

Chapter - 4

Revenue Sharing

The sole bidding criterion for financial bid to select of the JVC partner was the revenue share of JV Company with AAI. GMR led consortium was the highest bidder offering 45.99 *per cent* of gross revenue to AAI.

4.1 Aeronautical/ Non-Aeronautical Airport Charges

As per existing airport business operations, there are two systems in vogue for determination of aeronautical and non-aeronautical charges termed as Single Till and Dual Till. Non-aeronautical services are less capital intensive and are considered to be more profitable.¹² Using OMDA's provisions, DIAL has outsourced most of the non-aeronautical services through the mechanism of JVs.

Under Single Till system all the revenue and costs are put together in respect of all aeronautical and non-aeronautical services and in case of Dual Till System revenues are distributed between aeronautical and non-aeronautical services separately.

AERA vide its order no 13 dated 12 January 2011 decided to adopt Single Till mechanism ensuring a fair return on equity (consistent with risk profile) and at the same time, keeping the interest of the passengers in focus. AERA also informed Audit that any moderation of charges through Single Till directly benefits the passengers. However, it was further informed that AERA would follow Single Till in respect of all the airports excepting Delhi and Mumbai.

The provision of Dual Till taking into account only 30 *per cent* of the revenue generated by non-aeronautical services gives advantage to DIAL at the cost of the passengers. Diversion of non-aeronautical revenue aided and abetted by the contractual arrangements as also through outsourcing of these services through JVs has put additional burden on passengers in the form of development fee on one hand and has deprived AAI of the revenue, on the other.

Adverse impact on revenue sharing by AAI on outsourcing of non-aeronautical services by DIAL

Article 2.1.2(iv) of OMDA recognized the exclusive right of DIAL to contract and/or sub-contract with third parties all the functions to be undertaken by DIAL. It was noticed that many of the services to be provided by airport operator like DIAL had been outsourced to as many as 11 Joint Venture companies. DIAL has equity share in these companies ranging from 26 *per cent* to 50 *per cent*. The revenue share of DIAL in these companies ranges from 10 *per cent* to 61 *per cent*. DIAL has also collected ₹ 503 crore from these ventures as security deposits, which do not form part of the

¹² Authority: AERA

revenue of DIAL sharable with AAI and is reflected in the financial statements of DIAL as unsecured loans.

It was noted that OMDA does not debar DIAL to contract or sub contract any function relating to the management of the airport. DIAL thus can outsource both aeronautical and non-aeronautical services, though so far it has outsourced only non-aeronautical services. Outsourcing of all the services in future cannot be overruled at this stage which would significantly affect the revenue share adversely in long run.

Such JVs are in violation of terms and conditions in OMDA

Further Article 8.5.7 (d) states that every such contract entered into by the JVC shall be on an arms length basis. An arms length transaction is defined by Institute of Chartered Accountants of India (ICAI) as “transaction between parties that do not have a particular or special relationship that makes prices of transactions uncharacteristic of market conditions. The transaction is presumed to be between unrelated parties each acting independently.”

Equity participation of DIAL in these JVs makes these contracts not on arms length. Since neither the Government nor the AAI has exercised any access to the books of accounts of these JVs, it can never be ascertained whether the revenue passed on as share of DIAL is indeed correct.



Eq: Equity share of DIAL in JV
 RS: Revenue share of DIAL in JV
 Note #: Management Fee ₹15 Cr over 10 year plus 5% on additional business
 Note\$: First three year 10%, 4th to 5th year 15%, 6th to 10th 20%, 11th to 25th 40%
 Note@: 0 to 15; 55%, 16 to 20: 61%

The position is further complicated by the fact that many of these services are “non-aeronautical” as per OMDA but as per the AERA Act, these are aeronautical services. As per OMDA, therefore, DIAL would be competent to determine tariffs for these services but as per AERA Act, AERA would be competent to determine tariffs for these services. In a case of determining tariff for X ray baggage charges, DIAL did not furnish comments sought by AERA on a consultancy paper. In fact, the legal confusion would be apparent from the following extracts of AERA’s order No AERA/20011/DIAL-C/2010-11 dated 10 December 2010:

“It is an admitted position of DIAL that as per Section 2(a)(v) of the AERA Act 2008, services provided for cargo facility (which includes X-Ray screening) at an airport is an aeronautical service. However, with reference to a concession agreement, they have claimed that cargo handling and services (which includes X-ray) is a non-aeronautical service and requested for compliance with the concession agreement. “

In order to ensure revenue share as per OMDA to AAI, OMDA provides for appointment of an Independent Auditor by AAI in consultation with DIAL to certify the applicable revenue used for final verification / reconciliation of the annual fee. The Independent Auditor however does not have access to any books of accounts of the sub contracting JVs which would establish veracity of the share of revenue earned by DIAL from these companies.

In this connection, reference is invited to Para 2.3.1.1 of CAG’s Report No. 3, Union Government (Commercial) for the year 2011-12 wherein Audit commented on only three JVs dealing with cargo and car parking operationalised during 2009-10. Audit observed that there was substantial reduction in revenue share of ₹ 103.29 crore to AAI for the period December 2009 to December 2010 on account of transfer of cargo and car parking business to JVs.

The MoCA stated (June 2011 and March 2012) that the matter regarding recognition of entire revenue of concessionaires/ JV companies should be added to the revenue of DIAL or not has been referred to the Ministry of Law and Justice for their opinion, which is still under examination. MoCA further stated (March 2012) that the financial statements of the Joint Ventures formed by DIAL for various non-aeronautical services already forms part of Independent Audit Report for each quarter and have been made available at the time of audit.

The financial statements of JVs stated to have been part of independent Audit Report for each quarter were not made available to Audit.

4.2 Sharing of revenue from existing leases with DIAL resulted in a loss of ₹ 23.15 crore

As on effective date, AAI had valid leases with airlines/ allied agencies, oil and gas companies, Government agencies, private agencies and hotels/ caterers. As per Article 2.6 of OMDA, read with Article 2. 1.1 of the lease deeds executed with existing lessees (continuing as on effective date), the lease rent thereof was receivable by AAI till the expiry of respective lease period. This was not shareable with DIAL. However the lease rent in respect of existing leases is being collected by DIAL and 45.99 *per cent* revenue is shared with the AAI resulting into a loss of ₹ 23.15 crore as of March 2011.

MoCA stated (March 2012) that as there was difference in the interpretation of the provisions of OMDA and lease deed, legal opinion of Ministry of Law has been sought on the treatment of revenue accruing from existing leases at both MIAL and DIAL.