule VI prescribes a pro forma of balance sheet. Part II of Schedule VI only prescribes the *particulars* which must be furnished in the P&L account. Therefore, as far as possible, the P&L account must be drawn up according to the requirements of Part II of Schedule VI.

23. It is important to note that Section 211 read with Part I and Part II of Schedule VI prescribes the form and contents of balance sheet and P&L account. However, Section 211(1), *inter alia*, states that every balance sheet of a company shall subject to the provisions of that section, be in the form set out in Part I of Schedule VI. The words "subject to the provisions of this section'' would mean that every sub-section following sub-section (1) including sub-sections (3-A), (3-B) and (3-C) shall have an overriding effect and consequently every P&L account and balance sheet shall comply with the Accounting Standards. Therefore, implementation of the Accounting Standards and their compliance are made compulsory and mandatory by the aforestated sub-sections (3-A), (3-B) and (3-C).

24. The insertion of the concept of "true and fair view" in place of "true and correct" has been made to do away with the view that accounts should disclose arithmetical accuracy. Adherence to the disclosure requirements as per Schedule VI is subservient to the overriding requirement of "true and fair view" as regards the state of affairs. Therefore, the annual financial statements should convey an overall fair view and should not give any misleading information or impression. All the relevant information should be disclosed in the balance sheet and the P&L account in such a manner that the financial position and the working results are shown as they are. There should be neither an overstatement nor an understatement. Further, the information to be disclosed should be in consonance with the fundamental accounting assumptions and commonly accepted accounting policies. Therefore, failure to make provision for taxation would not disclose true and fair view of the state of affairs. Non-compliance with taxation would, therefore, amount to contravention of Sections 209 and 211 of the Companies Act. Accordingly, it is necessary for the auditor to qualify in his report, and such qualification should bring out in what manner the accounts do not disclose a true and fair view of the state of affairs of the company as well as the profit/loss of the company.

25. Several Accounting Standards prescribed by the Institute have been made mandatory. The Institute has, however, clarified that the expression "mandatory in nature" implies that while discharging their functions, it will be the duty of the Chartered Accountants who are members of the Institute to examine whether the said Accounting Standard has been complied with in the presentation of financial statements covered by their audit [See Section 227(3)(*d*).] In this regard it may be noted that under Section 227(3)(*d*) it is the duty of the auditor, to state in his audit report whether the P&L account and the balance sheet complies with the Accounting Standards referred to in Section 211(3-C). Before introduction of sub-sections (3-A), (3-B) and (3-C) in Section 211 (w.e.f. 31-10-1998) these Standards were not mandatory.

Therefore, the companies were then free to prepare their annual financial statements, as per the specific requirements of Section 211 read with Schedule VI. However, with the insertion of sub-sections (3-A), (3-B) and (3-C) in Section 211 the P&L account and the balance sheet have to comply with the Accounting Standards. For this purpose the expression "Accounting Standards" shall mean the standards of accounting recommended by the Institute as may be prescribed by the Central Government in consultation with NAC on Accounting Standards. Thus, the Accounting Standards are prescribed by the Central Government. Thus, the Accounting Standards prescribed by the Central Government are now mandatory qua the companies and non-compliance with these Standards would lead to violation of Section 211 inasmuch as the annual accounts may then not be regarded as showing a "true and fair view".

26. Section 641 empowers the Central Government to alter any of the regulations, rules, tables, forms and other provisions contained in Schedule VI to the Companies Act. However, this power can be used only for making simple alterations which will not affect the legislative policies enshrined in the Companies Act.

27. Section 642 refers to the powers of the Central Government to make rules. It states that *in addition to the powers conferred* by Section 641, the Central Government may, by notification in the Official Gazette, make rules for all or any of the matters which by the Companies Act are to be prescribed by the Central Government and to carry out the purposes of the Companies Act. Therefore, Sections 641 and 642 form part of the same scheme. Under Section 642, *the Central Government exercises power of delegated legislation by prescribing rules*. Under various provisions of the Act, Rules are to be prescribed. Rules can also be prescribed vide Clause (*b*) to Section 642(1) to carry out the purposes of the Act.

28. In exercise of the powers conferred by Clause (*a*) to sub-section (1) of Section 642 of the Companies Act read with sub-section (3-C) of Section 211 and Section 210-A(1), the Central Government in consultation with NAC on Accounting Standards has made the following Rules vide the impugned Notification dated 7-12-2006. The said Rules are called as the Companies (Accounting Standards) Rules, 2006. We quote hereinbelow the said impugned notification in entirety together with annexures:

"Ministry of Company Affairs

NOTIFICATION

New Delhi, the 7th December, 2006

ACCOUNTING STANDARDS

GSR 739 (E).—In exercise of the powers conferred by Clause (*a*) of sub-section (1) of Section 642 of the Companies Act, 1956 (1 of 1956), read with sub-section (3-C) of Section 211 and sub-section (1) of Section 210-A of the said Act, the Central Government, in consultation with National Advisory Committee on Accounting Standards, hereby makes the following rules, namely:

ATTACHMENT-5

99

Accounting Standard (AS) 6
(revised 1994)

Depreciation Accounting

Contents

Accounting Standard (AS) 6*
(revised 1994)

Depreciation Accounting

*(This Accounting Standard includes paragraphs 20-29 set in **bold italic** type and paragraphs 1-19 set in plain type, which have equal authority. Paragraphs in bold italic type indicate the main principles. This Accounting Standard should be read in the context of the Preface to the Statements of Accounting Standards[1].)*

The following is the text of the revised Accounting Standard (AS) 6, 'Depreciation Accounting', issued by the Council of the Institute of Chartered Accountants of India.

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* Accounting Standard (AS) 6, *Depreciation Accounting*, was issued by the Institute in November 1982. Subsequently, in the context of insertion of Schedule XIV in the Companies Act in 1988, the Institute brought out a Guidance Note on Accounting for Depreciation in Companies which came into effect in respect of accounting periods commencing on or after 1st April, 1989. The Guidance Note differed from AS 6 in respect of accounting treatment of (a) change in the method of depreciation, and (b) change in the rates of depreciation. It was clarified in the Guidance Note, with regard to the matter at (a), that AS 6 would be revised to bring it in line with the recommendations of the Guidance Note.

Based on the recommendations of the Accounting Standards Board, the Council of the Institute at its 168th meeting, held on May 26-29, 1994, decided to bring AS 6 in line with the Guidance Note in respect of both of the aforementioned matters. Accordingly, it was decided to modify paragraphs 11, 15, 22 and 24 and delete paragraph 19 of AS 6. Also, in the context of delinking of rates of depreciation under the Companies Act from those under the Income-tax Act/Rules by the Companies (Amendment) Act, 1988, the Council decided to suitably modify paragraph 13 of AS 6. An announcement to this effect was published in the August 1994 issue of *The Chartered Accountant* (pp. 218-219).

AS 6 is mandatory in respect of accounts for periods commencing on or after 1.4.1995. Reference may be made to the section titled 'Announcements of the Council regarding status of various documents issued by the Institute of Chartered Accountants of India' appearing at the beginning of this Compendium for a detailed discussion on the implications of the mandatory status of an accounting standard. From the date of Accounting Standard (AS) 26, 'Intangible Assets', becoming mandatory for the concerned enterprises, this Standard stands withdrawn insofar as it relates to the amortisation (depreciation) of intangible assets (See AS 26).

[1] Attention is specifically drawn to paragraph 4.3 of the Preface, according to which Accounting Standards are intended to apply only to items which are material.

Introduction

1. This Statement deals with depreciation accounting and applies to all depreciable assets, except the following items to which special considerations apply:—

(i) forests, plantations and similar regenerative natural resources;

(ii) wasting assets including expenditure on the exploration for and extraction of minerals, oils, natural gas and similar non-regenerative resources;

(iii) expenditure on research and development;

(iv) goodwill;

(v) live stock.

This statement also does not apply to land unless it has a limited useful life for the enterprise.

2. Different accounting policies for depreciation are adopted by different enterprises. Disclosure of accounting policies for depreciation followed by an enterprise is necessary to appreciate the view presented in the financial statements of the enterprise.

Definitions

3. The following terms are used in this Statement with the meanings specified:

3.1 *Depreciation* is a measure of the wearing out, consumption or other loss of value of a depreciable asset arising from use, effluxion of time or obsolescence through technology and market changes. Depreciation is allocated so as to charge a fair proportion of the depreciable amount in each accounting period during the expected useful life of the asset. Depreciation includes amortisation of assets whose useful life is predetermined.

3.2 *Depreciable assets* are assets which

(i) are expected to be used during more than one accounting period; and

(ii) have a limited useful life; and

(iii) are held by an enterprise for use in the production or supply of goods and services, for rental to others, or for administrative purposes and not for the purpose of sale in the ordinary course of business.

3.3 *Useful life* is either (i) the period over which a depreciable asset is expected to be used by the enterprise; or (ii) the number of production or similar units expected to be obtained from the use of the asset by the enterprise.

3.4 *Depreciable amount* of a depreciable asset is its historical cost, or other amount substituted for historical cost[2] in the financial statements, less the estimated residual value.

Explanation

4. Depreciation has a significant effect in determining and presenting the financial position and results of operations of an enterprise. Depreciation is charged in each accounting period by reference to the extent of the depreciable amount, irrespective of an increase in the market value of the assets.

5. Assessment of depreciation and the amount to be charged in respect thereof in an accounting period are usually based on the following three factors:

(i) historical cost or other amount substituted for the historical cost of the depreciable asset when the asset has been revalued;

(ii) expected useful life of the depreciable asset; and

(iii) estimated residual value of the depreciable asset.

6. Historical cost of a depreciable asset represents its money outlay or its equivalent in connection with its acquisition, installation and commissioning as well as for additions to or improvement thereof. The historical cost of a depreciable asset may undergo subsequent changes arising as a result of increase or decrease in long term liability on account of exchange fluctuations, price adjustments, changes in duties or similar factors.

[2] This statement does not deal with the treatment of the revaluation difference which may arise when historical costs are substituted by revaluations.

7. The useful life of a depreciable asset is shorter than its physical life and is:

(i) pre-determined by legal or contractual limits, such as the expiry dates of related leases;

(ii) directly governed by extraction or consumption;

(iii) dependent on the extent of use and physical deterioration on account of wear and tear which again depends on operational factors, such as, the number of shifts for which the asset is to be used, repair and maintenance policy of the enterprise etc.; and

(iv) reduced by obsolescence arising from such factors as:

(a) technological changes;

(b) improvement in production methods;

(c) change in market demand for the product or service output of the asset; or

(d) legal or other restrictions.

8. Determination of the useful life of a depreciable asset is a matter of estimation and is normally based on various factors including experience with similar types of assets. Such estimation is more difficult for an asset using new technology or used in the production of a new product or in the provision of a new service but is nevertheless required on some reasonable basis.

9. Any addition or extension to an existing asset which is of a capital nature and which becomes an integral part of the existing asset is depreciated over the remaining useful life of that asset. As a practical measure, however, depreciation is sometimes provided on such addition or extension at the rate which is applied to an existing asset. Any addition or extension which retains a separate identity and is capable of being used after the existing asset is disposed of, is depreciated independently on the basis of an estimate of its own useful life.

10. Determination of residual value of an asset is normally a difficult matter. If such value is considered as insignificant, it is normally regarded as nil. On

the contrary, if the residual value is likely to be significant, it is estimated at the time of acquisition/installation, or at the time of subsequent revaluation of the asset. One of the bases for determining the residual value would be the realisable value of similar assets which have reached the end of their useful lives and have operated under conditions similar to those in which the asset will be used.

11. The quantum of depreciation to be provided in an accounting period involves the exercise of judgement by management in the light of technical, commercial, accounting and legal requirements and accordingly may need periodical review. If it is considered that the original estimate of useful life of an asset requires any revision, the unamortised depreciable amount of the asset is charged to revenue over the revised remaining useful life.

12. There are several methods of allocating depreciation over the useful life of the assets. Those most commonly employed in industrial and commercial enterprises are the straightline method and the reducing balance method. The management of a business selects the most appropriate method(s) based on various important factors e.g., (i) type of asset, (ii) the nature of the use of such asset and (iii) circumstances prevailing in the business. A combination of more than one method is sometimes used. In respect of depreciable assets which do not have material value, depreciation is often allocated fully in the accounting period in which they are acquired.

13. The statute governing an enterprise may provide the basis for computation of the depreciation. For example, the Companies Act, 1956 lays down the rates of depreciation in respect of various assets. Where the management's estimate of the useful life of an asset of the enterprise is shorter than that envisaged under the provisions of the relevant statute, the depreciation provision
is appropriately computed by applying a higher rate. If the management's estimate of the useful life of the asset is longer than that envisaged under the statute, depreciation rate lower than that envisaged by the statute can be applied only in accordance with requirements of the statute.

14. Where depreciable assets are disposed of, discarded, demolished or destroyed, the net surplus or deficiency, if material, is disclosed separately.

15. The method of depreciation is applied consistently to provide comparability of the results of the operations of the enterprise from period to period. A change from one method of providing depreciation to another is made only if the adoption of the new method is required by statute or for

compliance with an accounting standard or if it is considered that the change would result in a more appropriate preparation or presentation of the financial statements of the enterprise. When such a change in the method of depreciation is made, depreciation is recalculated in accordance with the new method from the date of the asset coming into use. The deficiency or surplus arising from retrospective recomputation of depreciation in accordance with the new method is adjusted in the accounts in the year in which the method of depreciation is changed. In case the change in the method results in deficiency in depreciation in respect of past years, the deficiency is charged in the statement of profit and loss. In case the change in the method results in surplus, the surplus is credited to the statement of profit and loss. Such a change is treated as a change in accounting policy and its effect is quantified and disclosed.

16. Where the historical cost of an asset has undergone a change due to circumstances specified in para 6 above, the depreciation on the revised unamortised depreciable amount is provided prospectively over the residual useful life of the asset.

Disclosure

17. The depreciation methods used, the total depreciation for the period for each class of assets, the gross amount of each class of depreciable assets and the related accumulated depreciation are disclosed in the financial statements alongwith the disclosure of other accounting policies. The depreciation rates or the useful lives of the assets are disclosed only if they are different from the principal rates specified in the statute governing the enterprise.

18. In case the depreciable assets are revalued, the provision for depreciation is based on the revalued amount on the estimate of the remaining useful life of such assets. In case the revaluation has a material effect on the amount of depreciation, the same is disclosed separately in the year in which revaluation is carried out.

19. A change in the method of depreciation is treated as a change in an accounting policy and is disclosed accordingly.[3]

[3] Refer to AS 5.

Accounting Standard

20. The depreciable amount of a depreciable asset should be allocated on a systematic basis to each accounting period during the useful life of the asset.

21. The depreciation method selected should be applied consistently from period to period. A change from one method of providing depreciation to another should be made only if the adoption of the new method is required by statute or for compliance with an accounting standard or if it is considered that the change would result in a more appropriate preparation or presentation of the financial statements of the enterprise. When such a change in the method of depreciation is made, depreciation should be recalculated in accordance with the new method from the date of the asset coming into use. The deficiency or surplus arising from retrospective recomputation of depreciation in accordance with the new method should be adjusted in the accounts in the year in which the method of depreciation is changed. In case the change in the method results in deficiency in depreciation in respect of past years, the deficiency should be charged in the statement of profit and loss. In case the change in the method results in surplus, the surplus should be credited to the statement of profit and loss. Such a change should be treated as a change in accounting policy and its effect should be quantified and disclosed.

22. The useful life of a depreciable asset should be estimated after considering the following factors:

(i) expected physical wear and tear;

(ii) obsolescence;

(iii) legal or other limits on the use of the asset.

23. The useful lives of major depreciable assets or classes of depreciable assets may be reviewed periodically. Where there is a revision of the estimated useful life of an asset, the unamortised depreciable amount should be charged over the revised remaining useful life.

24. Any addition or extension which becomes an integral part of the existing asset should be depreciated over the remaining useful life of that asset. The depreciation on such addition or extension may also be

provided at the rate applied to the existing asset. Where an addition or extension retains a separate identity and is capable of being used after the existing asset is disposed of, depreciation should be provided independently on the basis of an estimate of its own useful life.

25. Where the historical cost of a depreciable asset has undergone a change due to increase or decrease in long term liability on account of exchange fluctuations, price adjustments, changes in duties or similar factors, the depreciation on the revised unamortised depreciable amount should be provided prospectively over the residual useful life of the asset.

26. Where the depreciable assets are revalued, the provision for depreciation should be based on the revalued amount and on the estimate of the remaining useful lives of such assets. In case the revaluation has a material effect on the amount of depreciation, the same should be disclosed separately in the year in which revaluation is carried out.

27. If any depreciable asset is disposed of, discarded, demolished or destroyed, the net surplus or deficiency, if material, should be disclosed separately.

28. The following information should be disclosed in the financial statements:

(i) the historical cost or other amount substituted for historical cost of each class of depreciable assets;

(ii) total depreciation for the period for each class of assets; and

(iii) the related accumulated depreciation.

29. The following information should also be disclosed in the financial statements alongwith the disclosure of other accounting policies:

(i) depreciation methods used; and

(ii) depreciation rates or the useful lives of the assets, if they are different from the principal rates specified in the statute governing the enterprise.

ATTACHMENT-6

THE SUPREME COURT CASES

(2012) 10 SCC

(2012) 10 Supreme Court Cases 1

(BEFORE S.H. KAPADIA, C.J. AND D.K. JAIN, J.S. KHEHAR, DIPAK MISRA AND RANJAN GOGOI, JJ.)

NATURAL RESOURCES ALLOCATION, IN RE, SPECIAL REFERENCE No. 1 OF 2012

Special Reference No. 1 of 2012†, decided on September 27, 2012

A. **Constitution of India — Art. 14 — Violation of, by legislation or executive action — Determination of — Approach to be adopted — Test, if any, that may applied — Formulaic approach, comprehensively rejected — Development of jurisprudence on Art. 14 since inception of Constitution, traced — Shortcomings of classification doctrine and arbitrariness doctrine, highlighted — Executive power — Limits on — Foundational principles of executive governance — Held (*per curiam*), a constitutional mandate is an absolute principle which has to be applied in all situations on a case-by-case basis to see which actions fulfil the requirements thereof and which do not — A constitutional principle must not be limited to a precise formula but ought to be an abstract principle applied to precise situations — Strength of constitutional adjudication and judicial review lies in case to case adjudication — Thus held (*per curiam*), State action, be it legislative or executive action, has to be tested for constitutional infirmities qua Art. 14: State action to escape wrath of Art. 14 has to be fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment — State action must conform to norms which are rational, informed with reasons and guided by public interest — All these principles are inherent in Art. 14 — This is the mandate of Art. 14 — Held, *per Khehar, J.* (*concurring*), executive action should have clearly defined limits and should be predictable — Man on street should know why decision has been taken in favour of a particular person — Lack of transparency in decision-making process would render it arbitrary — Foundational principle of executive governance is based on realisation that sovereignty**

† Under Article 143(1) of the Constitution of India

mechanisms, cannot be held to be the only constitutionally recognised method for alienation of natural resources. That should not be understood to mean that it can never be a valid method for disposal of natural resources (refer to paras 186 to 188 of my instant opinion).

200. I would, therefore, conclude by stating that no part of the natural resource can be dissipated as a matter of largesse, charity, donation or endowment, for private exploitation. Each bit of natural resource expended must bring back a reciprocal consideration. The consideration may be in the nature of earning revenue or may be to "best subserve the common good". It may well be the amalgam of the two. There cannot be a dissipation of material resources free of cost or at a consideration lower than their actual worth. One set of citizens cannot prosper at the cost of another set of citizens, for that would not be fair or reasonable.

(2012) 10 Supreme Court Cases 144

(BEFORE A.K. PATNAIK AND SWATANTER KUMAR, JJ.)

RAJ PAUL SINGH AND ANOTHER .. Appellants;

Versus

STATE THROUGH P.S. MUSHEERABAD, HYDERABAD .. Respondent.

Criminal Appeal No. 1339 of 2008†, decided on October 9, 2012

Penal Code, 1860 — Ss. 302/34 or Ss. 304/34 [S. 300 Exception 4] and S. 86 — Murder or culpable homicide not amounting to murder — Acting in cruel manner and taking undue advantage in a sudden fight — Conviction for murder, confirmed — Nature of offence — Appellant 1 (A-1) in a fully drunken condition, started abusing complainant in filthy language — Complainant's husband warned appellant not to abuse complainant — A-1 did not pay heed and he asked his wife to get a knife — A-1's wife, Appellant 2 (A-2) herein, brought knife and gave it to A-1, who then stabbed husband of complainant as a result whereof he fell down with bleeding injury and was taken to hospital, where he died subsequently — A-1 was arrested and at his instance knife was recovered — Complainant wife was examined as PW 1, and son of deceased was examined as PW 2, and they fully supported prosecution case — Held, deceased was unarmed and there was absolutely no physical threat from deceased to appellants and A-1 after being provided with a knife by A-2 stabbed deceased on left side of chest on instigation of A-2 resulting in deceased's death — This was, thus, a case where appellants took undue advantage and acted in a cruel or unusual manner and case did not fall within Exception 4 to S. 300 — Appellants were rightly held guilty of offence of murder under S. 302 r/w S. 34

† From the Judgment and Order dated 26-4-2007 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Appeal No. 1258 of 2006