

CHAPTER V : MINISTRY OF CIVIL AVIATION

Bangalore International Airport Limited, Bangalore (BIAL)

5.1 Doubtful recovery of outstanding dues because of failure of fiduciary duty

Ministry failed to ensure that BIAL fulfill its fiduciary duty to promptly realise the security fees from the airlines and remit the same in escrow account. As a result, outstanding dues against airlines accumulated and recovery of ₹ 9.19 crore from Kingfisher Airlines was rendered doubtful.

Ministry of Civil Aviation (MoCA) signed (5 July 2004) a concession agreement with Bangalore International Airport Limited (BIAL) for the development, construction, operation and maintenance of the Bangalore International Airport. Article 8.5.1 of the agreement provides for levy of security fee in terms of the Aircraft Rules, 1937 from each departing passenger. In terms of the Standard Operating Procedure (SOP) issued (19 January 2009) by MoCA, this security fee, termed as Passenger Services Fee (Security Component) (PSF (SC)), is to be collected by BIAL through the airlines. BIAL in turn is required to bill the respective airlines for PSF (SC) and the payment so received from the airlines is to be deposited immediately in an escrow account with a scheduled nationalised bank in a fiduciary capacity. The SOP requires BIAL to ensure realisation of dues from the airlines regularly. BIAL is also required to furnish MoCA with copies of its audited annual accounts.

BIAL, however, failed to exercise fiduciary responsibility and airlines were allowed to accumulate dues. As of 31 March 2014, the amount outstanding from the Airlines was ₹ 16.77 crore out of which ₹ 9.64 crore was outstanding for a period of more than one year. The outstanding amount further increased and as of 31 March 2016, the same was ₹ 17.44 crore out of which ₹ 10.12 crore was outstanding for a period of more than one year. Out of this, ₹ 9.19 crore was due from Kingfisher Airlines from 2012-13 onwards. Kingfisher Airlines ceased operations in September 2012.

Though, MoCA received periodic accounts from BIAL and Article 13.3 of the agreement provided for the consequences of a 'BIAL Default Event' stipulating payment of dues by BIAL within twenty-one days of a request from Government of India, at no time did MoCA direct BIAL to collect and remit outstanding dues in the escrow account. The SOP also did not provide for levy

of penal interest for non-payment of dues by the Airlines on time. In the absence of such a clause, non-recovery of dues constituted an interest free loan to Kingfisher Airlines.

On the matter being raised in audit (February 2014), BIAL sought (March 2014) approval of MoCA to write off the dues recoverable from Kingfisher Airlines. The proposal of BIAL is not tenable as it would be an undue favour to the defaulter and condonation of failure of BIAL to fulfil its fiduciary responsibility.

Thus, Ministry failed to ensure that BIAL fulfilled its fiduciary duty to promptly realise the security fees from the Airlines and deposit the same in escrow account. As a result, outstanding dues against airlines accumulated and recovery of ₹ 9.19 crore from Kingfisher Airlines was rendered doubtful.

The matter was reported to the Ministry in April 2016; their reply was awaited as of January 2017.