# CHAPTER II: MINISTRY OF CIVIL AVIATION

## Air India Limited

### *2.1 Wasteful expenditure due to non-utilisation of leased premises for cargo warehouse*

**Failure to surrender leased premises without usage for the last nine years ended March 2012 resulted in a wasteful expenditure of ₹ 14.30 crore towards lease rent, council tax and utility charges.**

Air India Limited (Company) took on lease a plot of land measuring 0.58 acres and a building constructed thereon measuring 25,266 square foot from British Airport Authority (BAA) in April 1968 for a period of 50 years and 9 months, *i.e.*, up to January 2019, to be used as warehouse for handling its cargo at London Heathrow airport. As per terms and condition of lease governed by deed of 8 October 1976, the Company was required to pay annual rent for the premises which ranged between £4,350 (₹ 0.034 crore) in 2003-04 and £4,950 (₹ 0.038 crore) in 2010-11, besides council tax, which ranged between £172,716 (₹ 1.35 crore) in 2003-04 and £285,390 (₹ 2.23 crore) from 2011-12.

Handling of cargo of the Company was being done by Menzies Aviation Limited (MAL) since September 1998. For three years up to 31 August 2001, the Company received royalty of £21 (₹1644) per tonne for the third parties' cargo handled through its warehouse. In April 2004, MAL refused to work from the Company's warehouse due to poor working conditions and started handling the Company's cargo from its own warehouse. In January 2007, the Company entered into another agreement with MAL, effective for five years from 1 September 2006, whereby MAL agreed to refurbish the warehouse at its cost and pay minimum royalty of £30,000 (₹ 0.24 crore) per annum, besides paying 50 *per cent* of the cost of electricity, heating and water for using the Company's warehouse for the third parties' cargo.

The warehouse, being in a poor state, could not be used till completion of necessary repairs by MAL in April 2008 and consequently, royalty amounting to £45,000 (₹ 0.35 crore) (for September 2006 to March 2008) was not paid by MAL. Subsequently, due to withdrawal of the regulated status of MAL by the Department of Transport (the regulatory body of UK) owing to security lapses in the Company's warehouse, MAL could not use the warehouse and handled the exports again from its warehouse since April 2009.

Audit observed (January/April 2011 and February 2012) that:

- The Company's warehouse had barely been used for cargo handling and, instead, was used for storage of few of its stores and accommodating three staff members.
- Despite receiving an offer from BAA in February 2003 for early termination of lease at a market value of £3.35 million (₹ 26.23 crore), the Company inexplicably preferred to hold the asset idle over the years.

- The Company appointed (9 April 2009) a committee of four senior officials at London to examine all options in connection with cargo functioning and to propose action to be taken in respect of the warehouse. The committee, required to submit the report by 24 April 2009, did not submit any report.
- The Company incurred an avoidable expenditure (net) of ₹ 14.30 crore[1] on rent, council tax, and utility charges for the last nine years upto March 2012, after netting off the receipts of ₹ 1.24 crore from MAL towards royalty and utility charges.

*The Management in its reply stated (May 2011) that in view of the long term lease, it was not feasible to surrender the warehouse and steps were being taken to utilise the cargo warehouse. The Management while accepting that the committee never submitted any report added that the members of the committee either retired or were transferred out of London.*

The reply is not acceptable as the Company had received (February 2003) an offer from BAA for early termination of lease at a market value of £3.35 *million* (₹ 26.23 crore). In March 2009, BAA again offered for early termination of lease and cautioned that with the expiry of lease period coming to end (January 2019), delay in surrendering of warehouse would result in reduction in the values of lease. In fact, delay in surrendering the warehouse has already resulted in reduction in the value of lease to £2.25 million (₹ 17.62 crore), as estimated by the Management in June 2010.

**Considering the annual commitment towards rent and council taxes, and the fact that its cargo handling could have been done and was being done from the premises of the cargo handling agent, it was imperative for the Company to act promptly for surrendering or utilising the space. The lackadaisical approach of the Company in taking firm decision for the last nine years ending March 2012 indicated weak governance which resulted in a wasteful expenditure of ₹ 14.30 crore.**

The matter was reported to the Ministry in September 2011; reply was awaited (May 2012).

## 2.2 Extra expenditure in Air India Limited

Cases involving extra/wasteful expenditure and failure to realise revenue by Air India Limited (Company) were highlighted earlier through the CAG's Reports[2] for appropriate remedial action. In brief, these cases covered issues on internal controls to check expenditure and increase the revenue. In particular, Para No.2.2.1 of Report No.CA 24 of 2009-10 pointed out extra payment of ₹ 8.49 crore to a private party by the Company from April 2005 to March 2008 due to acceptance of higher rates for catering services

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[1] ***£1,826,455 converted at an average exchange rate of ₹78.309/£ , being the average of monthly exchange rates of Government of India for the period March 2003 to December 2011 as under:***

| ***Expenses*** | | | ***Less*** | ***Receipt*** | | |
|---|---|---|---|---|---|---|
| ***Council Tax*** | ***: £1,822,172*** | ***=₹14.27crore*** | | | | |
| ***Rent*** | ***: £42,750*** | ***= ₹00.34crore*** | | ***Rent*** | ***: £102,500*** | ***=₹0.80 crore*** |
| ***Utility Charges*** | ***: £120,257*** | ***= ₹ 00.93crore*** | | ***Utility Charges*** | ***:£56,223.71*** | ***=₹0.44crore*** |

[2] ***Para 2.2.1 of CAG's Report No. CA 24 of 2009 -10 and Paras 2.3.1 to 2.3.5 of CAG's Report No.9 of 2009-10.***

contract concluded for its own flights without availing of the benefit of lower rates concluded on the same date with the same caterer for identical menus for the flights of its subsidiary company-Air India Express involving comparatively lesser volume of business.

Audit observed that cases of extra expenditure due to acceptance of higher and non-competitive rates by the Company continued to occur which indicated persistence of a financial governance deficit. In fact, such cases point towards indifferent attitude of the Management to the financial position of the cash strapped Company as corroborated by the following cases:

***(a) Extra payment of ₹75.26 lakh due to acceptance of higher rates in a non-competitive manner for hiring transport***

**Acceptance of abnormally higher rates in a non-competitive manner by Washington office of Air India for hiring transport for the teams accompanying Special Charter Flights on visits of Prime Minister to USA resulted in extra expenditure of ₹ 75.26 lakh.**

(i) The Company operated a special charter flight for the visit of a delegation headed by the Prime Minister to New York in September 2011. Apart from the members of delegation nominated by various Ministries of the Government of India (GOI), the Company detailed a special team comprising of an advance prepositioning team, crew and accompanying team for the event. Though the delegation was scheduled to visit New York, the aircraft was parked at Dover[1]. Part of the crew along with the Special Protection Group (SPG) team had, therefore, to stay at Dover from 22 September to 26 September 2011. Based on the instructions from the Company's Headquarters, the Area Sales Office of the Company in Washington hired transport from a local transport company *viz.* M/s. Empress Limousine for the Company's team detailed at Dover. For the SPG team, the transport was hired by the Embassy of India at Washington (Embassy) from the same transport company through a separate contract.

Audit observed that hourly rates paid by the Embassy for 'Sedan' and '15 Pax Van' types of vehicles were US$ 30 and US$ 50 respectively, whereas the hourly rates paid by the Company for the same type of vehicles were abnormally high, being US$ 75 and US$ 90, as these were 1.8 times and 2.5 times the rates paid by the Embassy. Thus, the Company incurred an avoidable extra expenditure of ₹ 17.86 lakh[2] for this event.

(ii) Similarly, in connection with the earlier two visits of the Prime Minister to Washington in November 2009 and April 2010, when a delegation of the Company had accompanied the Special Charter Flights, Audit observed that transport for the Company's delegation was hired by Area Sales Office, Washington, whereas transport for the members of the delegation from various Ministries of GOI was hired by the Embassy. For both the visits, the Company and the Embassy had hired transport from the same transport

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[1] ***Dover is located in Delaware, about 185 miles from New York.***
[2] ***At an exchange rate of ₹48.07/US$ for October 2011. The amount also includes gratuity at the rate of 15 per cent.***

company *viz.* M/s. Empress Limousine. Again, the Embassy hired 'Sedan', '7 Pax Van' and '15 Pax Van' types of vehicles at hourly rate of US$ 40, US$ 50 and US$ 60 respectively, while the Company paid for the same type of vehicles at the rates of US$ 75, US$ 85 and US$ 90 *i.e.* at 1.5 times to 1.88 times (almost double) the rate paid by the Embassy leading to extra payment of ₹ 57.40 lakh[♣].

**Thus, in comparison to the arrangements made by the Indian Embassy, the Company incurred an extra expenditure of ₹ 75.26 lakh due to acceptance of non-competitive and unreasonably high rates for arranging transport for merely three VVIPs visits in 2009, 2010 and 2011.**

*In response, the Management stated that the market rates for such type of services were flexible and dynamic and, therefore, might vary from one customer to another. It further contended that the Embassy provides regular and voluminous business annually to the transporter and, therefore, it gets a huge volume discount and, thus, comparison of rates was not appropriate.*

Reply of the Management is not acceptable as hiring of vehicles for the same purpose during the same period from the same agency at a rate upto 2.5 times the rate paid by the Embassy could not be attributed to dynamics of the market. The contention that the Embassy was being offered discount due to higher volume of business was also not plausible as the rates in contracts concluded by the Embassy and the Company with the transporter were firm and final and irrespective of the volume of business offered. Furthermore, for the VVIP visits in 2009 and 2010, the agreements drawn by the Embassy were for lesser number of hours than the hours indicated in the agreements drawn by the Company in November 2009. This indicated a general absence of concern for the financial health of the Company which was reeling under severe cash crunch during this period.

The matter was reported to the Ministry in January 2012; their response had not been received (May 2012).

***(b) Overpayment of ₹63.22 lakh towards port fee to a private party at higher than the applicable rates***

**Port Authority of New York and New Jersey notified a rate of 8 *per cent* Port Fee to be charged on the permit holders using its resources. Air India Limited, however, paid the Port Fee at a higher rate of 8.7 *per cent* to its catering contractor operating at New York and Newark airports resulting in overpayment of ₹ 63.22 lakh.**

For provision of catering services for Air India's flights operating from Newark, New Jersey (EWR) and New York (JFK), the Company entered into separate Memoranda of Understanding (MOU) with M/s Flying Food Group, New York (FFG). The MOU were signed for a period of three years commencing 03 December 2006 and 01 August 2008 for EWR and JFK respectively. For EWR, the MOU was further extended up to 14 August 2010, before a fresh agreement for additional three years was entered into with effect from 15 August 2010 with the same firm. Similarly, for JFK, fresh MOU for a

[♣] ***At an exchange rate of ₹46.87/US$ and ₹46.05/US$ for November 2009 and April 2010, respectively. The amount also includes gratuity at the rate of 15 per cent.***

period of three years from 01 August 2011 was signed with FFG. Apart from the rates of each item of supply, the terms of the MOU, *inter alia,* enunciated that FFG would levy a Port Fee, which would be in accordance with the rates notified by the Port Authority of NY and NJ. The Port Authority's notification for levy of Port Fee, which formed part of the MOU, stipulated that from 01 June 2006, Port Fee would be charged at the revised rate of 8 *per cent* of the 'Gross Receipts'. It further clarified that FFG was also required to remit the Port Fee at the same rate of 8 *per cent* to the Port Authority accordingly. The agreement (Privilege Permit) between the Port Authority and FFG was executed. As per the terms and conditions of this agreement, any taxes separately paid by the customer and directly payable to the taxing authority by the Permittee (FFG) would not form part of the 'Gross Receipts' and, hence, payment of Port Fee was to be made only against the amount actually payable to FFG.

Notwithstanding the notified rate of 8 *per cent*, the Port Fee in the subject MOU with FFG was determined by the Company at the rate of 8.7 *per cent* and the Company's Regional Office, New York made the payments to FFG at this rate in respect of both the MOU. The additional element of 0.7 *per cent* was stated to have been worked out construing Port Fee as a component of the Gross Receipts i.e. 8 *per cent* levy over the 8 *per cent* Port Fee.

Audit observed that since the amount of Port Fee was separately charged by FFG as per the actual fee levied by the Port Authority and was in turn to be remitted to the latter, the same did not qualify to be included within 'Gross Receipts' as per the agreement. Further, as the Port Fee did not form part of the income to the Permittee, the levy of 8 *per cent* fee over this amount was not justifiable and tantamount to overpayment.

During the currency of the above MOU from December 2006 to September 2011, an aggregate amount[1] of US$ 21,397,471 at the rate of 8.7 *per cent* was paid to the firm and, thus, an amount of US$ 137,794 (₹ 63.22 lakh[2]) at the rate of additional 0.7 *per cent* was overpaid to the private party. Despite the matter having been pointed out to Air India, New York in January 2011, the Company continued to pay Port Fee at higher rate of 8.7 *per cent* up to September 2011. Though the rate of payment of Port Fee was later rectified in October 2011 after audit re-emphasized the inaccuracy of the rate being applied by the Company, no recovery for the excess amount paid prior to October 2011 had been effected, indicating a favour to the private party.

**Thus, due to payment of Port Fee at higher than the applicable rate, Air India overpaid an amount of ₹ 63.22 lakh to the catering contractor (FFG) in respect of the contractual agreements concluded in December 2006 and August 2010 for EWR and August 2008 and August 2011 for JFK.**

The matter was reported to the Company and the Ministry in December 2011; their response had not been received (May 2012).

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[1] ***Includes port fee of ₹US$ 1,712,585***

[2] ***At the average rate of exchange***

## Airline Allied Services Limited

### 2.3 Review of Operations

#### 2.3.1 Introduction

Airline Allied Services Limited (AASL) was incorporated in September 1983 under the Companies Act 1956, as a wholly owned subsidiary of erstwhile Indian Airlines Limited (now Air India Limited-AIL). The main objectives of the AASL were to carry on the business of hotel, flight kitchen, to carry out the business of ground handling at the airports, to establish, maintain and operate International and Domestic Air Transport Services and to buy, sell, hire, let on hire and deal in aero planes, flying machines, aircraft and the component parts thereof.

AASL was envisaged to function as profit centre of AIL. However, the Company was continuously incurring losses (except marginal profits of ₹ 2.05 crore in the year 2003-04) over the last ten years of its operations (2001-02 to 2010-11). The Company had accumulated losses of ₹ 582.90 crore as on 31 March 2011 and has fully eroded its share capital (₹ 2.25 crore). As on 31 March 2011 the Company was liable to pay to its Holding Company an amount of ₹ 462.51 crore

AASL started its operations in April 1996 with the transfer of an ageing fleet of 12 Boeing aircrafts on lease from AIL in a phased manner. As on 31 March 2011 the Company was having a fleet of 17 various types of aircrafts[1]. Audit reviewed operations of AASL during the period 2008-09 to 2010-11 with reference to MOUs/Agreements entered by it with clients to assess efficiency in operations of aircrafts. Major Audit findings noticed were as under:

#### 2.3.2 Audit Findings

#### 2.3.2.1 Freighter aircraft operations

12 Boeing aircrafts received on lease from AIL were initially used for passenger operations on inter regional routes. Subsequently, AIL got converted six aircrafts into freighters during July 2007 to October 2008 and phased out six aircrafts in August 2009(one aircraft had crashed in July 2000). AASL undertook freighter operations under the agreements for the freighter charters between AIL and the concerned parties. AIL provided handling, marketing, sales and booking and other support services for AASL flight operations.

AIL entered into (May 2007) a wet[2] lease agreement, for five of its freighter aircrafts with M/s. GATI initially for a period of five years (July 2007 to July 2012) at a lease rent of ₹ 2.92 lakh per aircraft per hour with a minimum guaranteed utilization of aircrafts to operate 25 days in a month with minimum 17 hours per day on five aircrafts operation i.e. 425 hours per month. The agreement further provided that initially M/s. GATI was to pay lease rental on actual flown hours basis till the induction of fifth aircraft in operation. Meanwhile, the AIL entered into (August 2007) another agreement, with Department of Posts (DOP) for one freighter aircraft on wet lease initially for a period of one year. After agreement with DOP the Company was unable to fulfil its contractual obligation of

[1] ***Six B-737-200 (Boeing), seven ATR-42-320 (Avion De Transport Regional)-48 seater and four CRJ-700 (Canadair Regional Jet) -70 seater.***

[2] ***In wet lease agreement aircraft is provided along with maintenance and crew support.***

deploying five aircrafts to GATI. Consequently, M/s. GATI was billed only for the average monthly utilization of 55.79 hours per aircraft during the period January 2008 (when two aircrafts were made available to GATI) to February 2009 (i.e. just before termination of the agreement in March 2009) which was much lower than the stipulated minimum guaranteed 85 hours per aircraft (425/5). Subsequently, the Company increased (November 2008) rental charges from ₹ 2.92 lakh per hour to ₹ 3.50 lakh effective from October 2008 due to increase in price of Aviation Turbine Fuel, subject to further revision of these charges every three months. M/s. GATI, however, did not agree for increase in lease rent and terminated (March 2009) the contract citing reasons such as increase in lease rent against the contract provisions, non induction of aircrafts as per agreement, failure to provide aircrafts with agreed payload capacity, long grounding of aircrafts etc.

After termination of contract with GATI, another agreement was entered into (July 2009) with DOP for three freighter aircrafts on wet lease for the period July 2009 to March 2010 which was further extendable on mutual consent. On expiry of the contract period, DOP did not extend the contract due to frequent delays and cancellations of freighter operations. DOP, however, entered a fresh contract (effective from April 2010) only for one aircraft for two years. Subsequently, AIL took the decision (September 2010) for phasing out and disposal of all the six freighter aircrafts and terminated (January 2011) the contract with DOP.

Audit observed that Clause 5.1 of the contract with GATI was against the financial interests of the Company as lease rent was payable for actual flown hours till induction of the fifth aircraft. It was not prudent to agree to the same in view of the ongoing negotiations (February 2007) with DOP for deployment of one aircraft. Even though the Company was aware that in respect of agreements with GATI (May 2007) and DOP (August 2007) six aircrafts would be required to meet the commitment, the Company did not convert the sixth aircraft into freighter till October 2008. Further, agreeing for a fixed amount of per hour lease rental in the contract for a five year term was also not prudent which became non-feasible when price of Aviation Turbine Fuel increased.

*The Management stated (October 2008) that the payment of minimum guaranteed hours were to be enforced only after induction of the fifth aircraft into operation with M/s. GATI. The Management further stated (October 2011) that from freighter operations of Boeing aircrafts, net profit was ₹62.05 crore.*

The reply was not acceptable as for calculating the above mentioned profits, only direct operating costs were considered and the other costs such as Lease and Maintenance charges of ₹ 22.88 crore of six freighter aircrafts, financing charges of ₹ 12.02 crore at the rate of 10 *per cent* per annum on the cost of conversion of four Boeing aircrafts, charges for various in-house administrative and operational supports including airport and ground handling borne by AIL on behalf of the AASL, cost of painting clients logo on freighter aircrafts, carrying and financing cost of inventory, float of spare engine, Auxiliary Power Unit along with its space rental, insurance and obsolescence were not taken into account which the Audit was unable to quantify in absence of details of these expenses. Moreover, the profit of ₹ 62.05 crore claimed by the Company included the bank guarantee of M/s. GATI Limited amounting to ₹ 30.00 crore, the encashment of which was sub-judice.

#### *2.3.2.2 Passenger aircraft operations*

AASL was using ATR and CRJ type aircrafts for carrying out its passenger operations. It acquired ATR 42-320 aircrafts (which were out of production) on dry lease[*] for a period of five years, four aircrafts in December 2002 from M/s. ATR along with a Global Maintenance and Support Agreement (GMSA) for maintenance and support of spares and major components and three aircrafts in March 2007 from M/s. ATRiam Capital Limited. AASL acquired four CRJ aircrafts on dry lease from four lessors for a period of seven years. AASL also entered into a Component Maintenance Works Agreement (August 2008) with M/s. Lufthansa Technik for support of components of CRJ aircrafts.

Audit observed that while acquiring ATR and CRJ aircrafts AASL did not ensure adequate arrangements for maintenance and engine support. The GMSA for ATR aircrafts was based on four aircraft operation. When three more aircrafts were added to ATR fleet, the inventory level was not increased and GMSA was continued with the existing level of stock. During April 2008 to March 2011, aircrafts remained grounded for 1651 days i.e. 21.54 *per cent* as against 10 *per cent* normally earmarked for scheduled maintenance etc. Out of ₹ 78.39 crore paid by the Company as lease rent for the above period, an amount of ₹ 27.73 crore pertained to aircrafts which remained grounded due to inadequate stock of spares and components.

Due to absence of engine support contract one of the CRJ aircrafts remained grounded from September 2009 to December 2010 and another since December 2010 to June 2011. This resulted in infructuous payment of lease rent amounting to ₹ 15.48 crore in respect of these aircrafts beside loss of opportunity to earn revenues.

*Management, in its reply (October 2011), stated that as the ATR aircrafts were of old vintage the availability of spares became difficult. Consequently, one ATR aircraft had to be grounded for cannibalization purposes to make the others serviceable. Management further stated that in respect of CRJ aircrafts, the efforts made for arriving at comprehensive engine support before induction of aircrafts could not materialize.*

The Management reply was not acceptable as the Company was aware of these issues while it opted for leasing of old vintage ATR aircrafts. Grounding of aircraft could have been avoided had the Management made appropriate arrangements for maintenance and spare engine.

#### *2.3.2.3 Manpower management*

##### *a. Freighter operations*

The Company was having 28 Boeing pilots (15 commanders P-1 and 13 Co-Pilots P-2) as on April 2010. After termination of the contract with GATI and curtailment of number of freighters engaged by DOP the Company had contract for one freighter aircraft since April 2010 for which it required only three sets of pilots (i.e. 3 commanders-P1 and 3 Co-Pilots-P2). The Company continued to have 10-22 excess pilots from May 2010 to November 2010. This resulted in infructuous payments amounting to ₹ 5.15 crore to pilots whose services were not availed of during May 2010 to November 2010.

*The Management stated (October 2011) that AIL was exploring business opportunities for alternative deployment of freighter aircrafts subsequent to reduction of operations by*

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[*] ***In dry lease agreement, aircraft is provided without maintenance and crew support***

*DOP. It stated further that availability of trained pilots for B-737-200 type of aircraft was highly inflexible and scarce so it was not considered appropriate to terminate the services or send back the pilots to the parent company.*

The reply of the Management was not acceptable as operations reduced to three aircrafts in July 2009 itself. The operations did not increase thereafter and reduced further from April 2010.The Company should have reassessed its manpower requirement.

***(b) Passenger operations***

The Company was having 13 expatriate[♥] commanders for ATR aircrafts as on April 2008, 2009 and 2010 and it was reduced to 11 as on April 2011. The number of Indian commanders was only one, two, four and nine as on April 2008, 2009, 2010 and 2011 respectively. The payments made to Indian commanders were lesser by approx. ₹ 3 lakh p.m. in comparison to expatriates. However, despite receiving a number of applications from Indian commanders and also the Director General Civil Aviation directive to replace expatriate pilots at the earliest, the Company did not hire Indian commanders and continued with a large number of expatriate pilots.

*The Management stated (July 2011) that the efforts made by the Company to hire Indian commanders for ATR aircrafts did not succeed due to low salaries offered by the Company in comparison to other private operators.*

The reply of the Management was not acceptable as the Company could have hired Indian commanders whose salaries were lower than the expatriates in compliance with the DGCA directive.

***Conclusion***

**The Company was unable to operate cost effectively its fleet of six old vintage freighter aircrafts. As regards passenger operations, the Company did not have adequate stock coverage in the maintenance contract/engine support leading to infructuous payment of lease rent in respect of ATR and CRJ aircrafts. The Company also failed to reassess its manpower requirements timely and continued to have 10-22 pilots in excess of its requirement every month from May 2010 to November 2010. Such imprudent decisions resulted in loss to the Company to the extent of ₹ 48.36 crore during the audited period.**

The matter was reported to Ministry in March 2012; reply was awaited (May 2012).

## Airports Authority of India

### *2.4 Irregular Appointment of Consultant*

**AAI awarded consultancy work by accepting the offer of a private company without inviting competitive bids in contravention of CVC guidelines and incurred extra expenditure of ₹ 26.14 crore.**

M/s. Aspire Trading Private Limited (Aspire) approached (October 2002) Airport Authority of India (AAI) with offer of consultancy services to enable AAI to get customs/central excise benefits of saving of duty/excise/other levies payable against

[♥] ***Non-Indian pilots***

procurements. The Board approved (March 2003) appointment of M/s. Aspire without inviting tenders, initially for the year 2003-04, for rejected/disallowed cases only, at a service fee equivalent to 18.5 *per cent* of the financial benefits received by the AAI. Accordingly, letter of appointment was issued on 03 April 2003. Subsequently, AAI extended tenure of M/s. Aspire twice, in August 2006 (for the licensing years 2004-05 and 2005-06) and in August 2010 (for the licensing year 2006-07) at a negotiated rate of 16 *per cent* and 14 *per cent*, respectively, of the financial benefits received by the AAI. On the basis of Custom Duty exemption certificates valuing ₹ 333.00 crore♦ received for the financial years 2003-04 to 2006-07 the AAI paid (up to June 2011) service fee amounting to ₹ 29.20 crore to M/s. Aspire.

The extension granted by the Board in August 2010 to M/s. Aspire was to remain valid till the appointment of a consultant through open tender or till December 2010 whichever was earlier. Accordingly, AAI invited (November 2010) quotations from reputed consultants through open tender for providing consultancy services/advice/assistance on DGFT/Customs matters related to savings/benefits under various Government of India schemes/policies and related works. M/s. Romy Enterprises, being L1, was appointed (December 2010) as a consultant for a period of one year on annual professional charges of ₹ 0.51 crore.

Audit observed that the initial appointment of the consultant (M/s. Aspire) without inviting open tenders was in contravention of the guidelines issued from time to time by the Central Vigilance Commission (CVC) on appointment of consultants which prohibit appointment of consultants on arbitrary or ad-hoc basis and stipulated that public notice should be issued to enlist names of suitable consultants. The guideline dated 25 November 2002 further provided that selection of consultants should be made in a transparent manner through competitive bidding.

Had the Management invited competitive bids in the year 2002 itself, extra expenditure of ₹ 26.14 crore incurred due to higher rates charged by M/s. Aspire could have been avoided.

*The Management replied (June 2011) that:*

- *Approval for appointment of M/s. Aspire as a consultant for AAI was on identical terms and conditions agreed to by Air India (AI).*
- *Work of the two consultants was for different periods of time; the scope of work was different; hence was neither comparable nor quantifiable.*
- *CVC Guidelines referred to by Audit actually pertain to the appointment/working of consultant in the engineering works/contracts only. Further, none of the instances referred to in the CVC guidelines dated 25 November 2002 were relevant to the present case. Hence the guidelines were not applicable to the appointment of M/s. Aspire and therefore there was no violation of CVC guidelines.*

♦ ***₹ 71 crore for year 2003-04, ₹ 91 crore for year 2004-05, ₹ 88 crore for year 2005-06 and ₹ 83 crore for year 2006-07.***

The reply of the Management was not acceptable in view of the following:

- AI appointed (January 2003) M/s. Aspire on identical terms and conditions for rejected/disallowed cases. When AI did not get any benefits for a few closed cases referred to M/s. Aspire for scrutiny and opinion, the AI stopped corresponding with M/s. Aspire with due approval (17 February 2004) of their Board.

  On the other hand, AAI appointed M/s. Aspire initially for rejected/disallowed cases but subsequently, the AAI availed the services of the consultant in dealing with all the cases relating to Exim Policy 2002-2007.

- While the services assigned to M/s. Romy were detailed in the appointment letter as compared to that of M/s. Aspire, the scope of work assigned to both of the parities was similar and comparable to a great extent.

- Para 4 of the CVC guidelines dated 25 November 2002 clearly stated that list of the instances mentioned in the guidelines was only illustrative and not exhaustive. As such the Management contention, that the instances referred to in the CVC guidelines were not relevant was not acceptable. Further, the various guidelines of CVC issued from time to time stipulated appointment of consultant in a transparent manner through competitive bidding.

**Thus, appointment of consultant in contravention of CVC guidelines led to extra expenditure of ₹ 26.14 crore.**

The matter was reported to Ministry in January 2012; reply was awaited (May 2012).

### *2.5 Favour to a contractor by awarding a construction contract against unacceptable offer and allotment of land free of charge*

**Airports Authority of India awarded a contract to a M/s ITD-ITD CEM JV for (a) construction of Integrated Terminal Building at Kolkata Airport at higher rates in violation of its own guidelines under works manual; and (b) also extended undue favour of ₹ 12.69 crore to the contractor by allotting land free of charge in deviation of its own policy on land allotment.**

In order to accommodate growing passenger traffic, the Airports Authority of India (Authority) decided (August 2007) to modernise Netaji Subhas Chandra Bose International Airport in Kolkata by developing an Integrated Passenger Terminal Building and allied facilities (Project).

(a) The price-bids for the project were opened in June 2008 and offer of M/s 'ITD-ITD CEM' JV[1] (contractor) for ₹ 2,102.83 crore was found to be the lowest (L-1). The offer was 53.20 *per cent* higher than the estimated cost (₹ 1,372.62 crore) and 37.23 *per cent* higher than the justified cost[2] (₹ 1,532.40 crore).

As per Authority's Works Manual (April 2007), no tender is to be accepted in case value deviates by 30 *per cent* from the estimated cost. Further, if the tender value is more than

[1] ***A Joint venture of Italian Thai Development Public Company Limited (ITD) and ITD Cementation India Limited (ITD CEM), in which the former is the parent company.***

[2] ***Airports Authority of India prepares justification cost of the work to be awarded for considering the reasonableness of tender value as there may be time gap between the preparation of estimated cost and opening of tender.***

5 *per cent* of the justified cost, the same could be accepted with the approval of the Chairman of the Authority subject to recording of reasons thereof. However, in this case after exclusion of some of the 'items of works'[*] from the scope of the project, the contact was awarded (October 2008) to the contractor at ₹ 1,602 crore. The project, originally scheduled to be completed by June 2010, has been delayed and is expected to be completed by April 2013.

***Audit observed that:***

(i) Offer of the contractor did not qualify for acceptance as gap of the offer with reference to both - the estimated cost and the justified cost - was substantially higher than the norm stipulated by the Authority's works manual. The offer was even more than the total project cost (₹ 1,942 crore) that had been approved by the Ministry of Civil Aviation in August 2008 after the project was appraised through the Public Investment Board.

(ii) The process of tender evaluation and award of the contract was flawed due to lack of internal control and complacent project management system as discussed below:-

- In order to bridge the gaps of the estimated cost and the justified cost with reference to the offer price of L-1 (contractor) and to present a better picture for justifying award of the work to the contractor, the Authority adopted a two pronged approach as under:
    - The Authority tweaked certain items of work and excluded some of the items from the scope of the project. This deflated the offer price of L-1 for the residual items of works to ₹ 1,602 crore and the corresponding estimated cost also came down to ₹ 1,123 crore.
    - Simultaneously, the Authority inflated the justified cost by loading it by ₹ 145.07 crore towards service tax (₹ 51.22 crore), works contract tax (₹ 24.86 crore), labour cess (₹12.43 crore), overheads and profit elements (₹ 56.56 crore).
- Audit analysis of the revised justified cost revealed that service tax not applicable to such projects was also loaded to the revised justified cost of the work. Further, to inflate the justified cost artificially, elements of cost like work contract tax; overheads and profit were included twice in the input components of the project. Resultantly, the reduced offer price and the padded justified cost led to reduction of gap between the two, and the project was awarded to the contractor at ₹ 1, 602 crore which was, *de-facto,* higher than the estimated cost and the revised justified cost by 43 *per cent* and 15 *per cent* respectively.

Thus, the project was awarded to a contractor whose offer, in fact, should have been outrightly rejected as per works manual of the Authority.

*The Management stated (September 2011) that considering the time bound nature of the project, retendering was not resorted to, and added that the service tax, works contract*

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[*] ***O&M works, IT works, Sewerage Treatment Plant, Effluent Treatment Plant, Water Treatment Plant and Aluminium/ Facade work.***

*tax and overheads etc. were added on the advice of Engineers India Limited - the independent professional consultant.*

The Management argument is not convincing as award of the contract at a price higher than the estimated cost by more than 30 *per cent* was against the Authority's own works manual and was irregular. The Management's plea for not resorting to retendering due to time bound nature of the project also did not hold good as the contract which was scheduled to be completed by June 2010, has already been delayed and is expected to be completed by April 2013. The Management's argument cannot justify award of the contract in an irregular manner by tinkering with the costing structure which only point towards a flawed project management system in the Authority.

(b) Policy of Authority on use of its land by others provided for charging of licence fee at the prevailing rates. The rates[1] were revised by the Board of the Authority in April 2008. Immediately before award of the project to the contractor, the Authority had also clarified[2] in July 2008 that excepting for the land to be allotted to the contractor free of charge for stacking construction material, any land in the Authority's premises required by the contractor for installation of plants, labour camp, cement godown and site office would be charged at the prevailing rates.

***Audit observed that:***

In deviation of the Authority policy, the terms of the contract provided for allotment of land to the contractor at a nominal rate of ₹ 1 per square metre per annum (psmpa). As a result, for 35,302 square metre of Authority's land utilized by the contractor during November 2008 to December 2011 for installation of 'concrete batching plant'[3], fabrication yard, rebar yard and recreation club *i.e.* for the purposes other than stacking of construction material, the Authority charged the nominal rate of ₹ 1 psmpa to the contractor instead of the applicable rate. This resulted in revenue loss of ₹ 12.69 crore to the Authority and consequent undue benefit of the same amount to the contractor till December 2011. As the project is expected to be completed by April 2013 and the contractor continues to occupy the land, the undue benefit to the contractor would increase further.

*On the issue of allotment of land at nominal license fee, the Management, without clarifying the contradiction between the land licensing policy and the terms of the contract, admitted (September 2011) that the terms of the contract allowed recovery of license fee at nominal rates.*

**In sum, in both these cases, the Authority failed to comply with its own well documented manual prescribing systems for processing the tenders and procedures to be followed. This reflected poorly on its governance and internal controls.**

The matter was reported to the Ministry in November 2011; reply was awaited (May 2012).

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[1] ***₹ 1,035 psmpa as approved by the Board on 7 April 2008.***

[2] ***Technical Order issued by the Authority on July 2008.***

[3] ***A device for making industrial purpose concrete required in modern construction industry.***