

INFRASTRUCTURE CLUSTER

CHAPTER IX: MINISTRY OF CIVIL AVIATION

Airports Authority of India

9.1 Loss of revenue due to inadequate assessment of electricity load

Inadequate assessment and delay in arrangement of required electricity load at Goa Airport resulted in loss of revenue of ₹15.66 crore.

Airports Authority of India (AAI/ Authority) entered (24 September 2018) into a concession agreement with M/s Travel Food Services Private Limited (M/s TFS) for concession to develop, market, setup, operate, maintain and manage the Food & Beverage (F&B) outlets at Goa Airport. As per the Letter of Intent to Award (LOIA) issued (25 July 2018) to the concessionaire, the license fees to be paid by the concessionaire was ₹3.89 crore (excluding taxes) per month for an assigned area. Further, Clause 5 of LOIA stipulated that gestation period or development period means the period in respect of each site commencing on the date of handing/ taking over of the location (which is 61st day or maximum 60 days from the date of issue of LOIA) and expiring on the 120th day from issue of award of LOIA or the commencement of business whichever is earlier, unless extended by AAI.

Clause 4.1.2 (b) of the agreement stipulated that the Authority shall assist the concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity. Further, as per Clause 11.7 of the agreement, “the concessionaire shall obtain requisite utility connections from nearest available sources provided by the Authority and shall install its own metering devices. All metering devices shall be tested and calibrated to the satisfaction of the Authority”.

In terms of the agreement, AAI handed over the entire assigned area of 1,144 square metres to M/s TFS on 24 September 2018 for developing 26 outlets. Accordingly, AAI raised bills for the entire assigned area from 23 November 2018. M/s TFS made payment of license fee, out of which the payment for an area measuring 594.50 square metres was made under protest as AAI failed to provide the electrical load for the complete assigned area as per the contract. Resultantly, M/s TFS could not operate nine outlets.

In this regard, Audit observed that:

- AAI without assessing the actual requirement of existing electricity load as well as additional load for commercial purpose for Goa Airport invited bid for F&B outlets and entered into concession agreement with M/s TFS. As per the proposed layout plan submitted (30 August 2018) by M/s TFS, the electrical load requirement was estimated at 1,740 KW (26 outlets), which was subsequently revised to 1,545 KW (1 October 2018). In the meantime, on the request of AAI, M/s TFS submitted a revised requirement of 1,459

KW (27 October 2018), which was based on the consultant's (M/s Mindflow Partners)¹ survey report. Against the required electricity load, an electricity load of only 632 KW was made available to M/s TFS, which was short by 827 KW. Due to insufficient availability of electrical load, M/s TFS requested (20 December 2018) AAI to not to charge concession fee and other charges for an area of 594.50 square metres along with a request to extend the gestation period. AAI accepted (12 June 2019) the proposal of M/s TFS and against 594.50 square metres, AAI granted (06 September 2019) the extension in gestation period for an area of nine outlets measuring 128.5 square metres till 21 June 2019 and for an area measuring 327 square metres till 30 November 2019. Besides, AAI also waived the license fee amounting to ₹15.66 crore (up to August 2019).

- Initially, Goa Airport had sanctioned electricity load of 4,000 KW, against the actual consumption of around 2,600 KW, hence an unutilised load of about 1,000 KW was surrendered (June 2015) to avoid penal charges as operation from old Terminal Building was stopped. Hence, it is evident that AAI was aware that present sanctioned load was only for operational need and that for starting commercial operations, additional sanctioned load (about 827 KW) was required. However, AAI failed to restore the surrendered sanctioned load for commercial activities before inviting the bids for renting F&B outlets at Goa Airport.

- AAI applied (12 November 2018) for additional sanctioned load of 1,500 KW, which was sanctioned by Goa Electricity Department on 3 January 2019 while stating that enhancement of contract demand would be supplied at 33 KV HT line and AAI would bear the entire cost, which was estimated at ₹5.67 crore. However, till date electrical work has not been completed and AAI is supplying electricity to M/s TFS from available load at airport through Diesel Generator set. Due to non-availability of full load, M/s TFS claimed a further rebate of ₹17.30 crore against the demand raised by AAI in November 2019. M/s TFS went into arbitration on 13 May 2020 and final outcome of the case is awaited.

Thus, inadequate assessment and delay in arrangement of required electricity load at Goa Airport resulted in loss of revenue of ₹15.66 crore.

The Management in its reply (January 2021) stated that as the concept of master concessionaire was introduced for the first time, it was difficult for AAI to foresee the quantum of electrical load requirement in the absence of historical data, and electricity load requirement at F&B outlets could be ascertained only after selected bidder submitted its load requirement based on equipment required to operationalise the outlets. The Management further stated that consultant (M/s Mindflow Partners) also did not quantify the electrical load requirement and that there was limited requirement/ availability of electrical load at Goa Airport by virtue of being a civil enclave.

¹ *Appointed for "Redesigning the layout of existing General Retail and F&B outlets for optimum utilisation of the Airport space for enhanced passenger facilitation and maximising the commercial revenue potential"*

The Management's reply is not acceptable as assessment of utilities before awarding such significant work should have been a pre-requisite. AAI neither included the assessment of electric load in the scope of work of the consultant (M/s Mindflow Partners) nor managed to get the load requirements ascertained by its own team. Scope of work of the consultant was only to review and redesign for optimum utilisation of airport space. Further, even after award of work to M/s TFS in July 2018, AAI decided to take the services to assess the load requirement from consultant in a joint meeting held with M/s TFS only in October 2018.

Hence, non-assessment of electricity load requirements during planning for award of concession for F&B outlets and delays in arrangement of required electricity load even after submission of electricity requirements by M/s TFS resulted in revenue loss of ₹15.66 crore. Besides revenue loss, ₹17.30 crore is a contingent liability, as the matter is sub-judice and final outcome of the arbitration case is awaited.

The Audit paragraph was issued to the Ministry in March 2021; their response was awaited (July 2021).

9.2 Non-reimbursement of electricity charges due to lack of proper follow-up and pursuance

Non-pursuance for reimbursement of electricity charges by Airports Authority of India, Rajahmundry, led to ₹6.36 crore being pending with Government of Andhra Pradesh (GoAP), despite there being a provision for such reimbursement in the MoU signed between Airports Authority of India and GoAP to facilitate minimisation of losses to AAI in the initial five years of operationalisation of the Rajahmundry Airport.

Airports Authority of India (AAI) signed (February 2007) a Memorandum of Understanding (MoU) with the GoAP for development of Rajahmundry Airport. As per the terms of the MoU, AAI was to execute the entire project at their cost² which, *inter-alia*, would include development of the airport, modifications required in the existing facilities to strengthen and upgrade them for existing operation of ATR-42/ 72 type aircrafts and future operation of bigger type of aircrafts such as B737-800/ A320, etc.

The MoU *inter-alia* provided that GoAP shall provide free electricity initially for a period of five years commencing from the date of operationalisation of the airport to minimise operational losses to AAI. Need for further extension of this concession was to be jointly reviewed by GoAP and AAI at the end of five year period.

For supply of electricity to the existing Airport, AAI, Rajahmundry was having an agreement with Eastern Power Distribution Company of Andhra Pradesh Limited for a contracted demand of 800 KVA since November 2009. This agreement was extended (July 2014) for a further period of five years for a contracted demand of 700 KVA. The upgraded Rajahmundry Airport became operational on 16 May 2012 and during the first

² *With provision for GoAP handing over required additional land free of cost and free from all encumbrances, on ownership basis subject to some terms and conditions.*

five years of operationalisation of the airport, AAI, Rajahmundry paid ₹6.36 crore towards electricity charges during May 2012 to April 2017. However, the same was not reimbursed till February 2021 by GoAP in compliance with the MoU terms.

Audit scrutiny of records of AAI, Rajahmundry revealed the following:

i) Subsequent to operationalisation of the Rajahmundry Airport on 16 May 2012, AAI, Rajahmundry took up the matter of providing free electricity for a period of five years with the Principal Secretary to GoAP, Infrastructure and Investment³ Department on 25 May 2012. The matter was referred to the Collector & District Magistrate, East Godavari by the GoAP in June 2012. Various correspondences with the GoAP and District Magistrate, East Godavari District were done on this issue till October 2013. Subsequently, there was no follow-up or pursuance until November 2016 followed by a written correspondence in February 2017, only after the matter being pointed out by Audit in January 2016.

ii) Though AAI, Rajahmundry, which was operationalised in May 2012, failed to get sanction for re-imbusement of electricity charges, AAI, Kadapa Airport, where the airport was operationalised on 7 June 2015, could get the sanction of the Secretary to GoAP, Energy, Infrastructure and Investment (Airports) Department in January 2016 for reimbursement of electricity charges⁴ incurred during June 2015 to March 2016. It was only after this that the AAI, Rajahmundry took up the matter with GoAP in February 2017 for issuance of a similar order as issued to Kadapa Airport. GoAP then sought remarks from Bhogapuram International Airport Corporation Limited (BIACL)⁵ in March 2017. After protracted correspondence with the GoAP and AAI, Rajahmundry, BIACL recommended (July 2017) to the Principal Secretary, Energy, Infrastructure and Investment (Airports) Department, GoAP for reimbursement of electricity charges to the tune of ₹6.36 crore incurred by the airport for a period of five years. However, there was no record of any further correspondence subsequent to July 2017 by the AAI, Rajahmundry with either Andhra Pradesh Airports Development Corporation Limited (APADCL)⁶ or GoAP on the issue, even after being pointed out again by Audit in March 2019.

iii) Audit observed that inspite of the request (23 July 2013) of Airport Director, AAI, Rajahmundry to the Regional Executive Director, Southern Region, Chennai to intervene for pursuing reimbursement of electricity charges, neither was there any record evidencing any intervention/ pursuance by the Regional Executive Director, Southern Region, Chennai nor was there any record to show that the matter was escalated to the Corporate Headquarters.

³ *Subsequent to bifurcation of the State of Andhra Pradesh, the Department was renamed as Energy, Infrastructure and Investment (Airports) Department.*

⁴ *GoAP vide its subsequent orders sanctioned the reimbursement of electricity charges incurred by AAI, Kadapa till October 2018.*

⁵ *A special purpose vehicle created by GoAP for speedy implementation of Airports in Andhra Pradesh.*

⁶ *BIACL was renamed as Andhra Pradesh Airports Development Corporation Limited in November 2017.*

iv) Though the MoU provided that the concessions and exemptions would be jointly reviewed by the AAI and GoAP at the end of five-year period, apart from a mention of discussion with the GoAP in one of the correspondence made (11 July 2017) with BIACL, no written communication/ minutes of discussion with the concerned Department of the GoAP was found on record in this matter.

Thus, non-pursuance for reimbursement of electricity charges by AAI, Rajahmundry, led to ₹6.36 crore being pending with GoAP.

The Regional Headquarters (Southern Region), AAI replied (December 2020) that subsequent to bifurcation of the State of Telangana from the State of Andhra Pradesh, it appears that Government machinery was involved in the bifurcation of works and hence the issue did not get enough attention. Reply also stated that the issue was once again taken up with Special Chief Secretary, Department of Infrastructure and Investment, GoAP and Chief Secretary, GoAP in October 2020/ November 2020. Corporate Headquarters, AAI, New Delhi reiterated the same facts (February 2021).

The reply needs to be viewed in light of the fact that the Kadapa Airport, which was operationalised in June 2015, got the sanction from GoAP in January 2016 for reimbursement of electricity charges. Also, the fact remains that pursuance by AAI, Rajahmundry was not effective and continuous as there was no correspondence with GoAP between October 2013 to November 2016 and again from July 2017 to September 2020, despite being pointed out by Audit in January 2016 and March 2019.

Thus, lack of proper pursuance resulted in non-realisation of electricity charges of ₹6.36 crore from the State GoAP till February 2021 i.e., more than eight years after operationalisation of the airport.

The Audit paragraph was issued to the Ministry in January 2021; their response was awaited (July 2021).

9.3 Avoidable extra expenditure due to unilateral increase of royalty

Unilateral increase of royalty by AAI from 2 to 13 per cent in violation of the terms of the agreement resulted in avoidable extra expenditure of ₹6.88 crore.

Airports Authority of India (AAI) entered into an agreement (October 1996) with M/s The Indian Hotels Company Limited (IHCL) for allotment of land measuring 6,750 square metres on lease for a period of 30 years upto June 2025 for construction and operation of flight kitchen services at Netaji Subhas Chandra Bose International (NSCBI) Airport, Kolkata. The above lease was subsequently endorsed (March 2007) in favour of M/s Taj Sats Air Catering Limited (TajSats), a subsidiary of IHCL, on the same terms and conditions. As per the terms of the above agreement IHCL/ TajSats was required to pay royalty at a fixed rate of two per cent on the Gross Turnover (GTO) from the flight kitchen operations. However, based on feedback received and prevailing scenario at various airports, the AAI unilaterally revised the rate of royalty to 13 per cent from April 2008 and same was invoiced till March 2017.

In this regard, Audit observed that:

- The upward revision of royalty was not accepted by TajSats as the same was not in accordance with the terms of the agreement.
- AAI's Law Department examined the case (April 2010) and took legal opinion from a legal consultant appointed by AAI (August 2010), both of whom opined that non-payment of enhanced royalty by M/s TajSats was not a breach of lease agreement.
- Despite the above, AAI continued raising invoices incorporating royalty at the rate of 13 *per cent* of GTO and applicable service taxes thereon from April 2008 till March 2017. The amount of service tax as invoiced was also deposited with the Service Tax Authority. Further, AAI considered the total amount of royalty of 13 *per cent* as part of its total income for the purpose of assessment and payment of corporate tax.
- AAI decided (September 2019) to withdraw the invoices raised on TajSats for differential royalty of 11 *per cent* (13 *per cent* – 2 *per cent*) and write off the differential dues of royalty along with service tax deposited thereon.
- The unilateral action of AAI resulted in avoidable extra expenditure of ₹6.88 crore (*Annexure-V*) towards payment of service tax (₹4.07 crore) and corporate tax (₹2.81 crore, i.e., difference of the then corporate tax rate–current corporate tax rate) which could have been avoided had the invoices with unilaterally increased royalty not been raised on TajSats.

While accepting (March 2020) the fact of unilateral increase of royalty and corresponding withdrawal of the same, the Management stated that though the period of limitation for claiming refund of service tax had expired, a Writ Petition was maintainable in the Court of Law. It was, further, stated that the reversal of revenue would have the effect of lowering corporate tax liability on the current year profit which would ultimately result in no financial loss to AAI.

The reply of the Management is not tenable because the chance of refund of service tax from the concerned department seems to be remote as AAI failed to claim such refund within the prescribed time limit i.e., one year. No court case was filed for refund of service tax and AAI had only approached the Assistant Commissioner, GST for refund in January 2021. Further, their response that refund claim is maintainable in the court of law is also not tenable as court judgements have upheld the statutory time limit prescribed for claiming refund which in the instant case has lapsed. Further, Management reply with regards to corporate tax is not acceptable because the benefit of the lower corporate tax liability on account of reversal of revenue would not recover full amount of corporate tax paid at higher rate as the rate of corporate tax has been subsequently lowered. As such, there was lesser payment of corporate tax only to the tune of ₹8.23 crore and the balance amount of ₹2.81 crore (₹11.04 crore – ₹8.23 crore) was loss to AAI on account of excess payment of corporate tax.

Thus, unilateral increase of royalty by AAI in violation of the terms of the agreement led to avoidable extra expenditure of ₹6.88 crore on account of excess payment of service tax (₹4.07 crore) and corporate tax (₹2.81 crore) on perceived royalty which was never receivable.

The Audit paragraph was issued to the Ministry in November 2020; their response was awaited (July 2021).

Air India Limited

9.4 Avoidable payment of penalty due to delay in return of removed components by Air India Limited

Air India Limited entered into an agreement with M/s Boeing for Rotable Exchange Program. As per the agreement, Air India Limited was required to return the removed component along with the component information to M/s Boeing within 10 calendar days after Boeing delivered the serviceable exchange component, failing which delayed return fee is payable. Persistent delays in return of removed component to M/s Boeing resulted in payment of penalty of ₹43.85 crore by Air India Limited.

Air India Limited entered into an agreement (December 2015) with M/s Boeing for Rotable Exchange Program (787 aircraft component service program) and the agreement became effective from 6 July 2016.

As per the agreement, the customer (Air India Limited) may exchange a removed component (unserviceable exchange component removed from a qualified aircraft) for an exchange component in Boeing's exchange component inventory (serviceable exchange component). M/s Boeing is to provide related repair, overhaul and modification services for exchange components. As per exchange procedure in the Agreement, Air India Limited may submit an order (Article 3.1) to exchange a removed component for an exchange component from Boeing's exchange component inventory. M/s Boeing is to deliver exchange component (Article 3.2.2.1) by making them available to a carrier arranged by M/s Boeing at the primary center (London) or at another center, which M/s Boeing would identify and inform to Air India Limited in advance.

As per Article 2.6.1 regarding return time, Air India Limited is to deliver each removed component to the primary center (London) along with component information within 10 calendar days after Boeing delivered the serviceable exchange component. Further, Article 3.3.5 regarding delayed return fees stipulated Air India Limited to pay a late return charge equal to one *per cent* of the applicable program part number's then-current price per day after the time limit of 10 calendar days until M/s Boeing received both the removed component and the component information. If M/s Boeing did not receive the removed component and the information within 20 calendar days after the exchange component is delivered, Air India Limited is to pay M/s Boeing the foregoing late return charges plus 110 *per cent* of the then-current price of a replacement component.

In this regard, Audit observed that:

i) During the period July 2016 to December 2019, there were several instances of delayed return of removed component by Air India Limited over and above the stipulated time limit of 10 days. Audit analysis showed that during the initial period (July 2016 to December 2017), there were 170 instances of delayed return and in 88 instances, the delay was more than 30 days with a maximum of 214 days. The contractual obligation towards penalty due to delayed returns of removed components, the concessions offered by M/s Boeing and balance dues after concessions are given below:

Table 9.1: Details of penalty

(In Million US\$)				
Details	2016 & 2017	2018	2019	Total
Actual obligations	10.50	5.92	3.72	20.14
Concessions by M/s Boeing	(6.70)	(4.69)	(2.88)	(14.27)
Balance dues after concessions	3.80	1.23	0.84	5.87

ii) Air India Limited defaulted the concessional late return fees/ penalty for the period from July 2016 to December 2019. Hence M/s Boeing served (14 July 2020) a letter intimating suspension of Rotable Exchange Program, if payment is not received by 31 July 2020. Consequently, as per Article 8.4.2 of the agreement, Boeing served (1 August 2020) six months' notice of termination on Air India Limited. As per the notice, M/s Boeing withdrew the discounts offered earlier with effect from 16 August 2020. Finally, Air India Limited paid the pending concessional late return fees/ penalty of US\$ 5.87 Million for the period July 2016 to December 2019 in August 2020. Thus, due to non-adherence to the timeline for return of removed parts as stipulated in the Agreement, Air India Limited paid penalty of US\$ 5.87 Million (₹43.85 crore) to M/s Boeing.

Air India Limited in its reply (March 2021) accepted that a discounted total late return penalty of US\$ 5.87 Million was to be paid and attributed the delay to the difficult activities involved in returning the removed parts within 10 days, viz., non-availability of aircraft for replacement, custom clearance and delay in getting the required documents from users. Air India Limited further stated that with close monitoring of tasks at every step, components' return time period has improved as dues paid for later two years (2018 and 2019) had gone down to US\$ 2.07 Million as compared to dues paid of US\$ 3.80 Million for the initial period (July 2016 to December 2017). It was also stated that the Rotable Exchange Program continued with minimal late returns in 2020.

The reply is not tenable, as Air India Limited could not adhere to the timelines prescribed in the agreement. Air India Limited was aware of the articles of the Agreement; 10 days' time limit was mutually negotiated and accepted by Air India Limited and thus, was required to take appropriate steps, including putting in place a mechanism to ensure that removed components were returned timely in order to avoid payment of penalty. Thus, Air India Limited had to pay penalty of US\$ 5.87 Million (₹43.85 crore) due to its inability to adhere to the contractually stipulated timelines for return of parts.

The Audit paragraph was issued to the Ministry in May 2021; their response was awaited (July 2021).