

CHAPTER II: MINISTRY OF CIVIL AVIATION

Airports Authority of India

2.1 Potential loss of revenue to Airports Authority of India (AAI) resulting from flaw in agreement between MIAL and private developer HDIL for removal of encroachments from Airport Land

As per Operation Management and Development Agreement signed between AAI and MIAL, MIAL was to remove encroachments in the demised airport land handed over by AAI to MIAL. Subsequently, MIAL awarded rights for commercial development on a considerable portion (65.20 acres) of Mumbai airport land owned by Airports Authority of India (AAI) to HDIL for a very long period (upto 60 years) in return for removal of encroachments from the airport land. MIAL did not inform AAI before entering into an agreement. MIAL would not receive any revenue from HDIL for the commercial development of airport land and hence no revenue share would accrue to AAI. Though the contract between HDIL and MIAL has since been terminated (February 2013), the matter is still under arbitration and hence the possibilities of transfer of land with attached commercial development rights have not been closed finally. Meanwhile, the encroachment of airport land is continuing.

Airports Authority of India (AAI) handed over (April 2006), Chatrapati Shivaji International Airport (CSIA), Mumbai to Mumbai International Airport Limited (MIAL) under Operation Management and Development Agreement (OMDA) for a period of 30 years. The airport land handed over to MIAL was termed the 'demised premises'. At the time of signing of OMDA, the status of total land of Mumbai Airport was 1875 acres. Out of this 1875 acres, 76.3 acres were carved out assets retained by AAI. The balance area i.e 1798.7 acres was demised premises. As per clause 2.2.4 of OMDA, MIAL was eligible to utilize 10 per cent of the demised premises in the airport for commercial development. The area available for commercial development was 179.8 acres. As per clause 11.1.2 of OMDA, AAI was eligible to receive 38.7 per cent of the gross revenue (including revenue from commercial activities) generated by MIAL.

The demised premises included encroached land. As per the State Government Support Agreement (SGSA) signed by MIAL (April 2006) with Govt. of Maharashtra, MIAL was to bear the entire cost of relocation of approx. 80,000 families encroaching airport land. In March 2007, State Government allowed inclusion of the project for rehabilitation of slum dwellers from the airport site under the Development Control Regulations (DCR). DCR provides for both in-situ rehabilitation (clause 33(10) of DCR) as well as rehabilitation in an alternate site (clause 3.11 of DCR). It was decided that the encroachers of airport land would be rehabilitated in an alternate site (clause 3.11 of DCR).

In October 2007, MIAL signed an agreement with a private company, Housing Development and Infrastructure Limited (HDIL) for removing and rehabilitating encroachers of airport land by October 2011. The work was to be taken up in two phases,

removing encroachment from airport land measuring 157.93 acres in the first phase and from 118.53 acres in the second phase. As per agreement, HDIL was to bear the entire cost of rehabilitation and in return, receive rights for commercial development of 65.2 acres (55 per cent of the airport land cleared of encroachment in the second phase). As required under clause 3.11 of DCR, HDIL identified its own land and took up construction of 28,000 tenements in the first phase of encroachment removal scheme. HDIL signed deeds of conveyances (December 2007) with Slum Rehabilitation Authority (SRA) of Government of Maharashtra, transferring the ownership of land and tenements to SRA. Under the DCR provisions, HDIL was eligible for Transfer of Development Rights (TDRs) in lieu of land that it provided (land TDR) and for construction of tenements (construction TDR). As on Sept 2015, SRA had released land TDR for 2,50,679.63 sq. mtrs and construction TDR for 6,49,392.00 sq. mtrs (Approx. value ₹ 2,400 crores¹).

Clause 8.5.7 (e) of OMDA required that the JVC shall ensure that any sub-contract, license or sub-lease granted in relation to the airport expires on the 30th anniversary of effective date. The agreement between HDIL and MIAL, however, envisaged sub-lease of 65.2 acres of airport land to HDIL for commercial development for a period of 30 years to be renewed automatically for another 30 years in case the airport lease with MIAL gets renewed, which is in contravention of the provisions of clause 8.5.7 (e) of OMDA.

In February 2013, MIAL terminated its contract with HDIL as the airport encroachment, being agreed under the Contract, could not be removed by HDIL by October 2011. HDIL invoked the arbitration process. Presently (November 2015), the dispute between HDIL and MIAL is under arbitration. Till date, no encroachment has been removed from the airport site. SRA meanwhile released considerable quantum of TDR (both land and construction TDR) to HDIL. The grant of such TDR, thus, did not serve the intended purpose of encroachment removal from Mumbai Airport.

Audit has the following observations:

- MIAL was eligible for commercial development of 179.8 acres of land (10 per cent of the demised premises of 1798.7 acres) in the Mumbai airport. In the sanctioned Interim Development Plan (IDP) of CSIA for the period 2010-14 MIAL proposed commercial utilisation of 169.31 acres with floor space index (FSI) of 4.0. In August 2014, MIAL pointed out to Government of Maharashtra that the available land at Mumbai airport for commercial development was only 133.08 acres as against its requirement of 169.31 acres (sanctioned in the IDP). The State Government accordingly allowed MIAL an additional FSI of 1 (the available FSI of 4 increased to 5) for 133.08 acres of airport land to cover the shortfall. Thus, MIAL has already received commercial development rights for 169.31 acres of airport land out of 179.8 acres mandated in the OMDA for which MIAL has also identified specific commercial activities. Thus, balance land available to MIAL for commercial development as per OMDA is only 10.49 acres (179.8 – 169.31 acres = 10.49 acres). The agreement between

¹ As submitted by HDIL to Hon'ble High Court of Mumbai during November 2013.

MIAL and HDIL provides for sub-lease of 65.2 acres of airport land to HDIL for commercial development, even though, only 10.49 acres would be available as per the OMDA as against the 65.2 acres required to be provided to HDIL, in case the arbitration award goes in its favor. Though the agreement has been terminated by MIAL, it has been disputed by HDIL and the matter is presently under arbitration which leaves open the possibility of excess airport land being utilized for commercial development.

- MIAL had embarked on removal of encroachment from airport land citing aeronautical requirements. However, once the airport land becomes free of encroachments, 65.2 acres of this freed land would be available to HDIL for commercial development. As per OMDA, AAI was eligible to receive 38.7 percent of the gross revenue¹ generated by MIAL. As per the agreement between HDIL and MIAL, MIAL would not receive any revenue share for 65.2 acres of land of airport land available for commercial development. Consequently AAI, would not receive any revenue share for development of airport land by HDIL in case arbitration award goes in favor of HDIL.
- AAI has given an in-principle approval to MIAL (February 2014) to carry out in-situ rehabilitation of slums in Mumbai airport (clause 33 (10) of DCR). As per provisions of DCR, the built up area to be consumed on the site for the in-situ rehabilitation project is 2.5 times of available Floor Space Index (FSI). The balance built up area, after in-situ rehabilitation, can be taken as transferable development rights (TDR). Thus TDR benefits would be available to MIAL in case of in-situ rehabilitation of airport slum. In such an event, the same encroachment site at the airport would form the basis for TDR benefits to HDIL (under clause 3.11 of DCR which has already been partially granted) and to MIAL (under clause 33(10) of DCR) resulting in benefit to two different entities for the same encroachment site.
- As per clause 8.5.7 (c) (bb) of OMDA, MIAL had to inform AAI before entering into any agreement with a third party. However, MIAL, did not inform AAI of the agreement between itself and HDIL regarding removal of encroachments from airport land. The lack of information with AAI regarding this contract, to safeguard its interest also needs to be viewed in the context of a representative of AAI being a member of the board of MIAL².
- Report No. 2(Civil) of C&AG of India for the year ended 31 March 2011 on Government of Maharashtra had reported on “Slum Rehabilitation Schemes in Mumbai”. It was brought out that the Government of Maharashtra had extended (30 March 2007) the provisions of DCR to MIAL, on payment of additional infrastructural charges at double the rate of normal infrastructure charges (subject

¹ *As per OMDA, AAI is eligible for 38.7 per cent of gross revenue earned from services/activities such as aeronautical as well as non-aeronautical. (Aeronautical services include the services provided as listed in schedule 5 of OMDA. Non-aeronautical services include the services provided as listed in schedule 6 of OMDA.)*

² *AAI having 26 per cent share in MIAL*

to a maximum of ₹30,000 per tenement). However, only normal infrastructure charges were recovered from MIAL, leading to a short recovery of ₹84 crore.

AAI in its reply stated that:

- (i) At the time of executing the agreement with HDIL, MIAL had not informed AAI of the same. However, as per OMDA clause 8.5.7, MIAL had the right to sub-lease any land for commercial use.
- (ii) As per Article 18.1(b) of OMDA, the JVC does not have automatic right to extend the period but the extension is subject to review by AAI.
- (iii) Land under encroachment has been shown as Encroached Land in the Draft Master Plan of 2011. Similarly, table 4-1 indicates land uses which include both aeronautical and non-aeronautical uses.
- (iv) As per MIAL, there is no transfer of TDR to HDIL generated out of AAI encroached land. Further generation and any further transaction of TDR falls in the purview of the SRA/State Govt. The said grant of TDR is between the SRA and HDIL and AAI/MoCA is not a party to this transaction.
- (v) In principle approval for the in-situ rehabilitation has been accorded by AAI. MIAL has also approached Govt. of Maharashtra to formulate Rehabilitation Scheme specific to Airport which is yet to be finalized. It has also been decided in the 19th OMDA Inspection Oversight Committee(OIOC) meeting on 1st October 2015 that MIAL will closely liaison with the State Government for finalization of its scheme for rehabilitation of slums which could thereafter be taken to the Union Cabinet for its approval, if necessary.
- (vi) The Audit observation has become inoperative as the contract between MIAL and HDIL has been terminated by MIAL due to non-fulfillment of its obligation. The dispute between HDIL and MIAL is under arbitration and it is fait accompli in any such contract.

The reply furnished is not tenable in view of the following:

- (i) AAI has acknowledged that it was not aware of the agreement between MIAL and HDIL despite the presence of representative of AAI on the Board of MIAL.
- (ii) Audit has commented on the agreement entered into by MIAL with HDIL with maximum duration of 30 years (clause 8.5.7(e) of OMDA). By allowing an automatic extension of this contract, clause 8.5.7(e) has been violated. The clause 18.1(b) quoted by AAI, pertains to the extension of OMDA between AAI and MIAL and is not relevant to the audit observation.
- (iii) AAI has confirmed that presently there is a proposal for in-situ development of encroached land. The audit concern is that this may lead to TDR benefits allowed under DCR of Maharashtra for such in-situ development benefits being allowed to different parties (HDIL under ex-situ development and another party for in-situ development of the same site).
- (iv) The reply of the management that the dispute between MIAL and HDIL is fait accompli is incorrect. Audit has pointed out weaknesses in the operation of PPP which led to a possibility of transfer of AAI land to a third party without AAI's

knowledge and to its detriment, even though AAI is represented on the MIAL Board. The present dispute under arbitration is a fallout of this lack of monitoring on the part of AAI.

The matter was reported to the Ministry in February 2016; their reply was awaited (March 2016).

2.2 Short realization of Annual Fee from MIAL resulting in loss of revenue to AAI

As per OMDA, MIAL had to share 38.7 per cent of its pretax gross revenues with AAI except for those specifically exempted. In contravention of OMDA terms, MIAL did not share revenues earned as non-refundable deposits made by bidders and additional water and electricity charges collected over and above the rates at which it paid to concerned authorities. AAI failed to recover these monies long after these violations were pointed by the independent auditors appointed by it.

Airports Authority of India (AAI) signed the Operation, Management and Development Agreement (OMDA) with Mumbai International Airport (Private) Limited (MIAL) on 4th April, 2006 thereby handing over the Chhatrapati Shivaji International Airport (CSIA), Mumbai to MIAL for development, operation and management for a period of 30 years, extendable by another 30 years.

As per clause 11.1.2.1 of the OMDA, MIAL has to pay to AAI an annual fee for each year during the term of the agreement, equal to 38.70 per cent of 'revenue' for the said year. The annual fee is payable in twelve equal monthly installments, on the first day of each calendar month. In case of non-receipt of monthly payment by AAI, interest for the delay would be charged at State Bank of India Prime Lending Rates (SBI PLR) +10 per cent p.a (clause 11.1.2.2 of OMDA).

'Revenue' is defined in the OMDA (clause 1.1 of OMDA) as "all pre-tax gross revenue of JVC, excluding the following: (a) payments made by JVC, if any, for the activities undertaken by Relevant Authorities or payments received by JVC 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 JVC from sale of any capital assets or items; (d) payments and/or monies collected by JVC 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".

Audit noticed that the independent revenue auditors appointed by AAI had highlighted some specific instances where revenue of MIAL were not shared with AAI. It was observed that AAI had not taken any corrective action on the matter, despite lapse of considerable time. The specific instances noticed are shown below:

(i) Non-refundable deposits collected by MIAL, not shared with AAI

MIAL had collected non-refundable deposits from bidders while tendering for allotment of space at the new terminal T2. Being non-refundable, these amounts constituted an income to MIAL. Till June 2015, MIAL had collected an amount of ₹ 31.47 crores on

this account. It was noticed that MIAL had adjusted ₹ 18.10 crores out of it, towards its expenditure (2013-14 and 2014-15) and only shared the balance amount of ₹13.37 crore with AAI.

The independent auditor had stated in his report (for the quarter ended March 2013) that these non-refundable deposits are not recognized as income and hence not shared with AAI. MIAL in its response to AAI (June 21, 2014) stated that non-refundable deposits were essentially in the nature of recoupment of the cost of consultants appointed by MIAL for advising on business planning, concession planning, formulation of RFQ and RFP, commercial terms for T2 commercial tenders and other concessions and hence could not be treated as revenue. Audit did not notice any further effort on the part of AAI to demand share of the balance revenues.

The contention of MIAL that these items are recoupments and not to be recognized as revenue is not acceptable. As per terms of OMDA, the gross revenue of MIAL with a few specified exclusions has to be shared with AAI. Non-refundable deposits, even if collected as recoupment of expenses do not qualify for exemption under OMDA and hence ought to be shared with AAI.

Non-sharing of ₹18.10 crore of non-refundable deposits collected by MIAL with AAI has resulted in short realization of ₹ 7 crore revenue (38.70 per cent of ₹18.10 crore) and loss of interest of ₹ 2.02 crore thereon to AAI.

AAI in its reply (March 2016) stated that, as informed by MIAL, the above “Bid Development Cost” from bidders was collected towards cost of RFP process to ensure participation by serious bidders and only tender related expenditure were adjusted against such bid development cost and as such no revenue income accrued to MIAL in this regard. AAI further stated that the independent auditor has been instructed to verify the same including the justification of MIAL towards adjustment of bid development cost.

Management reply is not in line with the terms of the OMDA which does not allow adjustments of such expenses while arriving at the gross shareable revenue. Further action of AAI in this regard would be reviewed in future audits.

(ii) Additional revenue collected by MIAL as electricity and water charges from concessionaires not shared with AAI

MIAL provides electricity and water facilities to various trade concessionaires and recovers charges for these utilities at agreed fixed rates from them. MIAL has been recovering since December 2010, these utility charges at rates higher than the actual applicable rates, payable to the authorities. The excess amount so collected is being retained by MIAL and was not shared with AAI.

The matter had been highlighted by the Independent Auditor (since December 2010). In response to AAI's demand (letters of June 2011 and March 2012) for release of payment towards excess utility charges collected, MIAL had stated that these utility charges are collected from the concessionaires as reimbursement of common area cost and not revenue. The matter had been referred to Ministry of Law and Justice (MoL&J) who observed (May 2012) that payments received and made by JVC for electricity charges,

municipal taxes etc. do not form a part of the annual fee payable. AAI did not further pursue the demand with MIAL in view of this observation of MoL&J.

Audit noticed that the MoL&J opinion has only stated that utility charges collected from the trade concessionaires, to the extent that they are paid to the government authorities, does not form a part of revenue. However, MIAL collected additional amounts, over and above payments made to the authorities for these utilities. This additional amount retained by MIAL is an income of MIAL, which ought to be shared with AAI.

Over the period, April 2010 to March 2015, MIAL had recovered additional charges of ₹ 58.36 crore¹ (₹ 52.47 crore towards additional electricity charges and ₹ 5.89 crore towards additional water charges). This amount ought to have been regarded as revenue of MIAL and should have been shared with AAI as per clause 11.1.2.1 of the OMDA. Failure to do so had led to short realization of annual fee of AAI by ₹ 22.59 crore (38.7 per cent of ₹ 58.36 crore) and loss of interest of ₹ 18.62 crore thereon.

AAI in its reply (March 2016) stated that it has been decided after discussion with MIAL that any excess collection in this regard is to be shared with AAI. However, acceptance of said decision from MIAL for the same is awaited.

The reply needs to be viewed against the fact that the Independent Auditor has been highlighting this issue since December 2010 and AAI had not pursued the matter since May 2012.

In all the above instances, MIAL had not shared its revenue with AAI in line with the provisions of OMDA. Audit noticed that AAI has not taken any concrete steps for recovery of the revenue and safeguarding its own interests even when they had been highlighted by the independent auditor. This led to short receipt of ₹ 29.59 crore as revenue from MIAL and consequent loss of interest of ₹ 20.64 crore.

The matter was reported to the Ministry in March 2016; their reply was awaited (March 2016).

2.3 Non-realisation of revenue share as per provisions of agreement

Airports Authority of India (AAI) did not take the required action to protect its financial interests in terms of the provisions of Operation, Management and Development Agreements signed with MIAL and DIAL which resulted in non realisation of share of ₹ 29.62 crore by AAI in the revenues of MIAL and DIAL. AAI also sustained loss of interest to the extent of ₹ 13.86 crore (till March 2015) on the unrealised amount.

Airports Authority of India (AAI) signed on 4 April, 2006 two separate agreements viz. Operation, Management and Development Agreements (OMDA) with Delhi International Airport (Private) Limited (DIAL) and with Mumbai International Airport (Private) Limited (MIAL), thereby handing over Indira Gandhi International Airport (IGIA), Delhi and Chhatrapati Shivaji International Airport (CSIA), Mumbai to DIAL and MIAL, respectively, for development, operation and management of the airports.

¹ As per Independent Auditor report for the quarter ended March 2015

As per clause 11.1.2 of both the OMDAs, DIAL and MIAL have to pay to AAI an annual fee for each year during the term of the agreement, equal to 45.99 *per cent* and 38.70 *per cent*, of 'revenue' for the said year, respectively. The annual fee is payable in twelve equal monthly instalments, on the first day of each calendar month. In case of non-receipt of monthly payment by the due date, the AAI is entitled to recover interest on the amount due, at Prime Lending Rate of State Bank of India +10 *per cent* p.a. for the period of delay. The above clause of OMDA further stipulates that the applicable revenue used for final verification/reconciliation of the Annual Fee shall be the revenue of the JVC as certified by the Independent Auditor every quarter.

Further, clause 1.1 of both the OMDAs defined 'Revenue' as "all pre-tax gross revenue of JVC, excluding the following: (a) payments made by JVC, if any, for the activities undertaken by Relevant Authorities or payments received by JVC 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 JVC from sale of any capital assets or items; (d) payments and/or monies collected by JVC for and on behalf of any governmental authorities under Applicable Law and (e) any bad debts written off provided these pertain to past revenues on which annual fee has been paid to AAI".

MIAL and DIAL constituted a Marketing Fund in April 2010 and August 2012, respectively, and started collecting 0.5 *per cent* and one *per cent* respectively of Net Sales from various concessionaires as Marketing Fund Charge. The objective of the Marketing Fund was to promote business of concessionaires at CSIA Mumbai and IGIA Delhi.

Audit observed that MIAL and DIAL had collected/billed from the concessionaires (till March 2015) an amount of ₹ 66.76 crore in the name of Marketing Fund (MIAL ₹ 14.90 crore and DIAL ₹ 51.86 crore) without sharing it with the AAI in terms of clause 11.1.2 of OMDAs referred above. Audit further observed that respective Independent Auditors, while certifying revenue of MIAL and DIAL, have been raising through the quarterly reports, the issue of non inclusion of the amount of Marketing Fund in the revenues of MIAL and DIAL. Thus non-sharing of the revenue by MIAL and DIAL with AAI resulted in short realization of ₹ 29.62 crore (MIAL ₹ 5.77 crore + DIAL ₹ 23.85 crore) to AAI and loss of interest of ₹ 13.86 crore (MIAL ₹ 2.02 crore + DIAL ₹ 11.84 crore) thereon (till 31 March 2015), as worked out in terms of above mentioned provisions of OMDAs.

AAI in their reply (February 2016) stated that:

- (i) As there is no provision in OMDA with regard to utilization of revenue, for the promotion of the business of the concessionaires at the airport, in the name of Marketing Fund, they have communicated (February 2016) to MIAL and DIAL to treat the Marketing Fund as shareable revenue and remit the same to AAI at the applicable rate as per OMDA, since introduction of marketing fund including interest.
- (ii) The Independent Revenue Auditors appointed under clause 11.2 of OMDAs have also been instructed to look into the matter and the issue would be taken up by the AAI representative in the Board meeting of MIAL/DIAL.

Fact remains that though constitution of Marketing Fund was in contravention of provisions of OMDA, AAI did not object to constitution of the fund. The Agenda and Board Minutes of MIAL/DIAL, reflecting the inputs of AAI representative on the Boards of MIAL/DIAL, while approving the decision of establishment of the respective Marketing Funds, were also not made available to Audit. Further, even after highlighting the matter by the respective Independent Revenue Auditors in their quarterly Revenue Audit Reports (for quarter ended December 2012 in case of MIAL and for quarter ended June 2014 in case of DIAL), AAI did not take appropriate action in the matter for more than two years. The action proposed by AAI would be reviewed in future audits.

Thus, AAI's failure in resolving the issue promptly has resulted in non realisation of revenue of ₹ 29.62 crore and loss of interest thereon to the extent of ₹ 13.86 crore.

The matter was reported to the Ministry in December 2015; their reply was awaited (March 2016).

2.4 Irregular payments towards encashment of half pay leave

AAI allowed to its employees encashment of half pay leave/earned leave, on their retirement/superannuation/death, beyond the prescribed ceiling of 300 days, in contravention of GoI/DPE guidelines, which resulted in irregular payment of ₹ 30.30 crore during the period from January 2006 to March 2015.

Department of Public Enterprises (DPE) had instructed (April 1987¹) that the individual public enterprises may frame leave rules for its employees keeping the broad parameters of the policy guidelines laid down in this regard by the Government of India (GoI). DPE enhanced (August 2005) the existing ceiling on accumulation of earned leave from 240 days to 300 days for public enterprises. GoI allowed encashment of earned leave (EL) and half pay leave (HPL) subject to overall limit of 300 days with effect from 1 January 2006. DPE, referring to its instructions of April 1987, issued clarification on 17 July 2012² that EL and HPL could be considered for encashment of leave on retirement subject to the overall limit of 300 days. Thus, in terms of DPE instructions of April 1987 *ibid*, public enterprises were required to follow the overall ceiling of 300 days for encashment of EL and HPL on retirement of their employees.

Audit observed (January 2015) that:

- Though the guidelines did not permit for encashment of HPL till 1 January 2006, Airports Authority of India (AAI) allowed encashment of 240 days HPL on superannuation/resignation/death since 29 August 2000. The ceiling of 240 days was further enhanced in November 2004 to maximum of leave standing at the credit of the employees on the date of superannuation/resignation/death. Thus, encashment of HPL during the period from 29 August 2000 to 31 December 2005 was in violation of guidelines of GoI and DPE. In the absence of details, the excess amount paid during this period could not be ascertained.

¹ OM No.2(27)85-BPE(WC) dated 24 April 1987

² OM No.2(14)/2012-DPE(WC) dated 17 July 2012

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- Contrary to GoI/DPE guidelines for encashment of EL/HPL on superannuation /resignation/death subject to the ceiling of 300 days, AAI allowed encashment of EL/HPL in excess of 300 days, resulting in irregular payment of ₹30.30 crore to its employees, during the period from January 2006 to March 2015.
- As per clause 43 of AAI Act 1994, each regulation issued by AAI is required to be laid before the Parliament. However, whether the AAI (Leave) Regulations, 2003, notified on 13 June 2003, allowing encashment of 240 days of HPL beside encashment of 300 days of EL, were laid before each House of Parliament (as required under Clause 43 of AAI Act 1994), could not be verified in audit due to non production of relevant records sought by Audit.

Management replied (September 2013 and October 2015) that:

- (i) As per Clause 42(2)(b) of the AAI Act, AAI is empowered to frame its own regulations, following due procedure of notifications such as approval of Ministry of Civil Aviation and finally duly vetted by the Ministry of Law. Accordingly, Airports Authority of India (Leave) Regulations, 2003 were notified which contain the provision of encashment of HPL and only the ceiling was raised in November 2004 to raise it to maximum limit of leave standing at the credit of employees on the date of separation from the service.
- (ii) AAI was not paying the gross excess amount/leave at par with the employees of GoI i.e. 730 days towards Child Care Leave, 15 days for Paternity Leave and EL encashment while availing LTC in addition to encashment of EL standing at the credit at the time of superannuation.
- (iii) The said benefit was applicable to executives and non-executives and any alteration in the same will have Industrial Relation (IR) problem.

Reply of the management was not acceptable in view of the following:

- (i) Leave encashment beyond the overall ceiling prescribed by DPE/GoI was not permitted in view of DPE instructions of April 1987, followed by DPE's clarification of July 2012 reiterating the overall limit of 300 days to be considered for encashment of EL and HPL on superannuation. Further, despite requests (January 2015 and February 2016) made by Audit, AAI did not furnish the documentary evidence relating to laying of AAI (Leave) Regulation, 2003, before each House of Parliament.
- (ii) The comparison made by the Management between the benefits applicable to AAI and Central Government employees was irrelevant because DPE guidelines are not applicable to Central Government employees. Further, despite following the DPE/GoI guidelines for other purposes like revision of pay scales, credit of leave in a year, maximum ceiling for encashment of EL, etc., AAI had framed rules for encashment of HPL which were inconsistent with DPE's guidelines.
- (iii) Non-adherence to DPE guidelines in the name of IR problem is not acceptable as before deviating from the guidelines, the AAI should have raised the issue, through their administrative ministry, with the DPE.

Thus, payment made by AAI towards encashment of EL/HPL in violation of GoI/DPE guidelines, resulted in irregular payment of ₹30.30 crore (January 2006 to March 2015).

The matter was reported to the Ministry in January 2016; their reply was awaited (March 2016).

2.5 Poor utilization of infrastructure developed with Government funds at Birsi airport, Gondia resulting in recurring losses for its maintenance

Government budgetary funds (₹198.80 crore) were used to develop Birsi airport at Gondia with the objective of supporting a private flying training institute. The revenue earned by Airports Authority of India (AAI) from this institute was insufficient to meet the operation and maintenance cost of the airport. Even with utilisation of the airport infrastructure by another institute it failed to generate enough revenues to cover the running costs of the airport. Meanwhile, AAI established another institute at Gondia for better utilisation of the airport facilities. However, the institute could not fulfil its objectives or utilise the airport infrastructure. This left AAI with recurring losses; the cumulated losses incurred by AAI on Gondia airport during April 2009 to March 2015 being ₹ 27.31 crore.

Ministry of Civil Aviation (MoCA) intended (February 2005) to set up a flying training institute with development of an airport at Gondia, Maharashtra through Government of India (GoI) budgetary support. It was subsequently decided (May 2005) that the Birsi airport at Gondia would be taken over from Maharashtra Industrial Development Corporation (MIDC) and developed to be a part of the flying training institute proposed to be set up at Gondia. The Detailed Project Report (DPR) prepared for the project estimated a total project cost of ₹ 240.01 crore (₹ 118.62 crore for setting up the flying institute and ₹ 121.39 crore for development of Birsi airport at Gondia).

Subsequently (November 2007), MoCA decided that AAI would develop the Birsi airport at Gondia with budgetary support and the flying training institute would be constructed, developed and managed by a private joint venture (JV) company. While approving Government Budgetary Support (GBS) for the airport development project, MoCA directed (November 2007) that the recurring costs of the airport be borne from the resources of AAI.

Government approved (November 2007) the proposal to establish the flying training institute on JV mode. JV agreement between M/s. CAE Inc., Canada (CAE) and AAI was signed in February 2008. The shareholders agreement between AAI and International Flight School (Mauritius) Ltd. (IFSML) (an associate company of CAE) was signed in April 2008. AAI holds (March 2014) 45.36 per cent of the equity stake in National Flying Training Institute (NFTI) (the other 51 per cent held by IFSML and 3.64 per cent by M/s. Pawan Hans Helicopters Limited). AAI was required to provide land on lease to the JV for development of NFTI.

AAI has (March 2014) released ₹ 36.03 crore as equity contribution for the institute and allotted 12 acres of land at Birsi airport for setting up NFTI at a lease rent of ₹ 110 per sq.m.per annum.

The actual expenditure for development of the Birsi airport as per initial plan was ₹ 117.82 crore against which Government released ₹ 117.95 crore. This work was completed by August 2010. AAI highlighted the need for additional infrastructure at the Birsi airport for operation of bigger aircraft (A-320 aircraft) and proposed to take up a second phase of the development with government budgetary support which was agreed to by MoCA. The cost estimate for the second phase was ₹ 143.59 crore against which cumulative expenditure (upto July 2014) has been ₹ 83.82 crore. Till March 2015, AAI has received Government grant of ₹ 80.85 crore for the second phase of development of Birsi airport.

The maintenance of the Birsi airport is the responsibility of AAI. Over the last six years of operation (April 2009 to March 2015), AAI has incurred a revenue expenditure of ₹ 39.77 crore. Against this expenditure, AAI has earned the following revenue on the Birsi airport at Gondia during April 2009 to March 2015.

- (i) AAI earned a revenue of ₹ 11.07 crore from NFTI during April 2009 to March 2015. AAI has not received any dividend from NFTI as the institute has been incurring losses.
- (ii) The Indira Gandhi Rashtriya Udaan Academy (IGRUA), Rae Bareli commenced operations at Gondia for approx. six months a year since December 2007. AAI earned revenue of ₹ 1.28 crore during the period from 2009 to 2015.
- (iii) AAI established (August 2010) another institute National Institute of Aviation Training and Management (NIATAM) at Gondia at a cost of ₹ 51.91 crore, for training aircraft maintenance engineers, flight dispatchers, cabin crew and ground handling personnel. So far, NIATAM has only imparted training to AAI Air Traffic Control staff. AAI has earned revenue of ₹ 0.11 crore on this account.

Thus, against expenditure of ₹ 39.77 crore, AAI earned a revenue of ₹ 12.46 crore on the Birsi airport at Gondia during April 2009 to March 2015. AAI, thus, has incurred an operational loss of ₹ 27.31 crore during the period from April 2009 to March 2015.

Audit has the following observations in this context:

- Till date, an expenditure of ₹ 201.64 crore has been incurred (of which ₹ 198.8 crore are from Government budgetary funds) for development of the Birsi airport at Gondia. No commercial flights are operated or scheduled for operation to and from Birsi airport at Gondia.
- Audit further observed that AAI had been billing NFTI at discounted rates (during March 2009 to July 2012) i.e. @10 percent of the normal rate applicable for Category I¹ flying institutions though it is a Category II² flying institution and ought to be billed at the normal rate. It was only subsequently (on the basis of clarification dated 03.02.2012 received from Central Head Quarters (CHQ) of

¹ *Category I : Flying clubs, flying training administrations registered as education societies and operating on no profit no loss basis : nominal charges of 10 per cent of normal rates.*

² *Category II: All other flying clubs/ flying institutions would be charged at the normal rates for various AAI services*

AAI), that the error was rectified and outstanding bills raised on NFTI at normal rates. NFTI is yet to pay the difference and the accumulated outstanding dues from NFTI as on March 2015 amounts to ₹ 6.72 crore.

In reply, the AAI stated (November 2015) the following:

- (i) Government decided to set up a new flying training institute as pilots trained at IGRUA would not meet the demand of trained pilots. The institute was set up at Birsi airport, Gondia as the airstrip was found suitable for such an institute. The profit or loss at an airport depends on various factors like frequency of operations, type of aircraft, non-traffic revenue etc. and can be overcome by effective management.
- (ii) The Institute is serving the nation by creating skilled pilots to meet our Aviation Industry demand. The assets/aviation infrastructure created at Birsi Airport, Gondia is sufficient to handle commercial domestic flights for which AAI is requesting the airlines to start schedule operations. Since the airlines plan their flight schedules as per their market survey and fleet availability, the commercial flights have not yet commenced.
- (iii) The aviation industry also require aircraft maintenance engineers, flight dispatchers, cabin crew and ground handling personnel and need to be adequately trained. As there were no organised schools in the country to cater for these requirements, and development works of airstrip at Birsi Airport, Gondia were in progress to facilitate establishment of NFTI, Government suggested that NIATAM may also be set up at the same location. AAI had to join hands with a private Institute for providing training and managing day to day business of the institute. The collaboration could not succeed and the private party agreement was terminated. The loss being incurred by Birsi Airport cannot be attributed to the Institute as AAI is making all efforts to utilise the assets created for training facilities.
- (iv) With regard to payment of difference by NFTI, the representatives of AAI in the Board constantly pursue with the NFTI Board for settlement of its outstanding dues. In the Board Meeting held in September 2015, it was decided that NFTI will make a payment of approx ₹ 13 lakhs p.m. to AAI towards settlement of dues.

The reply is not acceptable in view of the following:

- (i) The demand for pilot training at NFTI, as envisaged in the DPR, has not been realised. The number of pilots actually trained was 336 as against 770 number of pilots targeted to be trained during the period from 2008-09 to 2014-15. The short utilisation of seats contributed to losses in operation of NFTI.
- (ii) No commercial flights were operational or intended to/from the airport while envisaging its development for NFTI. No commercial flights have been scheduled subsequent to the development of the airport, either. Hence, it may be correct to state that the development of infrastructure at Gondia was intended solely for

meeting the requirement of NFTI (as brought out in 139th meeting of AAI Board, August 2010).

- (iii) Audit noticed that AAI carried out major additional works at Birsi airport (₹ 83.82 crores spent on phase II development) increasing the terminal building capacity and extending the runway. The additional infrastructure has not been put to use either by NFTI or by commercial flight operation. Besides, though AAI stated that it had time and again requested the airline operators to start operations, no supporting documents in this regard was furnished by AAI despite being requested for by Audit.
- (iv) NIATAM, created at an expenditure of ₹ 51.91 crore, could not achieve its objective of training aircraft maintenance engineers, flight dispatchers, cabin crew and ground handling personnel. Few AAI personnel were trained at this institute rendering the cost of establishment and maintenance of NIATAM largely unfruitful.
- (v) The arrears bills on NFTI, correcting the concessional rates charged for the period March 2009 to July 2012, were raised by AAI in September 2012. Till March 2015, NFTI has not paid the arrears. Besides, traffic and non-traffic dues have accumulated to ₹ 6.72 crore (March 2015). The pursuance by AAI, thus, has not yielded the desired result.

Thus, significant Government budgetary funds have been employed (₹ 198.80 crore) for development of Birsi airport at Gondia with the objective of supporting NFTI, a private flying training institute. The revenue earned by AAI from NFTI was not sufficient to meet the operation and maintenance cost of the airport. Subsequently, AAI established another institute NIATAM at a cost of ₹ 51.91 crore intending utilisation of infrastructure facilities created at Gondia. However, the expenditure on the institute remained largely unfruitful as neither did NIATAM fulfil its training objectives nor did it utilise the infrastructure created at Birsi airport. Utilisation of infrastructure Birsi airport at Gondia by another institute, IGRUA, also did not generate enough revenues to cover the operation and maintenance costs of Birsi airport, leaving AAI with recurring losses; the cumulated losses incurred by AAI on Birsi airport during April 2009 to March 2015 being ₹ 27.31 crore.

The matter was reported to the Ministry in September 2015; their reply was awaited (March 2016).