

Implementation of Public Private Partnership Project at Chhatrpati Shivaji International Airport, Mumbai

[Action Taken by the Government on the Observations and Recommendations of the Committee contained in their 46th Report (16th Lok Sabha)]

MINISTRY OF CIVIL AVIATION

**PUBLIC ACCOUNTS COMMITTEE
(2023-24)**

HUNDRED AND TWENTY SEVENTH REPORT

SEVENTEENTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

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PUBLIC ACCOUNTS COMMITTEE
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Partnership Project at Chhatrpati
Shivaji International Airport, Mumbai**

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[Action Taken by the Government on the Observations and Recommendations of the Committee contained in their 46th Report (16th Lok Sabha)]



Presented to Hon'ble Speaker, Lok Sabha on 23.2.2024

Presented to Lok Sabha on:

Laid in Rajya Sabha on:

**LOK SABHA SECRETARIAT
NEW DELHI**

February 2024/ Phalguna 1945 (Saka)

CONTENTS

| | PAGE |
|---|---|
| COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (2023-24) | (iii) |
| INTRODUCTION | (iv) |
| CHAPTER I | Report |
| CHAPTER II | Observations/Recommendations which have been accepted by the Government |
| CHAPTER III | Observations/Recommendations which the Committee do not desire to pursue in view of the replies received from the Government |
| CHAPTER IV | Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration |
| CHAPTER V | Observations/Recommendations in respect of which the Government have furnished interim replies |

APPENDICES

- I*** Minutes of the sitting of the Public Accounts Committee (2023- 24) held on 09 February 2024
- II** Analysis of the Acton Taken by the Government on the Observations/Recommendations of the Public Accounts Committee contained in their Forty-sixth Report (Seventeenth Lok Sabha)

* not appended to cyclostyled copy of the report

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2023-24)

Shri Adhir Ranjan Chowdhury - Chairperson

MEMBERS

LOK SABHA

2. Shri Subhash Chandra Baheria
3. Shri Thalikkottai Rajuthevar Baalu
4. Shri Bhartruhari Mahtab
5. Shri Jagdambika Pal
6. Shri Pratap Chandra Sarangi
7. Shri Vishnu Dayal Ram
8. Shri Rahul Ramesh Shewale
9. Shri Gowdar Mallikarjunappa Siddeshwara
10. Dr. Satya Pal Singh
11. Shri Brijendra Singh
12. Shri Rajiv Ranjan Singh alias Lalan Singh
13. Shri Jayant Sinha
14. Shri Balashowry Vallabhaneni
15. Shri Ram Kripal Yadav

RAJYA SABHA

16. Shri Shaktisinh Gohil
17. Dr. K Laxman
18. Shri Derek O'Brien*
19. Shri Tiruchi Siva
20. Dr. M. Thambidurai
21. Shri Ghanshyam Tiwari
22. Dr. Sudhanshu Trivedi

SECRETARIAT

1. Shri Sanjeev Sharma - Joint Secretary
2. Smt. Bharti S. Tuteja - Director
3. Shri Alok Mani Tripathi - Deputy Secretary
4. Shri Vijay Mishra - Committee Officer

* Elected w.e.f. 19.08.2023 consequent upon retirement of Shri Sukhendu Sekhar Ray, MP on 18.08.2023.

INTRODUCTION

I, the Chairperson, Public Accounts Committee (2023-24) having been authorised by the Committee, do present this 127th Report (Sixteenth Lok Sabha) on Action Taken by the Government on the Observations/Recommendations of the Public Accounts Committee contained in their 46th Report (Seventeenth Lok Sabha) on “ Implementation of Public Private Partnership Project at Chhatrapati Shivaji International Airport, Mumbai.

2. The Forty-sixth Report was presented to Lok Sabha/laid in Rajya Sabha on 28th April, 2016. Replies of the Government to all the Observations/Recommendations contained in the Report were received. The Public Accounts Committee considered and adopted the draft Report at their Sitting held on 9th February, 2024. Minutes of the Sitting are given at Appendix I.

3. For facility of reference and convenience, the Observations and Recommendations of the Committee have been printed in bold in the body of the Report.

4. The Committee also place on record their appreciation of the assistance rendered to them in the matter by the Committee Secretariat and the Office of the Comptroller and Auditor General of India.

5. An analysis of the action taken by the Government on the Observations/Recommendations contained in the Forty-sixth Report (Sixteenth Lok Sabha) is given at Appendix-II

NEW DELHI

09 February, 2024
20 Magha, 1945 (Saka)

ADHIR RANJAN CHOWDHURY

Chairperson,
Public Accounts Committee

CHAPTER - I REPORT

This Report of the Public Accounts Committee deals with the Action Taken by the Government on the Observations and Recommendations of the Committee contained in their Forty- sixth Report (16th Lok Sabha) on "Implementation Of Public Private Partnership Project At Chhatrapati Shivaji International Airport, Mumbai".

2. The Forty- sixth Report (16th Lok Sabha), which was presented to Lok Sabha/laid in Rajya Sabha on 28th April, 2016, contained 20 Observations and Recommendations. The Action Taken Notes received from the Ministry have been broadly categorized as under :

- (i) Observations/Recommendations which have been accepted by the Government:
Para Nos. 1-20

Total: 20
Chapter - II

- (ii) Observations/Recommendations which the Committee do not desire to pursue in view of the replies received from the Government:

NIL

Total: 0
Chapter - III

- (iii) Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration:

NIL

Total: 0
Chapter - IV

- (iv) Observations/Recommendations in respect of which Government have furnished interim replies/no replies:

NIL

Total: 00
Chapter - V

3. During the detailed examination of the subject "Implementation Of Public Private Partnership Project at Chhatrpati Shivaji International Airport, Mumbai", the Committee had identified certain shortcomings/deficiencies on the part of the Ministry of Civil Aviation, which *inter-alia* included issues of design constraint, Right of first refusal, Change in scope of work and master plan, Increase in project cost etc.

4. The Action Taken Notes furnished by the Ministry on the Observations/Recommendations of the Committee contained in their Forty-sixth Report (Sixteenth Lok Sabha) have been reproduced in the relevant chapters of this Report. The Committee will now deal with the Action Taken by the Government on some of their Observations/Recommendations made in the original Report which require reiteration/merit comments.

5. The Committee desire the Ministry of Civil Aviation to furnish Action Taken Notes in respect of Observations/ Recommendations contained in Chapter I within six months of the presentation of the Report to the House.

6. At Recommendation No. 9 : Airport Development Fee

The Committee in their original report had recommended as under:

"As per OMDA, MIAL was to arrange for financing through suitable debt and equity including listing of its shares on Mumbai/National Stock Exchange. The Committee are surprised to note that instead of finding ways of debt and equity contribution, MOCA allowed MIAL to levy a Development Fee (DF) at CSIA for the purpose of funding or financing the cost of up-gradation, expansion or development of the Airport in contravention of the provisions of OMDA. The Committee appreciate that though OMDA provides for listing options, MOCA opted for levying of development fee to ensure share holding of AAI does not fall below 26%, considering its strategic interest and desire that there is no change in shareholding pattern in violation of OMDA. The Committee also note that DF is determined by AERA under section 13(1)(b) of AERA Act 2008 read with section 22A of AAI Act 1994.

However, as per Rules of the Airports Authority of India (Major Airports) Development Fee Rules, 2011, framed by the Government, the money deposited in the Development Fee Receipt Account can be used to pay for the servicing of debt to the lenders raised against Development Fees. Accordingly, in pursuance of these provisions of the Development Fee Rules, 2011, interest on loan raised against DF has been allowed by AERA and included in the quantum of DF to be levied on the passengers. The PAC in their 94th Report (15th LS) had made certain observations on the same issue and Committee would like the MOCA to respond to those observations. They also feel that AERA is competent to fix DF and expect it to determine DF in future keeping in view the revenue interest of the Government of India in PPP projects and also that of the interest of the passengers."

7. The Ministry of Civil Aviation in their Action Taken Notes have submitted as under:

"The 15th Lok Sabha PAC, in its 94th Report on Delhi airport presented in Parliament on 06.02.2014, wanted to know the circumstances and the rationale for fixing such a high Development Fee which was later reduced substantially. MoCA has already furnished its ATR which has been referred by this Committee at several places of the present Report.

It is reiterated that the basic rationale for levy of Development Fee is aimed at funding or financing the cost of upgradation, modernisation or development of the airport under section 22A of the AAI Act, 1994. Development Fee collected was to be utilised for the development of Aeronautical Assets only, which are 'Transfer Assets' to Airport Authority of India (AAI) in terms of OMDA. Since the airport will come back to AAI after the expiry of the concession period, AAI will need to make transfer payments to MIAL to be arrived after independent calculation of the assets created by MIAL. However, since Development Fee is levied by AAI under AAI Act, 1994, and merely collected by MIAL, the asset created from Development Fee shall not form part of the Transfer Payment to be made by AAI. Further, as submitted by MoCA during Oral Evidence before the Committee, levy of Development Fee is in the interest of the passengers as being a pre-funding mechanism, it is the cheapest mode of project financing. The assets funded through DF are not included in RAB by AERA while determining the tariff.

Hence, passengers are saved from the cost of depreciation, interest component etc. which forms part of the aeronautical tariff. AERA has been authorized by the Parliament to determine rate of development fee at major airports under Section 13(1) (b) of AERA Act, 2008.

One of the objectives of the philosophy of AERA for tariff determination is to ensure that the passengers are not unnecessarily burdened on account of high airport charges and at the same time ensuring viability of the airport. Based on its philosophy, AERA determines rate of Development Fee after detailed scrutiny and open stakeholder consultation including from airport associations, airlines associations, passenger's association and the Government agencies."

8. In response to the replies of the Ministry, the Audit has made the following observation.

"Though levy of DF may not be violation of statute, Levy of DF as means of finance was not envisaged in OMDA which specified funding the project through mix of Debt and Equity. Thus financing risk of project was passed to MIAL through OMDA. However in levying DF to meet the financing gap due to escalated project cost, financing risk of MIAL was diluted. Hence the comment remains."

9. The Ministry of Civil Aviation in their further comments stated as under:-

"There is no negative covenant in the OMDA prohibiting the JVC from resorting to levy of DF and other means of finance. Article 13.1(a) of OMDA refers to financing arrangements wherein MIAL is supposed to arrange for financing of the Project, through "suitable debt and equity contribution". It is pertinent to note that the words "debt" and "equity" used in Article 13.1(a) are generic terms. The position becomes obvious from the fact that every means of financing that has been employed by MIAL, for the Project such as, internal accruals, deferred tax amounts, refundable security deposit and depreciation have been appropriately considered by AERA as part of internal resource generation, for the purpose of ascertaining the means of finance for the Project. Such funds would not fall within the definition of "Equity" or "Debt" as defined under the OMDA, nevertheless they have been considered towards means of finance in line with Article 13.1(a) of the OMDA. MIAL has ploughed back all internal resources and accruals, which has indefinitely postponed the payment of any return to shareholders.

Moreover, it may be noted that the OMDA does not limit MIAL's option to finance the Project through other means of finance including DF since the terms "debt" and "equity" are not suffixed by the word "only". Further, there is no negative covenant in the OMDA prohibiting MIAL from resorting to levy of DF and other means of finance. In the absence of any such prohibition, MIAL is permitted to approach AERA for levy of DF under Section 22A of the AAI Act, 1994. Amount of DF is subtracted from the allowable project cost (on aeronautical side) to arrive at net allowable aeronautical project cost on which fair rate of return is granted to the Airport Operator. It also follows that no depreciation is

available on this amount, since the depreciation is given only on the net allowable aeronautical project cost (net aeronautical RAB). Hence, by grant of DF, no unjust enrichment or extra monetary benefits accrue to the airport operator."

10. The Committee initially recommended adherence to the financing provisions outlined in the Operation, Maintenance, and Development Agreement (OMDA), emphasizing suitable debt and equity contributions and the listing of shares. However, the Ministry of Civil Aviation (MoCA) allowed Mumbai International Airport Limited (MIAL) to levy a Development Fee (DF) instead, citing strategic interests in maintaining AAI shareholding. In response to the Committee's concerns, MoCA highlighted that the Development Fee collected would be utilized exclusively for the development of aeronautical assets, considered 'Transfer Assets' to the Airport Authority of India (AAI) under OMDA. The rationale for the levy was reiterated as a pre-funding mechanism, deemed the cheapest mode of project financing, and passengers were purportedly spared from additional costs. Audit further observed that while the levy of DF might not violate statutes, it was not envisaged in OMDA, however, it shifted the financing risk to MIAL. In their further comments, MoCA asserted that OMDA did not prohibit MIAL from resorting to the levy of DF and other means of finance. The terms "debt" and "equity" in OMDA were deemed generic, encompassing various financing methods employed by MIAL. MIAL's utilization of internal resources and accruals was justified, and the absence of negative covenants allowed them to approach AERA for DF under Section 22A of the AAI Act, 1994. MoCA clarified that the amount of DF was subtracted from the allowable project cost on the aeronautical side, ensuring no unjust enrichment or extra monetary benefits for the airport operator. The depreciation was claimed to be available only on the net

allowable aeronautical project cost. Considering the final audit comment, the Committee find it evident that the disagreement still persists regarding the compatibility of the Development Fee levy with the OMDA provisions. They would therefore like to recommend that Operation, Maintenance, and Development Agreement (OMDA) be reviewed to clearly define permissible means of financing, addressing any ambiguities related to generic terms such as "debt" and "equity." Additionally, there should be a comprehensive assessment of the financial implications of using Development Fee as a financing mechanism, considering the potential impact on project costs and risks. The Ministry should always work towards aligning financing methods with the agreement. The Committee desire to be apprised of the efforts made by the Ministry to mitigate financing risks for MIAL, ensuring transparency and adherence to statutory provisions. The Ministry may also review the levy of DF in other PPP airports and remove the ambiguities in accordance with the Operation, Maintenance, and Development Agreement (OMDA).

11. The Committee would also like to observe here, that with the change of hands in controlling interest in Mumbai International Airport Limited (MIAL) in February 2021, it is essential now to evaluate the impact of these ownership changes on the operations, efficiency, and overall performance of the airport. In light of the changes in ownership and the evolving nature of PPP projects, there is a need to strengthen oversight mechanisms. They would also like to recommend that the Ministry of Civil Aviation should work towards enhancing its monitoring and evaluation processes to ensure effective implementation and compliance with best practices in PPP projects. The Committee would also recommend Ministry of Civil Aviation to collaborate with various stakeholders, industry experts, including the feedback from the flight passengers and their associations (like APAI) to ensure a holistic approach to the management and development of Chhatrapati Shivaji International Airport. The Committee also desire to be apprised of the status of the Airport being built at Navi Mumbai.

NEW DELHI

9 February, 2024
20 Magha, 1945 (Saka)

ADHIR RANJAN CHOWDHURY

Chairperson,
Public Accounts Committee