

DIAL/2022-23/Regulatory/735

14th December 2022

To,

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

Sub: Consultation Paper No.13/2022-23 dated 25.11.2022 in the matter of determination of tariff for Cargo Handling Services for M/s DELHI CARGO SERVICE CENTER PVT. LTD. (DCSC) at Indira Gandhi International Airport, Delhi (IGIA) for the Third Control Period (FY 2021-22 To FY 2025-26)

Dear Sir,

We write in respect of the subject Consultation Paper No.13/2022-23 dated 25.11.2022 vide which the Authority has invited stakeholder comments for determining tariff for Cargo Handling Services provided by DCSC at IGIA.

At the outset, DIAL objects to the Authority's jurisdiction to determine tariff for Cargo Handling Services and the consequent tariff determination process commenced by the Authority on the following counts:

- a. **Cargo Handling Services have been held to be Non-Aeronautical Services:** The Hon'ble Telecom Disputes Settlement & Appellate Tribunal ('**Appellate Tribunal**'), in its judgment dated 23.04.2018, has held that cargo handling services are Non-Aeronautical Services in view of the provisions of the Operation Management and Development Agreement dated 04.04.2006 ('**OMDA**') and the mandate of section 13(1)(a)(vi) of the Airports Economic Regulatory Authority of India Act, 2004 ('**AERA Act**'). Further the Authority is aware that the Hon'ble Supreme Court, has recently in its judgment dated 11.07.2022, has also upheld this decision of the Hon'ble Appellate Tribunal irrespective of whether such services are performed by DIAL itself or through its delegates. Accordingly, and also since it is indisputable that AERA's regulatory purview is restricted to determining tariff for Aeronautical Services, it cannot determine tariff for the service of cargo handling i.e. a Non-Aeronautical Service at IGIA.
- b. **Issue is sub-judice before the Hon'ble Appellate Tribunal:** The airport operators i.e. Delhi International Airport Ltd. ('**DIAL**') and Mumbai International Airport Ltd. ('**MIAL**') have challenged the Authority's direction to cargo handling service providers to submit their respective MYTPs for determination of tariff on the ground that this service is Aeronautical in nature in case of DCSC at IGIA. As such, since the matter is currently sub judice, it would not be appropriate for AERA to determine tariff for these services.
- c. **Interim Orders passed by the Hon'ble Appellate Tribunal:** The Appellate Tribunal, by way of its interim order dated 08.11.2021, has directed that "*no precipitate action shall be taken by*

the respondent" i.e. the Authority. This interim order was confirmed and made absolute by order dated 01.04.2022. Clearly, the Hon'ble Appellate Tribunal has directed the Authority not to take any precipitative action on the issue of determining tariff for cargo handling services during the pendency of these appeals. Thus, the commencement of the tariff determination process and issuance of the Consultation Paper amounts to a violation of the above interim orders.

- d. **AERA's application for vacation of Interims Orders:** In the aforesaid proceedings, AERA has also filed an application for vacation of these interim order so as to enable it to perform its function of determining tariff for cargo handling service providers. The Hon'ble Appellate Tribunal, however, has neither allowed this application nor passed any ad-interim orders varying or modifying interim orders referred to at point (c) above. Hence, AERA has itself sought the Hon'ble Appellate Tribunal's permission to determine tariff during the pendency of the aforesaid appeals. As this permission has not been granted till date, AERA cannot proceed with the tariff determination process.

In view of the above, AERA's action to pursue with tariff determination exercise for Cargo services being provided by DCSC at IGIA and the intention to issue the order in this regard is impermissible.

Thanking you,

For Delhi International Airport Limited

K Narayana Rao

Director