

The sole financial bidding criterion for selection of JV partner was the revenue share of JV with AAI. The GVK led consortium emerged the highest bidder offering 38.7 per cent of the revenue to AAI.

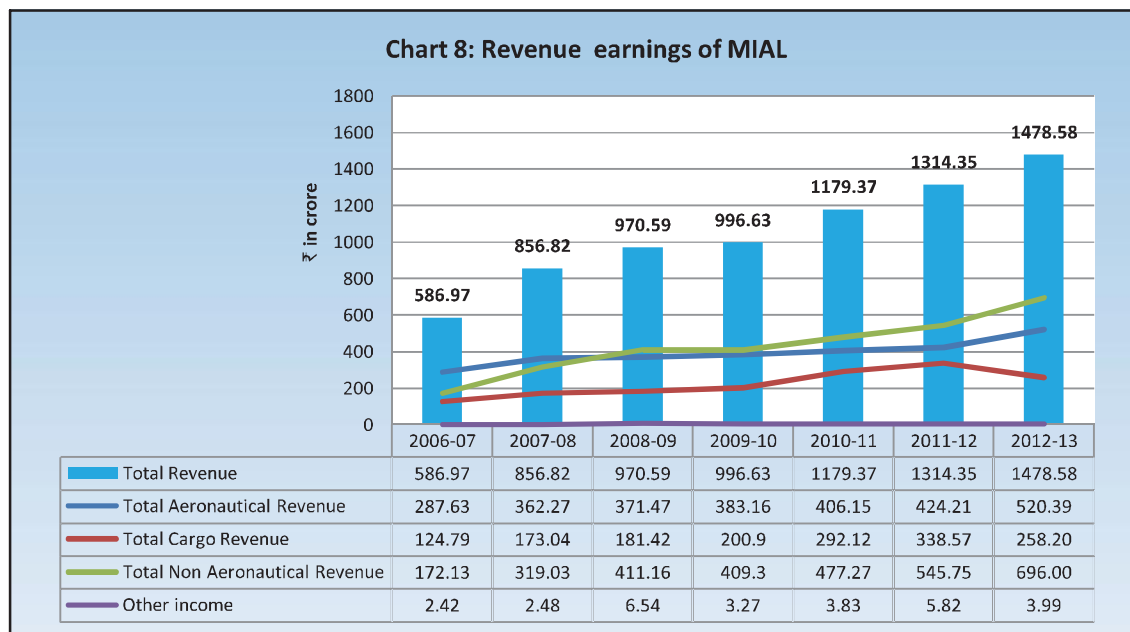
OMDA defines revenue as all pre-tax gross revenue of JV, excluding (a) payments made by JV, if any, for the activities undertaken by relevant authorities or payments received by JV for provision of electricity, water, sewerage, or analogous utilities to the extent of amounts paid for such utilities to third party service providers; (b) insurance proceeds except insurance indemnification for loss of revenue; (c) any amount that accrues to JV from sale of any capital assets or items; (d) payments and/or monies collected by JV for and on behalf of any governmental authorities under applicable law; (e) any bad debts written off provided these pertain to past revenues on which annual fee has been paid to AAI.

Revenue includes revenue from aeronautical as well as non aeronautical sources. The services provided at the airport comprise two distinct categories; - aeronautical services and services other than aeronautical services (termed as non-aeronautical services). Aeronautical services includes navigation, surveillance and supportive communication to air traffic management for the landing, housing or parking of an aircraft or any other ground facility offered in connection with aircraft operations at the airport. Non-aeronautical services include commercial activities like duty free shops, general retail, hotels etc.

Revenue earned by MIAL from aeronautical and non-aeronautical services as shared with AAI over 2006-07 to 2012-13 are shown in table 3 and chart below. It may be noted here that cargo revenue is treated as non-aeronautical revenue in MIAL.

Table 3 –Aeronautical and Non-aeronautical revenue (₹ in crore)

Year	Aeronautical revenue			Non-aeronautical revenue (including cargo)		
	AAI	MIAL (excluding AAI)	TOTAL	AAI	MIAL (excluding AAI)	TOTAL
	38.70%	61.30%	100%	38.70%	61.30%	100%
2006-07	111.31	176.32	287.63	115.84	183.50	299.34
2007-08	140.20	222.07	362.27	191.39	303.16	494.55
2008-09	143.76	227.71	371.47	231.86	367.26	599.12
2009-10	148.28	234.88	383.16	237.41	376.06	613.47
2010-11	157.18	248.97	406.15	299.24	473.98	773.22
2011-12	164.17	260.04	424.21	344.48	545.66	890.14
2012-13	201.39	319.00	520.39	370.82	587.37	958.19
Total	1,066.29	1,688.99	2,755.28	1,791.04	2,836.99	4,628.03



Source: Independent Auditors' Reports

Revenue earned by MIAL, in general, has shown an upward trend over the years. Revenue from non aeronautical sources accounted for 64 per cent of total revenue of MIAL. Besides, non-aeronautical revenues (excluding cargo revenue) registered 304 per cent growth in 2012-13 over 2006-07 revenues. In contrast, the growth of aeronautical revenues has been modest, growing by 81 per cent over the same period.

As per OMDA, MIAL is allowed to carry out commercial activities employing its assets utilising land area not exceeding ten per cent of the total land area constituting demised premises. These assets which do not form a part of the non-aeronautical assets are termed as 'non-transfer assets'. Income from non transfer assets in CSI Airport, Mumbai is yet to flow.

5.1 Aeronautical tariff in 'shared till' arrangement

As per section 13 of AERA Act, 2008, AERA determines the tariff for aeronautical services while charges for non-aeronautical services are not regulated.

In order to determine the tariff for aeronautical services (airport charges), three systems are in vogue - single till, dual till and shared till.

- **Single Till** considers the entire airport as one system. Airport charges are determined in a way to ensure that the sum of aeronautical and non-aeronautical revenue provides a pre-determined rate of return to the airport operator, over and above his operating costs, depreciation and taxes.
- **Dual Till** considers the entire airport as two independent systems – aeronautical and non-aeronautical. Airport charges are determined in a way to ensure that only the aeronautical revenues provide a pre-determined rate of return to the airport operator, over and above his aeronautical operating costs, depreciation and taxes.
- **Shared/Hybrid Till** is a combination of Single Till and Dual till. Airport charges are determined in a way to ensure that aeronautical revenues provide a pre-determined rate of return to the airport operator, over and above his operating costs, depreciation and taxes, cross-subsidised by a certain fraction of the non-aeronautical revenues.
- In case of Mumbai and Delhi airports, 30 *per cent* of the non-aeronautical revenues subsidised aeronautical expenses. Airport charges in CSI Airport, Mumbai are determined on a 'shared till' mode as defined in schedule I of the State Support Agreement (SSA). This is in contrast to other airports in the country (other than Delhi and Mumbai) where AERA follows the 'single till' system for determining the airport charges. In the shared till system, the costs associated with aeronautical services (including the cost of infrastructure creation as well as its maintenance and operation along with a reasonable return on this investment) are set off against 30 *per cent* of non-aeronautical revenue to arrive at the targeted aeronautical revenue leading to determination of airport charges at CSI Airport, Mumbai.

Aeronautical assets constitute 90 *per cent* of the total assets in CSI Airport, Mumbai. Besides, the cost of operation and maintenance of these aeronautical assets is also over 80 *per cent* of the total operation and maintenance expenditure. However, even as costs associated with non – aeronautical services are 10 *per cent* of the total costs, the non-aeronautical revenues (averaged over 2006-13) are 62 *per cent* of total revenues. Non-aeronautical services, are thus, more profitable with low cost of creation and operation of assets and high revenues.

As non-aeronautical costs are minimal while non-aeronautical revenues are large, the 'shared till' system is likely to lead to a higher airport charge vis-a-vis the 'single till' system. These higher airport charges would be passed on by the concerned airlines to passengers who would have to pay more for their airline ticket for flights through Mumbai while the return to MIAL for non-aeronautical services would remain high.

MOCA replied (November 2013) that OMDA provisions regarding system of permissible gross revenue generation from different sources, inclusion of cargo and ground handling in non-aeronautical services, cross subsidisation of 30 per cent of non aeronautical revenue towards tariff were laid down in transparent manner upfront before bidding and also approved by EGOM. Further MOCA stated that AERA Act also recognises that due consideration be given to provisions of OMDA and as such AERA has followed legal provisions.

While there is no issue regarding the bidding mechanism, it is a fact that in following the 'shared till' system, only 30 per cent of non-aeronautical revenue has been set off against the targeted revenue while determining tariff. This has increased the burden of the airport charges borne by passengers. The benefit of low-cost non-aeronautical revenues is largely retained by MIAL, placing a heavier burden on travelling passengers in Mumbai.

During the Exit Conference, MOCA stated that a comprehensive policy regarding the appropriateness of the system of 'till' is being formulated. Impact of such policy would be reviewed in subsequent audit.

It is pertinent to note that PAC in its report of February 2014 on Audit Report No. 5 of 2012-13 on Implementation of PPP in Indira Gandhi International Airport, Delhi, has urged the Government to consider the aspect that shared till actually increased the burden on travelling passengers as aeronautical tariffs were not subsidised by a significant part of non-aeronautical tariff which are low capital intensive and high revenue services while awarding airport contracts under PPP in future.

5.2 Conflicts between OMDA and AERA Act in defining aeronautical and non-aeronautical services

As has been pointed out in Audit Report No.5 of 2012-13 which dealt with Implementation of PPP in Indira Gandhi International Airport, Delhi, there are conflicts between provisions in OMDA and SSA on one hand and the AERA Act, 2008 on the other, which will have long term repercussions on the regulator's role and in fixation of tariff for CSI Airport, Mumbai. Definitions of aeronautical and non-aeronautical services differ substantially between OMDA and the AERA Act.

- Cargo Handling Service has been designated as a non-aeronautical service in OMDA (Schedule 6) but is an aeronautical service as per AERA Act (Section 2, v).
- Ground Handling Services have been included as non-aeronautical services in OMDA (Schedule 6) but are aeronautical services as per the AERA Act (Section 2, iv).

The Consultation Paper 22/2012-13 dated 11 October 2012 of AERA refers to MOCA's letter dated 10 September 2012 which states " revenue from Cargo and Ground Handling services accruing to the airport operator should be categorised as non-aeronautical revenues as provided under the OMDA. Section 13 (1)(a)(vi) of the AERA Act clearly states that concessions offered by the Central Government in any Agreement or Memorandum of Understanding or otherwise will have to be taken into consideration while determining the tariff."

Revenue generated from cargo and ground handling services are considered as 'non-aeronautical' for CSI Airport, Mumbai during tariff determination and only 30 per cent of such revenue is available for setting off aeronautical costs while determining the airport charges. As cargo revenues are very significant constituting 34 per cent of the total non-aeronautical revenues (over 2006-07 to 2012-13), this affords a higher return to MIAL and hence, the private partner of JV, while contributing to higher airport charges at CSI Airport, Mumbai.

AAI stated (July 2013) that there is no conflict between AERA Act and SSA and that these two provisions of OMDA and AERA Act have been harmonised. Accordingly, the charges for Cargo and Ground Handling services for Delhi/ Mumbai airports are being fixed / regulated by AERA considering these as aeronautical services as per provisions of AERA Act. AAI, however, agreed that the airport tariff is being determined as per the formula provided in SSA in line with section 13(1)(a)(vi) of AERA act and schedule I of SSA.

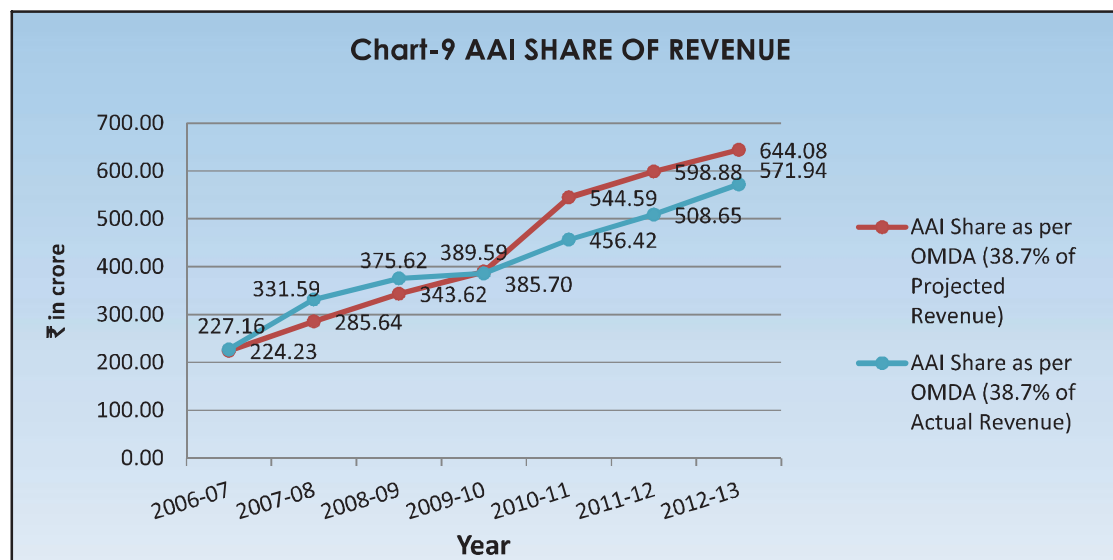
Though the charges for Cargo and Ground Handling services for Delhi/ Mumbai airports are being regulated by AERA, revenues from these services are being treated as non-aeronautical revenue as per the provisions of OMDA and SSA in determining the airport charges. As only 30 per cent of gross non-aeronautical revenue is considered for fixation of airport charges vis-a-vis 100 per cent of net aeronautical revenue, this difference in definition of 'aeronautical' and 'non-aeronautical' revenue in OMDA and AERA provisions allows a financial benefit to MIAL and, hence, the private partner of JV, while loading the passenger with higher airport charges.

It is pertinent to note, in this connection, that PAC have recommended in their report presented to Parliament on 06 February 2014, on the Audit Report

No. 5 of 2012-13 that dealt with Implementation of PPP in Indira Gandhi International Airport, Delhi, on the same issue, that MOCA may apprise PAC of the financial impact of the concessions granted by Government under OMDA and the revenue ensured by the Government from the JV after Ground Handling services and Cargo Handling services were categorised as aeronautical services.

5.3 Revenue accruing to AAI

The entire revenue earned (both aeronautical and non-aeronautical) by MIAL is shared with AAI, the share of AAI being 38.7 per cent. The revenue that accrued to AAI from 2006-07 to 2012-13 is shown in the following chart.

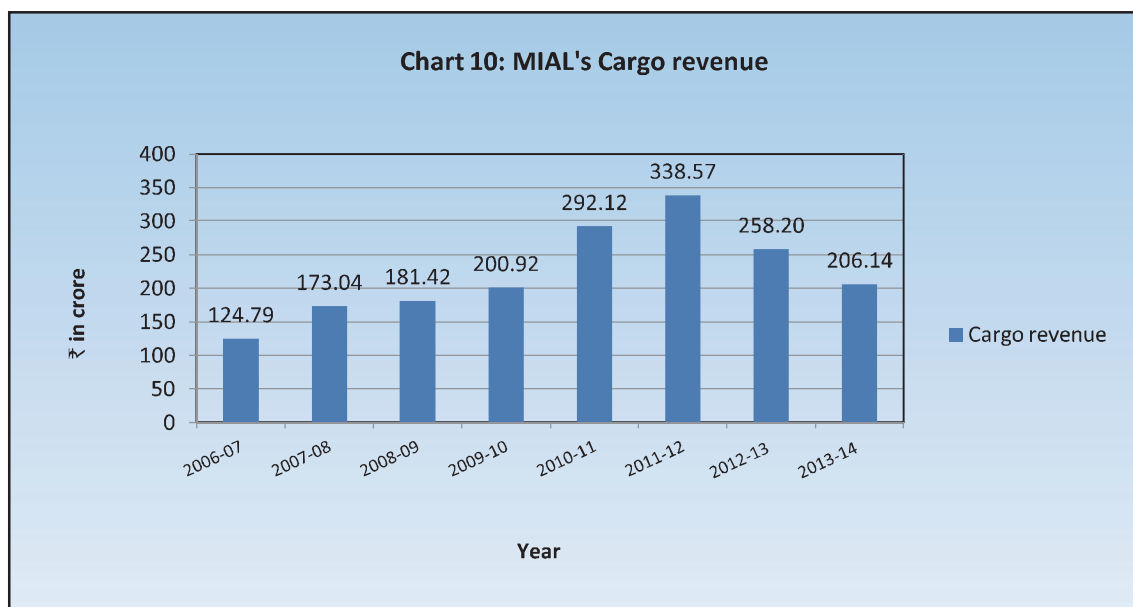


Source: Business Plan and Independent Auditors' Reports

While AAI share has increased steadily over the years, with MIAL having outsourced some of its activities, the percentage of additional revenue inflow to AAI is expected to diminish in future as has been brought out in the subsequent paragraphs.

5.4 Outsourcing domestic and international cargo activities

Cargo revenue comprises mainly domestic and international cargo operations. A review of MIAL's revenues particularly with regard to actual cargo revenues of MIAL for the period 2006-07 to 2012-13 and the estimates for 2013-14 revealed that the cargo revenue projections declined from 2012-13 onwards as indicated in the chart below:



Source: Independent Auditors' Report and MIAL's correspondence with AERA

Note: Figures for 2013-14 are estimates submitted by MIAL to AERA

The fall in estimated cargo revenues is on account of intended outsourcing of both the domestic and international cargo operations. It had originally been planned to operationalise the outsourcing arrangement for domestic as well as international cargo by 01 September 2012. Domestic cargo was outsourced (May 2013) to M/s. Container Corporation of India on Build Own Operate Transfer basis (BOOT) and perishable cargo handling was outsourced to M/s. Cargo Service Centre India Private Limited (16 May 2011). International cargo had been concessioned to M/s. Concor Air Limited (18 February 2014). Revenue share of MIAL from domestic cargo is 42 per cent (with a minimum annual guarantee of ₹7 crore) while that for perishable goods is 15.11 per cent (with a specified minimum guarantee based on estimates of cargo).

As seen from the chart, the cargo revenue is estimated to fall by ₹132.43 crore in a span of two years from (2011-12 to 2013-14) registering a 40 per cent reduction. However, in 2012-13, cargo revenue decreased to ₹ 258.20 crore. As 30 per cent of cargo revenue is taken into account in target revenue while arriving at the tariff rates, the fall in cargo revenues would lead to higher tariff and corresponding higher burden on passengers. Besides, significant reduction in cargo revenue would also reduce revenue share of AAI substantially.

AAI /MOCA stated (July/November 2013) that OMDA gives the right to MIAL to contract and / or sub-contract with third parties. AAI also pointed out that in the initial period, cargo operation had been handled by MIAL which decided to develop these facilities on BOOT basis. AAI agreed that there would be a drop in revenue in the initial period due to outsourcing but

pointed out that it would result in better infrastructure and increase in handling capacity.

Reply of AAI substantiates the audit observation. MOCA would be well advised to monitor and review the extent and adequacy of promised improvements in infrastructure and handling capacity compared to the projected reduction in revenues.

5.5 Award of concession for operation of Hotel near Terminal 1C to a Group Entity consortium

As per Article 8.3.3 and 8.3.7 of OMDA all developments (Aeronautical Assets, Non Aeronautical Assets, Transfer Assets, Non-Transfer Assets) at the Airport shall be as per the existing Master Plan and no development that is not envisaged in the Master Plan shall be allowed to be undertaken. OMDA also stipulates that MIAL shall clearly demarcate and distinguish, Transfer Assets and Non-Transfer Assets in the Master Plan {Article 13.1 (b)(ii)}.

MIAL took up construction of a hotel near Terminal 1C in June 2009 though it was not included in Master Plans (October 2006 and May 2007). In February 2010, MIAL informed AAI that it had carried out competitive bidding for operation of a hotel in Terminal 1C of the airport and a Consortium of (i) M/s. TAJ GVK Hotels & Resorts and (ii) Greenridge Hotels & Resorts had emerged as a successful bidder. MIAL was to receive 3 per cent of the gross revenue from the first year of commencement of operations of the hotel. A minimum annual guarantee of ₹45 lakh from second year and ₹90 lakh from third year onwards was also stipulated. AAI did not raise any objections though construction of the hotel was in violation of the provisions of OMDA {Articles 8.3.3, 8.3.7 and 13.1(b)(ii)}. AAI being a shareholder in MIAL would have been aware of the development, yet no action was initiated against the violation. MIAL later included the proposal in the Master Plan of 2011.

Subsequently, MIAL proposed a set of amendments to the agreement with the successful bidder which were also agreed by AAI with the suggestion that MIAL comply with the provisions of OMDA. The amendments included:

- increase in number of rooms from 92 to 300;
- increase in concession period from 15 years to 30 years (i.e. upto 02 May 2036, the expiry date of 30 years of OMDA);
- revenue share of MIAL to be increased from 3 per cent to 4.65 per cent;
- change in the shareholding pattern among the Consortium partners (M/s. TAJGVK - 49 per cent in place of 20 per cent and M/s. Greenridge - 51 per cent instead of 80 per cent).

Examination in Audit revealed that:

- MIAL had included the cost of construction of the hotel in the total project cost. Later, AERA disallowed it and desired that MOCA/AAI decide whether it is a 'transfer asset'⁴ or 'non transfer asset'⁵. If the hotel was designated a transfer asset, it could be included in the project cost and 30 per cent revenue would also be available for tariff fixation. AAI decided to consider it as a Non-transfer Asset.
- The bidder consortium which emerged successful for operation of the hotel comprised of M/s. TAJ GVK Hotels & Resorts (20 per cent stake) and Greenridge Hotels & Resorts (80 per cent stake). It is seen that both entities were GVK group companies. These entities formed a Joint Venture company M/s. Green Woods Palaces and Resorts Private Limited. As M/s. GVK Airport Holdings Private Limited which is a part of the GVK group has management control of MIAL (with a 50.5 per cent equity shareholding), the agreement entered into by MIAL with this consortium could benefit the parent company. It was also noticed that the terms of the agreement were subsequently altered in favour of the consortium allowing an increase in number of hotel rooms from 92 to 300 and extension of the concession period from 15 years to 25 years. The post bid changes were a violation of the principles of contracting and was an undue favor granted to the selected consortium which assumes further significance in view of the shareholding pattern of the concerned companies.
- AAI is eligible to share 38.7 per cent of the revenue generated from this asset. Since MIAL had agreed to receive only 4.65 per cent revenue from the concessionaire, the actual revenue which would accrue to AAI on account of the hotel project would be a miniscule fraction of the actual revenues (38.7 per cent of 4.65 i.e. 1.79 per cent) generated by this activity. However, as both the consortium members namely M/s. TAJ GVK Hotels & Resorts and Greenridge Hotels & Resorts are GVK group entities, the share of M/s. GVK from the hotel operations would be far higher.
- MIAL had forwarded (February 2010) the draft License Agreement and Concession Agreement to be executed with the successful bidder to AAI for comments. AAI, however, did not object (February 2010) to the arrangement though it would have significant adverse impact on its revenues.

⁴ ***'Transfer assets' encompass assets used for both aeronautical and non-aeronautical purposes which would be transferred back to AAI at the conclusion of the agreement.***

⁵ ***'Non-transfer assets' imply land available for commercial exploitation by MIAL for which AAI does not have the obligation (though it has the right) to acquire MIAL's rights, titles and interests at the conclusion of the agreement. Land available for 'non-transfer asset' is limited to 10 percent of the demised premises according to OMDA.***

AAI stated (July 2013) that its comments were not required as both the Master Plans of 2006 and 2007 did not envisage construction of the Hotel at Terminal 1C. AAI also asserted that the Hotel could not be designated as a 'Transfer Asset' as in such a case it would have been included in the project cost and had to be financed through DF which would also have increased the load on the passenger. Besides, appropriate procedure for appointment of Probity Auditor was done and its report was considered before permitting the contract.

In addition, MOCA stated (November 2013) that modifications could have been taken up by MIAL keeping AAI informed.

The reply needs to be viewed against the following:

- (a) AAI is represented on the Board of MIAL and ought to have been aware of the initiation of construction of the Hotel in June 2009 without it being included in the Master Plan, 2007. The Independent Engineer also failed in reporting the Hotel construction which was in deviation to the then operational Master Plan.
- (b) Considering that the revenue of AAI vis-à-vis the promoter of MIAL would be adversely affected through the concession agreement with a group entity of the private promoter, a higher degree of vigilance and due diligence was required.
- (c) MIAL included the Hotel project only in the Master Plan of 2011 and proposed that it be developed as a Transfer Asset. AAI has stated that the Hotel would not be developed as a Transfer Asset.

5.6 Undue benefit of ₹3.17 crore to MIAL

MIAL was liable (Article 5.1 of OMDA) to perform all obligations (including payment obligations) of AAI under all contracts and agreements between AAI and any third party with effect from the effective date (03 May 2006). Further, MIAL was also liable {Article 5.2 (b) (ii)}, for completion of all work-in-progress at CSI Airport, Mumbai and payments in respect of all capital work-in-progress at CSI Airport, Mumbai from 30 August 2005. The payments were to be made by MIAL to AAI within 15 days of the effective date on the basis of separate detailed accounts maintained by AAI and furnished to MIAL on the effective date.

In a meeting (14 June 2006) AAI agreed that all payments for the works in progress after the effective date would continue to be discharged by AAI. Bills for the work done would be raised by AAI on MIAL every fortnight which MIAL would reimburse. AAI raised claims for reimbursement of capital work-in-progress cost for the period 30 August 2005 to 02 May 2006 only on 15 September 2006. Besides, the claims for works-in-progress after the effective date (03 May 2006) were also delayed upto 159 days against the

prescribed time of a fortnight. MIAL also defaulted in reimbursing the claims in time and delayed reimbursement by upto 511 days resulting in loss of interest of ₹3.17 crore to AAI.

AAI/MOCA stated (July/November 2013) that raising of bills for reimbursement of capital work-in-progress was delayed due to procedures involved for preparation of bills. It was not possible to prepare bills on any particular date. Being new, MIAL also took some time to understand and reimburse the claims raised by AAI.

Reply ignores the fact that AAI was fully aware of the procedure involved in the preparation of bills and, hence, it would have been possible for AAI to have taken action to avoid delays. Further, as per the terms of OMDA, MIAL had committed to timely reimbursement of claims.

5.7 Delay in receipt of Retirement Compensation

Article 6.1.1 of OMDA stipulated operation support by AAI with the help of general employees to MIAL for a period of 3 years from 03 May 2006 to 02 May 2009. OMDA also stipulated (Article 6.1.4) that MIAL shall make an offer of employment not later than 3 months prior to the expiry of Operation Support Period, to a minimum of 60 per cent of employees. In the event of MIAL being able to absorb less than 60 per cent of such employees, MIAL was liable to pay Retirement Compensation to AAI for such unabsorbed number of general employees. As per Article 1.1 of OMDA, Retirement Compensation was to be based on the latest available Voluntary Retirement Scheme of AAI.

During the operation support period, only 185 employees were absorbed by MIAL and for the balance 1,245 unabsorbed employees, MIAL was liable to pay Retirement Compensation as per the provisions of OMDA. AAI raised bill on MIAL for ₹260.86 crore in March 2010. Of this, MIAL, till March 2010, had released an amount of ₹154.23 crore in four instalments and the balance of ₹106.63 crore was outstanding (as of May 2010).

MOCA observed (November 2009) that payment of Retirement Compensation from MIAL became due immediately after the operation support period *i.e.* post 02 May 2009. However, a lenient view was taken with the approval of Minister of State of Civil Aviation (Independent Charge), and accordingly MOCA directed AAI to recover the Retirement Compensation without penal interest from MIAL by March 2010. MOCA also intimated (May 2010) that any payment due after 01 April 2010 automatically attracted penal interest on State Bank of India Prime Lending Rate plus 10 per cent.

In a meeting between AAI and MIAL (August 2010) a decision was taken to allow MIAL to pay the balance amount in instalments. Consequent to the

decision, AAI (October 2010) revised the balance due and recommended for monthly instalment payable in 10 years from November 2010.

Thus, AAI allowed MIAL to pay Retirement Compensation as monthly instalments over ten years in violation of the directives from MOCA. This resulted in undue favour to MIAL and consequent loss of interest to AAI amounting to ₹71.37 crore, calculated at 10 per cent per annum.

Further, AAI had claimed (in March 2011 and April 2011) an additional amount of ₹33.40 crore towards Retirement compensation due towards revision of pay of non-executives. However, MIAL paid the same in 2 instalments (June 2011 and September 2011). Allowing MIAL to pay the same in instalments was also an undue benefit conferred on MIAL by AAI.

AAI /MOCA stated (July/November 2013) that they had failed to raise the final bill on MIAL in time (by 31 March 2010). When MIAL made a part payment of ₹ 154.23 crore on the provisional bill of ₹ 260.86 crore, AAI did not claim the balance as the procedure for payment of retirement benefit had changed from a one-time to a monthly basis. Following deliberations of AAI with MIAL, an agreement was reached according to which MIAL would make full payment of *ex-gratia* amount in *lump-sum* and the balance would be a monthly payment over the next ten years. AAI justified (July 2013) its actions stating that as the claim of Retirement Compensation from MIAL was as per the Voluntary Retirement Scheme of AAI, no loss had been incurred by AAI.

Reply needs to be viewed against the facts that

- (i) MOCA stated in November 2009 that payment of retirement compensation to AAI amounting to ₹260.86 crore became due immediately after the end of Operational Support Period (*i.e.* 03 May 2009 as per OMDA).
- (ii) AAI, however, allowed MIAL to pay ₹154.23 crore in four instalments and to make balance payments in monthly instalments spread over a period of 10 years against the directions of MOCA, which was an undue favour to MIAL by AAI.

MOCA's attention is drawn to the recommendation of PAC on a similar issue in Audit Report No. 5 of 2012-13 relating to the implementation of PPP arrangements in Indira Gandhi International Airport, Delhi where PAC concluded that MOCA had erred in safeguarding the interests of employees of AAI and failed to enforce its directives while also recommending that MOCA enforce the contractual obligations as per OMDA.