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**IMPLEMENTATION OF
PUBLIC PRIVATE PARTNERSHIP—
INDIRA GANDHI INTERNATIONAL
AIRPORT, DELHI**

MINISTRY OF CIVIL AVIATION

**PUBLIC ACCOUNTS
COMMITTEE
2013-2014**

NINETY-FOURTH REPORT

FIFTEENTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

NINETY-FOURTH REPORT

PUBLIC ACCOUNTS COMMITTEE
(2013-14)

(FIFTEENTH LOK SABHA)

IMPLEMENTATION OF PUBLIC PRIVATE
PARTNERSHIP—INDIRA GANDHI
INTERNATIONAL AIRPORT,
DELHI

MINISTRY OF CIVIL AVIATION

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LOK SABHA SECRETARIAT
NEW DELHI

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COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2013-14)

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3. Shri A.K. Yadav — *Under Secretary*

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\$ Elected *w.e.f.* 3rd September, 2013 *vice* Dr. V. Maitreyan ceased to be a Member upon his retirement as a Member of Rajya Sabha *w.e.f.* 24th July, 2013.

** Elected *w.e.f.* 3rd September, 2013 *vice* Dr. E.M. Sudarsana Natchiappan appointed as Minister of State for Commerce and Industry *w.e.f.* 17th June, 2013.

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2012-13)

Dr. Murlı Manohar Joshi — *Chairman*

MEMBERS

Lok Sabha

2. Shri Anandrao Vithoba Adsul
3. Dr. Baliram
4. Shri Sandeep Dikshit
5. Dr. M. Thambidurai
6. Shri T.K.S. Elangovan
7. Shri Anant Kumar Hegde
8. Shri Bhartruhari Mahtab
9. Shri Sanjay Brijkishorlal Nirupam
10. Shri Shripad Yesso Naik
- *11. Shri Abhijit Mukherjee
12. Shri Ashok Tanwar
- †13. Shri Takam Sanjoy
14. Dr. Girija Vyas
15. Shri Dharmendra Yadav

Rajya Sabha

16. Shri Prasanta Chatterjee
17. Shri Prakash Javadekar
18. Shri Satish Chandra Misra
19. Shri Sukhendu Sekhar Roy
20. Shri J.D. Seelam
21. Shri N.K. Singh
22. Prof. Saif-ud-Din Soz

* Elected *w.e.f.* 6th December, 2012 *vice* Shri Sarvey Sathyanarayana appointed as Minister on 28th October, 2012.

† Elected *w.e.f.* 6th December, 2012 *vice* Dr. Shashi Tharoor appointed as Minister on 28th October, 2012.

INTRODUCTION

I, the Chairman, Public Accounts Committee (2013-14) having been authorised by the Committee, do present this Ninety-fourth Report (Fifteenth Lok Sabha) on 'Implementation of Public Private Partnership—Indira Gandhi International Airport, Delhi' based on C&AG Report No. 5 of 2012-13 (Performance Audit), Union Government for the year ended March 2012 related to the Ministry of Civil Aviation.

2. The above-mentioned Report of the Comptroller and Auditor General of India was laid on the Table of the House on 17th August, 2012.

3. The Public Accounts Committee (2012-13) took up the subject for detailed examination and report. The Committee took evidence of the representatives of the Ministry of Civil Aviation on the subject at their sitting held on 4th October, 2012. The Committee also took evidence of the representatives of the Delhi International Airport Limited on the subject on 13th February 2013. As the examination of the subject could not be completed due to paucity of time, the Public Accounts Committee (2013-14) re-selected the subject to continue the examination and hereby, present a Report based on the earlier evidences taken by their predecessor Committee. Accordingly a Draft Report was prepared and placed before the Committee for their consideration, The Committee considered and adopted this Draft Report at their sitting held on 30th January, 2014. The Minutes of the Sittings are appended to the Report.

4. For facility of reference and convenience, the Observations and Recommendations of the Committee have been printed in thick type and form Part-II of the Report.

5. The Committee thank their predecessor Committee for taking oral evidence and obtaining information on the subject.

6. The Committee would like to express their thanks to the representatives of the Ministry of Civil Aviation and Delhi International Airport Limited for tendering evidence before them and furnishing the requisite information to the Committee in connection with the examination of the subject.

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

NEW DELHI;
31 January, 2014

11 Magha, 1935 (Saka)

DR. MURLIMANO HAR JOSHI
Chairman,
Public Accounts Committee.

PART I

REPORT

I. Introductory

In pursuance of the Policy on Airport Infrastructure (PAI) 1997, the Prime Minister made a declaration on 24th October, 1998 that world class international airports would be set-up in the country. While approving the restructuring of airports of the Airports Authority of India (AAI) in January 2000 through long-term lease route, the Cabinet had also directed that each detailed plan prepared for development of any airport through lease route should be separately brought up for consideration of the Cabinet Committee on Economic Affairs (CCEA).

2. Accordingly, MoCA initiated action to restructure and upgrade Delhi, Mumbai, Chennai and Kolkata airports through the long leasing route. Financial and Legal consultants were appointed and work of due diligence and transaction structure started. While doing so the Ministry felt that the Joint Venture route had certain advantages over long-term leasing route. Therefore, the matter was again put up for consideration of the Cabinet in December 2002 seeking approval to the proposal of restructuring of Delhi, Mumbai, Chennai and Kolkata airports through Joint Venture route by formation of separate Joint Venture Company (JVC) for each of these airports with the respective selected bidder, in which AAI would have five per cent equity.

3. Thereafter, the MoCA was directed by the Cabinet to discuss the proposal further with the Ministry of Finance and Ministry of Company Affairs and revert to the Cabinet. In July 2003, the Ministry of Finance had opined that the proposal should be restricted to Delhi and Mumbai only.

4. Finally in September 2003, Cabinet approved the proposal of MoCA that restructuring of Delhi and Mumbai airports may be undertaken through JV route by formation of two separate companies between AAI and selected JV partners. It also approved formation of an Empowered Group of Ministers (EGoM) comprising Minister of Finance, Minister of Law and Justice, Minister of Disinvestment and Minister of Civil Aviation (in-charge) to decide on the detailed modalities including the design parameters, bid evaluation criteria, etc. based on which the Joint Venture partner was to be selected. Later, the Minister of Defence was made the Chairman of the EGoM when the EGoM was reconstituted *vide* order dated 21.6.2004.

5. The EGoM in February 2005 approved all the key principles of the Request for Proposal (RFP) document alongwith the draft transaction documents *i.e.* Operation, Management and Development Agreement (OMDA), State Support Agreement (SSA), Shareholders Agreement (SHA), Lease Deed Agreement, Communication, Navigation, Surveillance and Air Traffic Management (CNS-ATM) Agreement and State Government Support Agreement.

6. The EGoM after evaluation of the technical and financial bids had recommended the Joint Venture Partners, which were submitted to the Cabinet for approval in a note dated 31 January, 2006 and the same was approved on 1 February, 2006.

7. For Indira Gandhi International Airport, the JV partner approved was M/s GMR Consortium. The consortium comprised of six private entities namely (i) GMR Infrastructure Limited, (ii) GMR Energy Limited, (iii) Fraport AG Frankfurt Airport Services Worldwide, (iv) Malaysia Airports (Mauritius) Private Limited, (v) GVL Investments Pvt. Limited, and (vi) India Development Fund.

8. AAI incorporated on 1 March, 2006 a subsidiary company namely M/s Delhi International Airport Private Limited (DIAL). After the OMDA was signed on 4 April, 2006 with the JV partner, 74 per cent of the equity shares were sold to them in accordance with the Shareholders' Agreement. In terms of the agreement, issued share capital of ₹ 200 crore was jointly held by AAI (26 per cent), GMR Infrastructure Ltd. (31.10 per cent), GMR Energy Limited (10 per cent), GVL Investment Ltd. (9 per cent), Fraport AG Frankfurt Airport Services Worldwide (10 per cent), Malaysia Airport (Mauritius) Private Limited (10 per cent) and India Development Fund (3.90 per cent). Subsequently, shares of IDF were acquired by GMR group. The paid up equity capital of DIAL as on 31 March, 2011 was ₹ 2450 crore with the share of AAI at 26 per cent. Indira Gandhi International Airport was handed over to M/s DIAL with effect from 3 May, 2006.

9. This report is based on Audit Report No. 5 of 2012-13 for the year ended March 2012. The Audit observations pertain to operationalization of the JV mode and implementation of the OMDA and SSA. In the course of audit an assessment was attempted to see whether during the conceptualization and implementation phases, the interests of Government and its revenue were protected. The decision to enter into a Joint Venture to develop and manage Indira Gandhi International Airport was first of its kind. Some of their important observations are regarding the conflict between OMDA and AERA Act (Airports Economic Regulatory Authority of India) in defining aeronautical and non-aeronautical services; unilateral right to extend the concession period for another 30 years on the identical terms and conditions at the sole option of JVC; Right of First Refusal to JVC in case of second airport; Misuse of the concept of upfront fee; Commercial exploitation of land; Development Fee imposed and collected from air passenger for development of airport instead of funds raised by the JVC; Highly concessional lease rent; defiant land records at IGI Airport; change in Major Development Plan and increase in Ground Floor Area; aeronautical/non-aeronautical airport changes; funds diverted from PSF (security component) escrow Account for purchase of Security Equipment by DIAL; and irregular withdrawal from PSF (SC) Escrow Account.

10. Despite the various irregularities pointed out, Audit has found that Public Private Partnerships are an appropriate way to airport development and modernization. Further, it has added that from the point of view of development of infrastructure, Indira Gandhi International Airport can be considered as a success. It has noted that there have been significant improvement in services at Indira Gandhi International

Airport for the travelling public. The new terminal T3 was completed within time for the Commonwealth Games 2010. In addition, the Airports Council International had adjudged the airport as the second best in the world in the category of 25-40 million passengers per annum.

11. Against this backdrop, the Public Accounts Committee (2012-13 and 2013-14) selected the subject for detailed examination and report. In the process of examination of the subject, the Committee obtained background material and detailed written replies from the Ministry of Civil Aviation (MoCA). They also took oral evidence of the representatives of the MoCA and DIAL and obtained post evidence replies. Based on written and oral depositions by the Ministry, the Committee examined the subject in detail and discussed some very important issues as enumerated in the succeeding paragraphs.

II. Transaction Documents

12. Consequent on the decision to hand over the Indira Gandhi International Airport to the Joint Venture Company and before physically handing over the airport to the latter, a number of agreements were signed among the concerned parties. These documents individually and collectively determine the terms and conditions of the handing over including economic benefits accruing to the parties. When these agreements were signed, the Regulator, namely Airport Economic Regulatory Authority (AERA) was not in existence. Some of these documents contained provisions relating to areas like tariff fixation for aeronautical services, which later, with the establishment of AERA came under the Regulator's domain of decision making.

(i) Operation, Maintenance and Development Agreement (OMDA)

The Operation, Maintenance and Development Agreement together with SSA was the most important document and formed the soul of the Public Private Partnership in Indira Gandhi International Airport. The OMDA, signed on 4 April, 2006 between AAI and DIAL, laid down the obligations and responsibilities of both the parties, the terms of revenue sharing and duration of the concession, conditions of assets transfers at present and in future, terms and conditions of land transfers, etc.

OMDA in Schedules 5 and 6 defined aeronautical services and non-aeronautical services. While DIAL was free to fix tariff for non-aeronautical services, responsibilities of fixation of tariff for aeronautical services was with the Government of India and later with its establishment, the Regulator, AERA. OMDA also allowed DIAL to outsource any services.

(ii) State Support Agreement (SSA)

Complementary to the OMDA, the State Support Agreement was signed between Government of India and DIAL on 26 April 2006. It laid down the responsibilities and obligations of the Government of India and DIAL in their respective domain and to each other. In Schedule 1, it laid down the principles of tariff fixation for aeronautical services.

(iii) State Government Support Agreement

State Government Support Agreement (SGSA) was signed on 26 April, 2006 between the Government of National Capital Territory of Delhi and DIAL to provide support services to the project. The agreement provided that the State Government will provide support to DIAL in matters relating to removal of encroachment, procurement of additional land for development of airport, removal of obstruction outside the airport boundary to ensure safe and efficient air traffic movement, improve the surface area access to the airport and to provide all the utilities on payment basis to DIAL. The SGSA also provided for assistance in procuring various clearances which are required by applicable law for undertaking and implementing the project as mentioned in OMDA.

(iv) Lease Deed Agreement

The Lease Deed agreement was signed on 25 April, 2006 between AAI and DIAL to lease the demised premises on “as is where is basis” on an annual lease rent of ₹ 100/- (₹ One hundred only) initially for a period of 30 years extendable for another 30 years by virtue of extension of concession period. The demised premises include all the buildings, construction or immovable assets, if any on the premises as described in the agreement with the liberty to construct, erect, renovate, alter or otherwise deal with the leased premises.

(v) Communication, Navigation and Surveillance (CNS)/Air Traffic Management (ATM) Agreement

The agreement was signed on 25 April, 2006 between AAI and DIAL to provide air traffic services support at the airport since only AAI is authorized to provide necessary air traffic services within Indian air space and at all civil airports in India.

(vi) Shareholders Agreement

Signed on 4 April, 2006 by and between AAI and DIAL and other participants, Shareholders Agreement recorded the terms and conditions to govern the relationships in their mutual capacity as the shareholders of the JVC.

(vii) Airport Operator Agreement

As per Schedule 8 of OMDA, DIAL is required to enter into an Airport Operator Agreement with the Airport Operator (AO) who is a member of the consortium (nominated if more than one AO are in the consortium). The agreement contractually set out the role, responsibilities, accountabilities and financial arrangements between the AO and DIAL. Accordingly, an agreement was signed on 1 May, 2006 between DIAL and Fraport AG Frankfurt Services Worldwide to provide airport services.

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

13. According to Audit there was conflict between provisions in OMDA and SSA on one hand and the AERA Act on the other, which may have long term repercussions on the Regulator's role on tariff fixation in Delhi airport. In terms of

Section 13(1)(a) of the AERA Act, one of the important functions of the Authority is to determine the tariff for the aeronautical service. However, definitions of aeronautical service differed substantially between OMDA and the AERA Act. Ground Handling Service, for example was a non-aeronautical service in accordance with OMDA but it was an aeronautical service in terms of AERA Act. Similarly, Cargo Handling Services defined as non- aeronautical services in OMDA were defined as aeronautical services in AERA Act. According to AERA, these services were less capital intensive and more profitable.

14. Treatment of services such as Ground handling, Cargo handling or parking as non-aeronautical services in OMDA provided undue financial advantage to DIAL, as in terms of SSA, the Targeted Revenue for the purpose of tariff fixation took into account only 30 per cent of the revenue generated from non-aeronautical services. Following SSA, a significant part of the revenue generated by DIAL in the airport could not be included by AERA for determining the Targeted Revenue for the purpose of tariff fixation for IGI Airport.

15. When asked about the steps taken by the Ministry to avoid any potential conflict between provisions of OMDA and the AERA Act, the Ministry has submitted that:—

“The provisions of OMDA and AERA act have been harmonised through section 13(1) (a) (vi) of AERA act. As per this clause AERA is required to give due consideration to concessions granted by the Government under any agreement or memorandum. Accordingly the charges for Cargo and Ground Handling Services are being fixed/regulated by AERA considering these as aeronautical services in the context of Delhi and Mumbai airports.

As per section 13, AERA may determine different tariff structures for different airports having regard to any or all the considerations mentioned in sub clauses (i) to (vii) of section 13(a). Accordingly due consideration is being given by AERA to SSA as per section 13(1) (a) (vi) of AERA act while fixing airport tariff.”

16. When the Committee pointed out that in terms of SSA, target revenue taken into account was only 30 per cent of revenue from non-aeronautical services for cross subsidization of aeronautical tariff and the fact remained that treating revenue generating cargo and ground handling as non-aeronautical services as per OMDA lead to higher tariff fixation at Delhi and Mumbai airport, the MoCA submitted that treatment of cargo and ground handling services as non-aeronautical services in OMDA was based on global practice and the practice was in vogue at AAI airports. It was further added that after a careful consideration and elaborate consultation at various levels in the Government right upto the level of EGoM, a conscientious decision was taken in this regard. Furthermore, it was added that this decision was taken well before the bidding process was started.

17. To a pointed question as to whether they considered the practice followed by the other airports worldwide in treating services as aeronautical and

non-aeronautical to airports which were running on PPP mode also, the Secretary, MoCA during evidence responded as under:—

“Whatever was the practice prevailing at the AAI airports where these two services were categorised as non-aeronautical, the same thing was considered at the time of privatisation and OMDA also captured the same thing. Worldwide, as I submitted, there are variations. Some airports are considering it as aeronautical and some others are considering it non-aeronautical. So, there is no uniformity as such”.

18. The Committee desired to know whether a provision was made in the OMDA for any future review in the event of any conflicts. To this, the MoCA submitted as under:—

“There is a provision to deal with the situation of 'Change of Law' under clause 20.3.2012 of OMDA and Clause 10 of SSA. However AERA has been specifically dealt with under clause 3.1.1 of SSA. There is no conflict between AERA act and SSA. In fact there is harmony between the two. To corroborate it, clause 3.1.1 of SSA and Section 13(1) (a) (vi) of AERA act are reproduced below:

- Clause 3.1.1 of the draft SSA clearly stipulates that “GoI further confirms that, subject to Applicable Law, it shall make **reasonable endeavours** to procure that the Economic Regulatory Authority shall regulate and set/reset Aeronautical Charges, in accordance with the broad principles set out in Schedule 1 appended hereto”.
- Section 13 (1) (a) (vi) of the AERA Act states that the Authority shall perform the function—in respect of major airports—“to determine the tariff for aeronautical services taking into consideration”..... “the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise”.
- 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.
- Airport tariff for Delhi/Mumbai airport is, however, being determined as per formula provided in SSA as per section 13(1) (a) (vi) of AERA act and schedule I of SSA.

Regarding the scope of any future review of the provisions of OMDA and SSA, it is stated that both in SSA (Clause 10) and in OMDA (Clause 20.3.12), there is a scope for reviewing the provisions of these legal documents in the event of any Change in Law (CIL).”

19. When the Committee sent for copies of financial analysis done by the Ministry or by the consultants appointed by them on the issue of allowing outsourcing of non-aeronautical services and its impact on the revenue to be shared by AAI, the MoCA in a written reply submitted that non-aeronautical services have been allowed to be sub-contracted/sub-leased as per the practice in AAI. Further, it was added that it was a global airport practice to outsource non-aeronautical services and as such a financial analysis of outsourcing of such services prior to privatization was not considered necessary.

20. Responding to the query of the Committee as to who was the beneficiary of the decision of the Government to separate the parking, the cargo and the ground handling from the revenue of DIAL, the Secretary, MoCA disposed:—

“Whether it is aeronautical revenue or non-aeronautical revenue, so far as the Airport Authority's share of 46 per cent is concerned, that remains intact. That does not change. They will get 46 per cent in both the categories.”

21. On the same issue another representative of the AAI added as under:—

“..... this 46 per cent which is supposed to come to us, comes to us in any way whether it is aeronautical revenue or non-aeronautical revenue. So, to that extent the Airports Authority is not directly hit.”

22. The following table shows the quantum of revenue of DIAL generated through aeronautical and non aeronautical services since inception:—

	<i>(Rs. in crores)</i>						
	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Aero revenue	339.59	301.09	321.86	342.07	422.14	464.81	482.92
Non-aero revenue	183.19	240.28	349.83	404.11	574.38	651.82	919.57
Cargo revenue	147.16	178.85	203.96	211.92	175.31	138.59	128.46
Total	669.94	720.22	875.65	958.10	1,171.83	1,255.22	1,530.95

23. Asked to explain the reasons for increase in Aero Service Revenue and drop in the Cargo revenue during the years, the Ministry submitted:—

“Between 2005-06 to 2011-12, the aero revenue has recorded an increase of about 42%, whereas non-aero revenue during this period has gone up by nearly 317%. The growth in aero revenue could be attributed largely to increase in traffic but a whopping growth of 317% in non-aero revenue has occurred due to sincere efforts put in this regard by the JVC. For increasing the cargo revenue in the long run some basic infrastructure facilities were to be created/ augmented. In the interregnum, there has been a little drop in the cargo income. Now since the cargo infrastructure facilities are put in place, it is expected that cargo revenue would also start showing robust growth hereafter.”

24. When the Committee specifically sought to know whether there was any system with the Airport Authority to advise the Ministry about the categorization of services into aeronautical or non-aeronautical keeping in view that the revenue interests of the Government were also taken care of, the Secretary, MoCA during evidence testified as under:—

“I would like to submit that earlier all these tariffs for all the services at the airport were fixed by the Government. The Airports Authority used to submit the proposal and the Ministry of Civil Aviation used to finalise the tariff. Since in future more and more airports are going to come up, more and more Greenfield airports are going to come up, and even the

existing airports would also be getting privatised, it was felt that tariffs work determination should be taken out from the Government and given to an independent regulator. That is why this AERA Act was conceived.”

IV. Concession Period

25. In terms of Article 18.1(b) Chapter XVIII of OMDA, DIAL enjoys the unilateral right to extend the concession period for another 30 years “on the identical terms and conditions”, provided no JVC event default had taken place during the 20th and 25th year of the first concession period. The decision to adopt the joint venture route was taken based on the Cabinet Note of September 2003. The Cabinet Note specifically envisaged an initial concession period of 30 years which could be extended by another 30 years subject to “mutual agreement and negotiation of terms”. However, in the draft OMDA which formed part of the bid documents, the important condition “subject to mutual agreement and negotiation of terms” was omitted. The OMDA, which was signed in April 2006, did not contain any provision of mutual agreement and fresh negotiations before extension of the concession period. Further, it does not provide the Government any scope for review of the conditions. In contrast, the model concession agreement issued by the Committee on Infrastructure of Planning Commission, the concession period typically granted by Port Trusts are 30 years. Similarly, in the case of highways, the period is usually 20 years.

26. In case of Infrastructure Projects (roads, ports etc.) the concession period are linked to triggers like traffic trends, passenger and cargo movements, break-even period, internal rate of return, return on investment, etc. When the Committee sought to know the basis for fixing concession period as 60 years, the Ministry submitted as under:—

“In the case of other sectors like Highways or Ports the Concession period is 25-30 years because the investment is typically to be made only once— at the start of the concession. However, in case of Delhi and Mumbai airports, it was envisaged that the infrastructure development would be in multiple phases. Delhi airport's passenger handling capacity has to go up from 15 million passengers per annum (mppa) in 2005 to 100 mppa in 2029. The airport is to be developed in six phases with huge investment in each phase. Hence, it was felt that DIAL would need a longer time-frame for phase-wise investments and their economic. Considering this, and to attract more bidders for Delhi and Mumbai airports, the EGoM included a provision to extend the concession period by another 30 years after the initial 30 years.”

27. When enquired from the Ministry, if trigger for any kind of review was provided in the agreement, the Ministry stated as under:—

“As this extension was subject to satisfactory performance of the JVC during the first 30 years, a performance related trigger was thus incorporated in the OMDA. It is also pertinent to mention that yearly renewal of licence of the airport by DGCA is also subject to satisfactory performance of the airport on some set- parameters.”

28. Regarding the condition mentioned in the Cabinet Note which stated that 30 years subject to mutual agreement and negotiations of terms, the Secretary, MoCA during evidence deposed as under:—

“I am submitting that it was not omitted. If you look at the Cabinet Note, only on two issues the decision of the Cabinet was sought. This 30 plus 30 was not part of that. Thirty plus 30 was basically part of the details of the transaction. So, the Cabinet gave permission only for privatisation but for the detailed structuring of the transition, they gave the responsibility to EGoM, who decided 30 plus 30.”

29. When specifically asked about the Note dated 01.09.2003 which was considered by Cabinet and was approved by them, the Secretary, MoCA during evidence deposed as under:—

“Cabinet considered the note dated 1.9.2003 from the Ministry of Civil Aviation and approved the proposal contained in para 18.1, that is the first one, restructuring, they said, yes, go ahead with privatisation. On second, Cabinet approved constitution of an EGoM consisting of Minister of Finance, Minister of Law and Justice, Minister of Disinvestment and Minister of State (Independent Incharge) of Civil Aviation to decide the detailed modalities, including the design parameters, evaluation criteria, based on which it will select the JV partner and submit the final proposal to Cabinet for approval. So, the second part of the transaction details in which this 30 plus 30 period comes, Sir, was not decided by the Cabinet. They left it open to the EGoM who subsequently recommended 30 plus 30 and finally the Cabinet accepted the recommendation of the EGoM.”

30. The Committee desired to know at what stage and at what level it was decided to exclude the scope for mutual agreement and negotiation of terms and to confer to the private party the unilateral right to extend the concession period for another 30 years on the same terms and conditions provided no default by JVC was made during the preceding five years of the 25th year from the effective date. The Committee were informed through written submissions as under:—

“During the preparation of the exact structure of the restructuring and modernisation of Delhi and Mumbai airports, the Financial Consultant had advised a lease term of 30 years. It was primarily driven by the fact that a lease period of 30 years would give enough time to investors to recoup investments and capture the growth. Incorporating this advice of the Financial Consultant, a draft Cabinet Note for restructuring and modernisation of Delhi and Mumbai airports through Joint Venture Route was prepared and circulated for inter- Ministerial consultation. Department of Economic Affairs (DEA) raised certain issues regarding the concession period and advised that the concession period of 30 years could be extendable by another 30 years. While submitting the proposal to Cabinet for approval of restructuring and modernization of Delhi and Mumbai Airports through JV route *vide* cabinet note dated 01.09.2003, it was mentioned in para 16.4 of the note that the lease period would initially be of

30 years and could be extended by another 30 years subject to mutual agreement and negotiation of terms. However, the Cabinet only approved the proposal contained in paragraph 18(i) of the Cabinet Note about restructuring of Delhi and Mumbai airports through JV route:

The Cabinet decided to constitute an Empowered Group of Ministers (EGoM) consisting of Minister of Finance, Minister of Law and Justice, Minister of Disinvestment and Minister of State (I/C) of the Ministry of Civil Aviation to decide the detailed modalities of restructuring including the design parameters, bid evaluation criteria, etc. based on which the joint venture partner was to be selected. An Inter-Ministerial Group (IMG) was also constituted to assist the EGoM.”

The issue of concession period was discussed in the several IMG meetings. The IMG observed that provision for extension for lease period improves the attractiveness of the transaction, improves the cash-flow and investment recovery profile while allowing for gradual increase in tariffs. IMG in its meeting held on 20.01.2005 considered the following two options:

- (i) The initial term for a period of 50 years with an option for renewal for another 40 years subject to satisfactory performance by the JVC during the first term.
- (ii) The initial term to be for a period of 40 years with an option for renewal for 30 years subject to satisfactory performance by the JVC during the first term.

IMG recommended that the option (ii) may be preferable with an automatic extension subject to satisfactory performance under the OMDA.

The above suggestions of IMG were discussed by EGoM in its meeting held on 15.02.2005 and it was decided that the concession period would be 30 plus 30 years subject to condition that the extension of the term after the expiry of the initial term shall not be automatic but JVC will have a right of renewal for second term subject to satisfactory performance as stipulated under OMDA.

Hence, it is clear that these provisions relating to extension of the lease period were finalized before issuing the Request For Proposal (RFP) to the Pre — Qualified Bidders (PQBs).”

31. Further clarifying the issue, the Ministry also submitted as under:—

“Para 18 of the cabinet note dated 01.09.2003 which is the approval paragraph is reproduced below:

- (i) "Restructuring of Delhi and Mumbai airports may be undertaken through JV route by formation of two separate companies between AAI and the selected JV partners”.
- (ii) The exact transaction structure for Delhi and Mumbai Airports.

It is clear that Para 18 (ii) contained proposal for approval regarding the exact transaction structure for Delhi and Mumbai airports including the

issue of concession period in the notes in Cabinet note. However, Cabinet did not decide on the exact transaction structure proposed by MoCA in this para and instead decided to constitute the EGoM to decide detailed modalities based on which it will select JV and submit its final proposal for approval of the Cabinet. Minutes of the Cabinet decision are quoted below:

“The Cabinet considered the note dated 01.09.2003 from the Ministry of Civil Aviation and approved the proposal contained in paragraph 18 (i) thereof. The Cabinet also approved the constitution of an Empowered Group of Ministers (EGoM) consisting of Minister of Finance, Minister of Law and Justice, Minister of Disinvestment and Minister of Civil Aviation (I/C) to decide the detailed modalities including the design parameters, bid evaluation criteria, etc. based on which it will select the joint venture partner and submit its final proposal for approval of Cabinet.”

It is clear from the above that proposal in approval para 18 (ii) on transaction structure including concession period was never decided by the cabinet. It is also clear that the issue of concession period needed to be examined and presented before the EGoM through the mechanism of newly appointed FC and IMG. Further, IMG and the EGoM considered the above issue several times since the decision of cabinet dated 11.09.2003 including the EGoM held on 11.2.2004 before the issue of Expression of Interest on 17.2.2004.

After formation of the new Government in May 2004, IMG and EGoM again met several times to examine the transaction structure. Recommendations of IMG meeting dated 20.1.2005 were submitted to EGoM *vide* note dated 9.2.2005. The EGoM decided on 15.2.2005 that concession period will be 30 plus 30 subject to that the extension of the term after expiry of the initial term shall not be automatic but JVC will have a right of renewal for second term subject to satisfactory performance as stipulated in OMDA.

Further, it is pertinent to mention that MoCA had enclosed Annexure IV to the EGoM note dated 9.2.2005. This Annexure carried the intention of the earlier view on extension of first term subject to mutual agreement under heading Term of OMDA. However, EGoM decided as above after due deliberations. After decision of EGoM on 15.2.2005, OMDA was accordingly drafted by legal advisor of AAI before release of RFP and before existence of any final bidder and of course upon approval of the whole document by EGoM based on extensive consultation with all related Ministries in July and August 2005. RFP and all transaction documents were released on 30.08.2005 and final bids were invited by 15.09.2005.”

32. The Ministry further clarified that there was no violation of any business rule:—

“... the above sequence clearly shows how, why and with whose approval the OMDA was drafted. There is no violation of any commitment of cabinet because cabinet had never decided the relevant approval paragraph on transaction structure. The above decision of EGoM is neither unilateral nor

gives any undue advantage to JVC because the JVC (DIAL) was not even in existence as the final bidder. It is not detrimental to government interest because AAI continue to reap benefits after extension of first term but AAI has to agree to extend the term whether the performance of JVC has been satisfactory during initial period. The AAI and government retain enough scope for review of OMDA.”

V. Right of First Refusal in case of second airport

33. In addition to the unilateral right of DIAL to manage the IGIA for sixty years, the State Support Agreement (SSA) allows the Right of First Refusal (RoFR) to DIAL with regard to any second airport planned within 150 km radius of the IGIA. According to SSA, the second airport will be decided by following a competitive bidding process, in which DIAL can participate. In the event of DIAL being unsuccessful, it will be allowed to match its bid with the most competitive bid, if it is within 10 per cent of most competitive bid. This condition will be applicable for the first 30 years. The SSA does not elaborate on the competitive bidding process or the model that would be followed.

34. When the Committee asked the Ministry to explain in detail the factors that were considered by EGoM for arriving at the decision of allowing the Right of First Refusal to protect the JVC against the risks in investment, the MoCA submitted as under:—

“The issue of RoFR was deliberated in detail by the IMG and EGoM wherein various options of the transaction *i.e.*, without RoFR, with RoFR, etc., were explored. Based on the global experience, it was considered that, in the absence of RoFR, the JVC would be exposed to significant risks in its substantial investments if the traffic were to divert to a competing airport in the vicinity after heavy investments have been made. Further, it was observed that the second airport would be a major airport which implied that the second airport would have to be given adequate traffic to ensure that the operation of the second airport is viable. This would mean diversion of some traffic from the existing airport to the new airport, which may include domestic/international traffic, certain routes/airlines or a combination of these. In such scenario, the existing JVC will require to be protected on account of huge investments having been made by the JVC besides, offering a continued incentive for undertaking huge investment.

Therefore, provision for RoFR to the JVC was considered imperative in the transaction documents.”

35. Regarding consideration of triggers like saturation point of existing airport, traffic census, rate of return on capital, breakeven period and so on, while arriving at the decision to allow the RoFR, the Ministry further added as follows:—

“It is clarified that development of second airport is based on existing airport reaching saturation point, traffic sharing and host of other factors. These are clearly inbuilt in Policy on Airport Infrastructure, 1997 (para 8.2 of the Policy). The fact that second airport will be set only upon traffic

trigger and on reaching saturation point is borne out of a recent example when a proposal to set up second airport at Delhi arose, MoCA assigned the traffic study to ICAO which in their study recommended that second airport may not be needed until 2022 at optimum growth rate of traffic. Similarly, second airport at Mumbai can be set when existing airport reaches its capacity saturation point of 40 million.”

36. About the safeguards provided in the RoFR in order to ensure competitiveness and transparency, the Ministry further submitted that:—

- (i) “A sunset clause has been provided that RoFR will not be available to JVC after initial 30 years of first term.
- (ii) RoFR will operate through competitive process only with the condition that if existing JVC is not successful in securing highest bidding, it can match the highest bid provided it is within 10% of the highest bid and therefore anticipating aggressive bidding by sitting JVC and other bidders.
- (iii) Existing JVC must have satisfactory performance at existing airport.
- (iv) Second airport will be planned and set up only after the trigger of traffic has occurred.
- (v) Planning for second airport should begin five years before or earlier than the traffic trigger is likely to reach.
- (vi) Existing JVC not to be consulted in the planning process.
- (vii) RoFR applies within 150 KM of the existing airport.”

VI. Misuse of Upfront Fee

37. As per Article 11.1.1 of OMDA a onetime upfront fee of ₹ 150 crore was fixed for each of the Delhi and Mumbai Airports by MoCA. In a clarification to Audit, MoCA explained that the amount in the concept of upfront fee had no relation to either the extent of land or the assets of the airport. But when DIAL sought the lease of additional 190.19 acres of land out of the carved out assets, to fix a lease rent for this land, AAI used the amount of upfront fee to arrive at a rate per acre and applied it to the additional land thereby fixing a onetime fee of ₹ 6.19 crore viz. [(₹ 150 crore/4608.9 acres) 190.19 acres]. OMDA allowed DIAL to use 5 per cent of demised land for commercial exploitation. The current value of 9.50 acres (5 per cent of 190.19 acres) as per AERA's communication to Audit amounted to ₹ 950 crore. As per DIAL's estimate, the earning potential for 58 years from 9.50 acres was ₹ 6475 crore (681.63 x 9.5). On the other hand, AAI leased out 7.60 acres of land to Director General of Civil Aviation and Bureau of Civil Aviation Security at a license fee of ₹ 2.41 crore per annum. Application of this license fee with the same escalation clause for 190.19 acres of land would amount to ₹ 4534 crore for a period of 27 years. In contrast to this, land was leased to DIAL for sixty years against a onetime payment of ₹ 6.19 crore.

38. When the Committee asked the basis for fixing the upfront fee as ₹ 150 crore, the Secretary deposed:—

“The basic approach for the privatisation of this Airport was that the revenue

sharing should be the sole bidding criteria. So, whosoever gives the maximum revenue share, will get the airport. Any other form of revenue was not the consideration. That is why this entire airport land of 4,600 acre was leased out at a token amount of ₹ 100. Now, if we had followed that, then proportionately for this 190 acre of land that we gave subsequently, the lease amount would have come to just ₹ 4. What we felt in the Ministry was that ₹ 150 crore upfront fees was charged from the JVC, when the airport was given out. The rationale behind this ₹ 150 crore was that at that point of time, the annual income coming from the Delhi Airport for the Airport Authority was about ₹ 150 crore. It was felt that during this privatisation process, it would be taking some time. Therefore, an upfront fees of ₹ 150 crore should be taken from them for one year.”

He further added:

“When the airport was being transferred from the Airport Authority to the DIAL, it was felt that after the transition phase which would be about one year, of course, AERA will come and will take care of all tariff fixation etc. At that time, it was considered that one year's income, what the Airport Authority was getting, could be charged as upfront fees. This was as per the recommendation of the Finance Ministry.”

39. Regarding the basis for fixing the upfront fee of ₹ 150 crore, the MoCA also stated as under:—

“The structure of OMDA Fee was discussed by the EGoM and it was observed that there are three models [*i.e.* (i) only upfront lump-sum OMDA fee; (ii) only annual payment of OMDA fee; and (iii) a combination of upfront and annual payment] available in this regard.

IMG had analyzed the average profit of both AAI airport and broadly firmed the profit of the order of ₹ 150 crore in 2003-04. Hence, IMG recommended ₹ 150 crore as upfront fee to be levied on JVC of both airports as one time payment to AAI.

EGoM also considered that a payment of upfront fee to AAI would provide some form of insurance to AAI between the effective date of OMDA and the date of transfer post completion of the transition plan, since cash-flow during the period would accrue to JVC. It was further considered that the upfront fee would provide AAI with immediate funding for its 26% equity contribution in the JVC.

After discussions, it was decided by the EGoM that one time upfront fee of ₹ 150 crore will be paid by the JVC to AAI. It was also decided that revenue sharing will be the sole financial evaluation criterion and OMDA fee will not be a cost pass through for fixation of aeronautical tariff.”

40. The Committee then sought to know the reasons for AAI adopting ₹ 150 crore as base for upfront fee while leasing out the additional land of 190.19 acres instead of going for negotiations as per OMDA. On being asked that if the upfront fee did not represent the cost of the demised land then what did it represent, the

Ministry replied that the quantum of upfront fee (₹ 150 crore) had no relation with the extent of land and asset at an airport and it was only a part of the OMDA fee. It was also stated that revenue share captured the overall earning potential of the airport and by considering the upfront fee as the basis for leasing out additional land of 190.19 acres for aeronautical purposes, AAI in fact had got a much higher amount of about ₹ 6 crore in comparison to the amount that it would have got through nominal lease — rental basis.

41. The Ministry further clarified as under:—

“..... in the process of formulating the cabinet note in 2003, DEA on consultation on DCN had advised that the JVC upon handing over of airport would continue to operate the airport even as it is modernised with no disruption of traffic flow. They will start earning revenues immediately from the day possession is handed over to JVC although renovation will only be completed as per laid down time line. It was advised that the bid document should be so structured as to ensure that the final bid factors in this benefit. On the basis of this advice, FC, IMG and EGoM considered various options to factor in this. It was also analysed that JVC, in addition to earning revenues will start incurring much more expenditure on maintenance and also capital expenditure which may be more than the profit earned. In fact, JVC was directed by EGoM to undertake mandated capital expenditure in first two years to bring perceptible changes in the airport. JVC in Delhi invested over ₹ 2900 crores in first two years.

Further, ₹ 150 crore was decided by EGoM as the one time lump sum upfront fee as average profit for both airport for the year 2003-04 after taking above aspects of mandated capital expenditure, maintenance cost by JVC etc. into account and also revenue share being subjected to bidding. The rationale of upfront fee has been a considered decision of the Government and decided before the issue of RFP with no final bidder in sight and hence transparent and neutral to all bidders.”

42. The Ministry was specifically asked whether AAI had the approval of the Ministry to transfer an additional 190 acres of land out of its carved out assets using upfront fee as the basis for cost of the land. Further, as per OMDA, for transfer of additional land out of carved out assets, "negotiations in good faith" were to be carried out and thus the Committee sought to know if any such negotiations, were carried out. To this, the Ministry in its reply stated as under:—

“With respect to the additional 190.19 acres of land, it is mentioned that this land was transferred to DIAL in terms of OMDA only for aeronautical purpose. As per OMDA, the airport land is classified into three relevant categories:

- **Demised Premises:** Section 2.6.1 of OMDA defines "Demised Premises" as — all the land (along with any buildings, constructions or immovable assets, if any, thereon) which is described, delineated and shown in the Schedule 25 hereto, other than (i) any lands (along with any buildings, constructions or immovable assets, if any, thereon) granted to any

third party under any Existing Lease(s) constituting the Airport on the date hereof; and (ii) any and all of the Carved Out Assets and the underlying land together with any buildings, constructions or immovable assets thereon, on an "as is where is basis" together with all Encumbrances thereto.

- Schedule 25 consists of the Map Demarcating the Demised Premises.
- **Excluded Premises:** In the event at any time during the Term, the JVC requires the hundred (100) hectares of land (or any part thereof) as identified in the Initial Development Plan and deducted for determining the Demised Premises (the "Excluded Premises"), for the purposes of provision of Aeronautical Services, then JVC may request AAI to lease such Excluded Premises, or part thereof, as the case may be, and upon such request the Parties shall enter into a lease deed for grant of such lease.
- **Carved Out Assets** are defined under Section 27 of OMDA.

The 190.19 acres of land transferred to DIAL in 2009 *via* the Supplementary Lease Deed executed on 13th August, 2009 — and referred to by CAG — is part of the "Excluded Premises" and not Carved out assets as noted by CAG. Hence, this transfer from "Excluded Premises" is governed by Section 2.6.1 of OMDA according to which no compensation was envisaged. Section 2.6.3 is not applicable in this situation since the transferred land is not part of Carved Out Assets. Section 2.6.3 reads as follows: "With respect to land underlying the **Carved Out Assets**, the Parties further agree that if, at any time during the Term, the JVC requires the said land for providing any Aeronautical Services or developing and/or constructing any Aeronautical Assets, the Parties shall come together to negotiate in good faith the terms and conditions on which the AAI shall lease to the JVC, and the JVC shall take on lease from the AAI, the said land.

Hence, "Excluded Premises" can be transferred to DIAL without any compensation to AAI as this land is to be used only for aeronautical purposes.

The land from "Excluded Premises" was transferred based on a meeting which took place between Ministry, AAI and DIAL on 28th April, 2008. Post this meeting, on a request by AAI and after subsequent discussions, DIAL agreed to pay a one-time fee of ₹ 6.19 crore for provision of Aeronautical Services on 190.19 acres of land.

It also needs to be understood that the leasing of land by AAI to DIAL is in return of its share of 45.99% of the total revenue and, therefore, lease rental from DIAL is inconsequential. On the other hand leasing to other entities like DGCA and BCAS is only in return of lease rental and hence this comparison itself is not correct."

43. The Secretary, MoCA in his deposition before the Committee emphatically stated that the upfront criterion had no relation with the land. Examining this issue further, the Committee sought to know the reasons for using this upfront fee to

calculate the value of 190.19 acres of land that was subsequently transferred to DIAL. To this, he replied:—

“Anyway, it was discussed and negotiated and finally agreed that way.”

VII. Commercial exploitation of land

44. AAI leased out 4799.09 acres land as demised premises at ₹ one hundred annually to DIAL. For 190.19 acres a onetime fee of ₹ 6.19 crore was also levied on DIAL. Article 2.2.4 of OMDA permits DIAL to utilize 5 per cent of the total land area of 4799.09 acres of demised premises for commercial exploitation. This would work out to 239.95 acres. The projected earning capacity of this land in terms of license fee over the concession period of 58 years was indicated by DIAL itself as ₹ 681.63 crore per acre in a letter to the Joint Secretary, MoCA. Thus for the entire area of 239.95 acres, the potential earning from the land, according to the calculations worked out by DIAL itself, amounts to ₹ 1,63,557 crore and 45.99 per cent of the same amounting to ₹ 75,220 crore would be AAI's share. The net present value at a discount rate of 10 per cent amounts to ₹ 3,566 crore. The share of DIAL would amount to ₹ 88,337 crore, net present value of which is ₹ 4,187 crore.

45. As of February, 2013, DIAL had leased out 45 acres of land. As against the projection of ₹ 1.92 crore per acre for 2012-13, DIAL had reached a lease rental of ₹ 1.96 crore per acre for the year and received a security deposit of ₹ 1471 crore. While lease rental is shared by AAI, the security deposit is not shared with AAI. According to Audit this area was part of the entire area of land that was handed over to DIAL at the lease rent of ₹ 100 per annum. It was ascertained from AERA that the current valuation of the land made by M/s. Merrill Lynch in the report of 26th August, 2011 was worked out at the rate of ₹ 100 crore per acre. Thus even in terms of this conservative estimate, the total current value of the land (239.95 acres *i.e.* 5% of 4799.09 acre) available to DIAL for commercial exploitation, would amount to approximately ₹ 24,000 crore.

46. When asked if the Ministry or the consultants appointed by it had arrived at the market value of the land proposed to be transferred to the JVC including the land to be made available to the JVC for commercial exploitation, the Ministry in its reply stated that OMDA Fee was the sole bidding criterion. According to MoCA, OMDA fee is the revenue share from gross revenue of the airport. Therefore, revenue share captured the earning potential of the airport which included revenues from both airport activities and the land. Hence, the issue of value of the land was not considered by the EGoM.

47. With regard to Commercial exploitation of land the Ministry replied as under:—

“Commercial exploitation of land is a misnomer because there are limitations on the use of land by DIAL. The matter regarding land uses and its limitation was discussed by the EGoM, *vide* note dated 10.06.2005 wherein it was, *inter-alia*, stated that Planning Commission had raised the issue of utilization of land at Delhi and Mumbai airports for commercial purposes and also

commented that creation of commercial districts on airport land might not bear relationship to the airport or its user. Such commercial uses should be preceded by a change in land use, provision of requisite civil amenities, approval relating to height and floor coverage. The parameters will require certainty. There is a need to specify the limits of commercial exploitation to be reflected in the Master Plan. JVC might also bring undue pressure on this count and may even take recourse to arbitration.

On the issue of Planning Commission, EGoM was apprised that as per the Cabinet decision dated 29th December, 1997, it is mandatory to AAI that AAI should prepare a Master Plan (MP)."

48. The Ministry submitted that AAI prepared a Master Plan in accordance with the principles set out in Policy on Airport Infrastructure, 1997 (which was also approved by Cabinet) in 1997. It was further submitted by the Ministry that:—

“.....there was a well-defined policy of Government of India regarding commercial activities at airports, which lays major thrust towards increasing the share of commercial revenue from non-aero sources.

AAI had prepared a Master Plan (MP) for Delhi and Mumbai airports and submitted to the local bodies from time to time. The recent MP was submitted to DDA in 1997. This MP gave approximate areas and percentages of land identified for specific use. Out of which, 10% at Delhi airport and 15% at Mumbai airport of land area was earmarked for commercial area. Even within this, 5% and 10% area at Delhi and Mumbai airports respectively, were directly connected with core airport functions and remaining 5% at both airports covered commercial activities which were incidental and supplemental to the airport functioning. DDA had also confirmed that the MP was approved.

The EGoM considered the note dated 10.06.2005 and directed that the opinion of Learned Attorney General (AG) should be obtained on the point of land uses and limit on commercial uses and also mortgage of land and assets.

Accordingly, the valuable opinion of the AG was obtained through Ministry of Law and Justice. The AG had opined that AAI can grant lease of land but use of such land for commercial activity not connected with passengers or Air Traffic Services or Air Transport Services is beyond the powers and functions of AAI. In fact, it appears from the note for EGoM dated 10.06.2005 that currently only 5% of the airport area at Delhi and Mumbai airports covers commercial activities which are incidental and supplemental to the airport functioning. Further, the policy granting lease for pure commercial activity such as Golf courses, business park etc. will be beyond the scope of power of statute of AAI Act 1994. The contract of lease must be necessarily for the discharge of functions of AAI as outlined in the statute. Anything beyond the statute of Parliament will be void and cannot be done till the act is amended.

The above position was conveyed to the EGoM *vide* note dated 21.06.2005 and discussed in its meeting held on 22.06.2005, EGoM had, *inter-alia*,

decided that in respect of Delhi, the total quantum of land required for complete aeronautical and non-aeronautical purposes at the airport will be identified upfront and only the land so identified will be leased to the JVC. The balance land not required by the JVC, will be retained by the AAI. Further, the JVC will be permitted to undertake, aeronautical activities and such other permissible non-aeronautical activities which are related to passenger, air traffic services and air transport services/facilities and will be further subject to the overall limit of 5% of the leased land in conformity with the DDA Master Plan.

In view of above, it is clear that the earmarking of commercial utilization of land at the airport has been fixed as per the norms which were available to AAI before the award of the contract to DIAL. No undue benefit has been given to DIAL. It can use only 5% of Demised Premises of the land and not the whole of land available at Delhi airport to which AAI was entitled to. Moreover, it is not an omnibus commercial use and is limited to allowed activities only.”

49. To a query of the Committee whether the Ministry or the consultants appointed by it had carried out any financial analysis before arriving at the decision to allow 5% of the land for commercial exploitation by the JVC, the Ministry in its reply added as under:—

“When the mode of transfer of assets including entire land of the existing airport to JVC was being considered early in 2003 during consultation process on cabinet note, Ministry of Finance had suggested that existing airport be transferred to JVC on token lease. One of the advantages of adopting JV route was saving to AAI in terms of stamp duty. It was also opined that instead of term lease or lease rental, the term 'concession fee' will be used which later also came to be known as revenue share. It was also considered that transfer of assets will be structured in such a way that only small portion of the entire transaction which will provide for renting of assets attract stamp duty. The proposed transfer will be an appropriate mix of assets being transferred on minimal rent and the rest of the 'lease rental' will be recovered as 'concession fee' or 'revenue share'. This line of consideration clearly captures the essence that the revenue share on bidding will capture the earning potential of the airport which include assets including land revenues from both airport activities and the land lease rental as well as its earning potential to be shared with AAI as part of gross revenue. The above clearly explains why EGoM based on advice of DEA and FC, did not go through the route of market valuation of land.”

50. On being asked whether the mode of commercial exploitation of land was through subsidiary company of DIAL or through JV route, the MoCA replied as follows:—

“DIAL has directly given the land to developers for development through a competitive bidding process; this process was done neither through a subsidiary company nor through a JV of DIAL. Further, none of the existing

subsidiaries of DIAL or JVs of DIAL were allowed to participate in this bidding. DIAL has granted rights for development of assets in return for a fixed annual license fee with an escalation clause. There is no revenue share agreement with any developer. DIAL has also not entered into any Joint Ventures with any of these concessionaires. The award of these licenses has been approved by the DIAL Board consisting of AAI nominees. It is clarified that by virtue of the provisions of the Article 2.1.6 of the Development Agreement, the Developers have been permitted to create encumbrance only over the built up Assets on the Asset Area (and not the underlying land), specifically for financing the Project only. This is within the ambit of provisions of OMDA Section 13 (1) (b) (v) and (vi). Hence, mortgaging of land for availing loan is not permitted as per the Development Agreement entered by DIAL.”

51. Regarding, monitoring the use of 5% land for commercial exploitation the Ministry stated that for each phase of commercial development, the plan is submitted by DIAL to AAI for necessary approvals based on which AAI approves the building plans. As per the Master Plan submitted in 2006, in line with stipulations in OMDA, 5% of the total Airport land was indicated as earmarked for Commercial Development. Contending the Audit's observations that the area was not earmarked the Ministry stated that the area had been earmarked and was subjected to monitoring by AAI and MoCA from time to time. Further, it was also added that the total land used by DIAL so far was not even 1% against the limit of 5%.

52. Given the fact that security deposit of ₹ 1471 crore from the above said land was used to meet the project expenditure and also the fact that revenue from this land was not used to cross subsidize the tariff for aeronautical services, the Committee desired to know as to why the provision for commercial exploitation of land could not be considered as "subsidy in kind". The Ministry submitted as under:—

“The right to use 5% of airport land for Delhi and 10% of airport land for Mumbai airport for commercial purpose was defined in the bid and known to all bidders (through the draft OMDA — Article 2.2.4). It is important to note that land has not been sold by DIAL; only development licenses have been awarded to the developers as per OMDA. During the bidding process, the Schedule 1 of draft SSA clearly specified the mechanism for calculating the aeronautical tariffs. This clearly stated that the revenue generated from non-transfer assets will not be considered for calculating the target revenue. Hence, both these points (a) 5% of land for commercial development and (b) non-inclusion of revenue from non-transfer assets for cross subsidy of tariff— were factored in by all bidders while quoting their bid value — for both Delhi and Mumbai airports. In fact, this was one of the key reasons why the bidders quoted revenue share as high as 45.99% for Delhi and 38.7% for Mumbai airports. Hence, it would be improper to consider the usage of 5% of airport land for commercial purposes as "subsidy in kind"— as AAI is the biggest beneficiary of these clauses as can be seen from the figures of revenue sharing.”

53. The Committee enquired about the total area of land that was made available to DIAL for Aeronautical purposes, Non Aeronautical purposes and commercial purposes and the revenue generated under these areas and the extent of profits which DIAL had earned. The MoCA in its reply stated that:—

“AAI has leased out 4799.09 acres of land as demised premises. Article 2.2.4 of OMDA permits DIAL to utilize 5 per cent of the total land area of 4608.9 acres (190 acres subsequently transferred and not included) of demised premises for Non-Transfer Assets *i.e.* commercial exploitation. This would work out to 230.44 acres. Out of this, DIAL has awarded commercial Development Rights for 45.08 acres of land. From this commercial development, in FY 2013, DIAL is expected to receive revenue of ₹ 89 crore. In addition, for FY 2013, the Aeronautical Revenues of DIAL are expected to be ₹ 1,859 crore; the Non-Aeronautical revenues are expected to be ₹ 939 crore. Since take-over of the airport from FY 2007 till today, DIAL has suffered a cumulative loss of more than ₹ 1,706 crore.”

54. On being asked about the safety and security requirements of aircraft *vis-à-vis* construction activities for commercial use, the Secretary MoCA deposed that all the approvals had been taken and permissions granted. With regard to security, addressing some concerns arising out of the hotels and other facilities constructed which would be visited by a large number of people both from inside and around the airport, the witness submitted that a committee had been constituted comprising of representatives from the Intelligence Bureau, RAW and the BCAS to look into this and to address those concerns.

55. Further, in the written reply furnished by the Ministry it was submitted as under:—

“The entire Hospitality District Area — where construction activities for commercial facilities are ongoing — falls on the Landside and is well outside the operational area of the Airport. The entire operational area of the airport is secured by perimeter wall of 8 feet height above which there is 1.5 feet of concertina coil. In addition to this, there is highly sophisticated four layered Perimeter Intrusion Detection System (PIDS). The CISF is guarding the perimeter 24x7 and there are 41 watch towers facilitating CISF to maintain a close watch on the entire perimeter.”

VIII. Airport Development Fees (DF)

56. According to Audit, Article 13.1 of OMDA specifically provided that the : "JVC shall arrange the financing and/or meeting all financing requirements through suitable debt and equity contributions in order to comply with its obligations including development of airport pursuant to the master plan and the major development plans". However, MoCA *vide* their order dated 9th February, 2009, allowed DIAL to levy a development fee (DF) at Indira Gandhi International Airport for the purpose of funding or financing the cost of up-gradation, expansion or development of the Airport. This was clearly in contravention of the provisions of Article 13.1 of OMDA, provisions in the AAI Act and in AERA Act as later confirmed by the Supreme Court.

57. This decision to levy DF after the effective date, had vitiated the sanctity of the bidding process, as the draft OMDA, which was part of the bid documents, did not mention about funding of the project cost of the Airport through levy of development fees. In case the JV was permitted to levy DF to finance the project after signing of the OMDA, this important condition should have been known upfront to all the bidders at the time of bidding. Approval of Ministry and later of AERA for levy of DF by DIAL (to bridge the funding gap) was a post contractual benefit provided to DIAL which was neither envisaged in the RFP nor included under any provision of OMDA or in the SSA. It was noted that this led to undue benefit to DIAL at the cost of passengers who were taxed for using Delhi Airport through levy of DF amounting to ₹ 3415.35 crore.

58. While replying to a query of the Committee as to whether the Ministry, before entering into the agreements considered the total capital expenditure that was required for the project and was it expected to be borne by the JVC, it was stated that the determining factor for the grant of concession was the Revenue share quoted by bidders and not the Project Cost. It was further added that as a result, it was not mandatory for the Ministry to consider the Project Cost before entering into the agreements.

59. When asked to justify the leeway given to DIAL in permitting it to levy DF on passengers when clause 13.1 of OMDA clearly stipulated that the cost of the project was to be arranged by the JVC, the MoCA in its reply furnished as under:—

“DIAL had prepared a Master Plan for modernization/development of the airport to world-class standards with an estimated cost of ₹ 8975 crore in the year 2008. While preparing its financial plan for development of the airport, DIAL proposed to collect fund from refundable security deposit from the hospitality district. The issue of refundable security was examined in this Ministry and it was felt that DIAL had intended to collect excessively high order of security deposit amounting to about 51/2 years of annual lease rental, which would adversely impact on the revenue shareable with AAI. Thus, DIAL approached this Ministry for approval of levy of Development Fee at IGIA, New Delhi in accordance with provisions of AAI Act, 1994 to bridge the funding gap.

The proposals of DIAL was examined in this Ministry taking into consideration that the funding sources available with DIAL to complete the infrastructure development at Delhi Airport were exhausted due to various constraints as provided below:

- Request for additional equity infusion was regretted by AAI.
- Due to constraints on serviceability of debt, lenders refused to enhance the debt.
- Private partners could not infuse further equity since that would have resulted in two issues (a) Dilution of AAI's share below AAI's target of 26% and (b) As no additional debt could be raised, it would have breached the Trigger Debt Equity Ratio and hence would be in contravention of Clause 3.3.1 of SHA.

- Only ₹ 1,471 crore worth of Refundable Security deposits could be raised from disposal of Commercial Land as against an originally envisaged amount of ₹ 2,738 crore—due to restrictions imposed by MoCA/AAI.

As a result, even after best possible efforts of DIAL, no funding option was available to complete the project. As a last resort, after due diligence, the Government had, in terms of Section 22A of the AAI Act 1994, approved levy for Development Fee purely on an *ad-hoc* basis at IGI Airport, New Delhi to bridge the funding gap of ₹ 1827 crore for a period of 36 months. Funds collected through the levy were to be utilized only for the construction of such aeronautical assets which was required to be transferred by the JVCs to AAI upon completion of lease period.

However, this levy was challenged before various appellate fora and finally the Hon'ble Supreme Court *vide* order and judgment dated 26.4.2011 in the CA No. 3611 of 2011 ordered as under:

- (i) We hold that development fees could not be levied and collected by the lessees of the two major airports, namely, DIAL and MIAL, on the authority of the two letters dated 09.02.2009 and 27.02.2009 of the Central Government from the embarking passengers under the provisions of Section 22A of the 1994 Act.
- (ii) We declare that with effect from 01.01.2009, no development fees could be levied or collected from the embarking passengers at major airports under Section 22A of the 1994 Act, unless the Airports Economic Regulatory Authority determines the rates of such development fee.
- (iii) We direct that MIAL will henceforth not levy and collect any development fee at the major airport at Mumbai until an appropriate order is passed by the Airports Economic Regulatory Authority under Section 22A of the 1994 Act as amended by the 2008 Act.
- (iv) We direct that DIAL and MIAL will account to the Airports Authority the development fee collected pursuant to the two letters dated 09.02.2009 and 27.02.2009 of the Central Government and the Airports Authority will ensure that the development fees levied and collected by DIAL and MIAL have been utilized for the purposes mentioned in clause (a) of Section 22A of the 1994 Act.

Thus, the SC Order dated 26.4.2011 upheld the levy of DF and ordered that no DF can be levied or collected from embarking passengers at major airports unless the AERA determines the rate of such DF. Subsequently, the levy of DF at Delhi airport was stayed by the Delhi High Court *vide* its order and judgment dated 1.06.2011 in the matter of WP No. 3889/2011. However, even in this Order, Delhi High Court did not hold that levy of DF at Delhi airport was ultravires of the AAI Act, 1994 or AERA Act, 2008.

Thereafter, upon an application from DIAL, AERA issued a Consultation Paper No. 02/2011-12 dated 21.04.2011 in the matter of review of levy of DF in respect of Delhi airport. AERA also held a stakeholder consultation meeting in this regard. After considering submissions of the DIAL as well as the views and comments of various stakeholders, AERA determined the amount of DF @ ₹ 3415.35 crore in order to bridge the funding gap in respect of the

Delhi airport project. The rates of levy of DF were also determined @ ₹ 600/- per departing domestic passenger and ₹ 1300/- per departing international passenger.

Further, as stated *supra*, as per AAI Act, 1994, DF can be levied and collected for the purposes of funding or financing the cost of development, upgradation, expansion, etc. of an airport at which such development fee is collected. As there were funding gaps in the means of finance for Delhi airport, AERA determined the amount of DF to bridge this funding gap as a measure of last resort under Section 13(1)(b) of the AERA Act read with Section 22A of the AAI Act.

Further, clause 13.1 of OMDA which states that “.....the JVC shall arrange for financing and/or meeting all financing requirements through suitable debt and equity contributions in order to comply with its obligations hereunder including development of the Airport pursuant to the Master Plan and the Major Development Plans.....”. In this regard, it is submitted that AERA, under section 13(1)(a) of the AERA Act is mandated to, *inter-alia*, take into consideration “timely investment in improvement of airport facility” as well as “economic and viable operation of major airports”. In discharge of its functions, accordingly, AERA determined the amount of DF in respect of Delhi airport in accordance with the provisions of Section 13(1)(b) of the AERA Act read with Section 22A of AAI Act.”

60. To a query of the Committee as to whether it was expressly provided in the bid documents that Government would or might allow levy of Development Fees, the Secretary, MoCA testified:—

“Section 20.3.7 of the same OMDA says that this agreement shall be governed by, and construed in accordance with, the laws of India. Now, this provision, section 22A, of the AAI Act and Aircraft Act were all in view and it was clarified to the bidders in the pre-bidding conference that provisions of these two crucial Acts will apply.”

61. When the Committee sought to know if the interpretation of the various clauses were being done to favour the JVC partner, the Ministry replied as under:—

“Our objective basically was to see that our project gets completed.”

62. When asked to explain the consequences of withdrawing DF, the MoCA submitted that in case DF was withdrawn, then the consequential funding gap of approx. ₹ 1197.71 crore (as on 30.09.2012) would need to be bridged either through equity/debt/RSD or any other means of finance. This would require Regulatory Asset Base (RAB) and consequently the aeronautical tariffs to be re-worked accordingly. Infusion of additional finance in the form of debt and/or equity will add to the RAB. A higher RAB will result into higher target revenue. This incremental higher target revenue will have to be met through higher tariff/additional UDF because the assets so created will take a long time to depreciate.

63. The Committee were informed that till January, 2013 an amount of ₹ 2302.20 crore was realized through levy of Development Fee. An amount of ₹ 1,262.01 crore was proposed to be recovered through levy of Development Fee till March, 2016 as determined by AERA.

64. With regard to a press report which stated that the Development Fee was reduced w.e.f. January, 2013 the Committee sought to know if the reduction of Development Fee would affect DIAL. Further, the Committee also wanted to know the alternative arrangement that had been made by MoCA to overcome the effect of lowering Development Fee. The Ministry in its submissions stated as under:—

“The Development Fee at IGI Airport has been reduced from ₹ 200 per domestic departing passenger and ₹1,300 per international departing passenger to ₹100 and ₹600 respectively, with effect from 1st January, 2013. Moreover, the duration of the levy of Development Fee has been extended by 2 years, to adjust for the reduction in the amount collected per departing passenger. The lowering of the Development Fee has resulted in a longer payback period to the lenders.”

IX. DIAL's financing of the Project

65. Audit had noted that out of the total capital expenditure of ₹12857 crore, the promoter's equity has been ₹2450 crore out of which 26 per cent is contributed by AAI. 74 per cent of the equity capital of ₹2450 crore is ₹1813 crore.

66. Out of the capital expenditure of ₹12857 crore, only 19 per cent of the capital expenditure has been promoters' contribution. ₹5266 crore were from loans and ₹1471 crore was from Security Deposits. While only ₹50 crore was by way of internal accruals, ₹3415.35 crore was from Airport Development Fees. It was also noted in audit that in case of Indira Gandhi International Airport, the contribution of internal accruals was the barest minimum. It was only ₹50 crore. In case of Mumbai airport, internal accrual was ₹1999 crore.

67. Thus, with owner's equity contribution of ₹2450 crore out of which 26 per cent is AAI's contribution, DIAL got an airport in the capital of India for thirty plus thirty years and in addition commercial rights of land valued at ₹24000 crore. Other substantial benefits also accrued to DIAL. The equity contribution of the private partner was ₹1813 crore.

X. Deficient Land records at IGI Airport

68. As per the records of Directorate of Land of the AAI, as on 9th February, 2011, the total land available at IGI Airport was 5106 acres of which 4799.09 acres was Demised Premises and 306.91 acres was Carved out Assets. Audit, could not verify the same as the details of khasara number, land award orders issued by Land Acquisition Collector, etc., were not available with AAI.

69. Asked how the Government land was handed over to a private party for development without conducting proper survey, clearly earmarking the boundaries of airport land, hospitality land, demised premises and carved out area, the Ministry in its written reply submitted as under:—

“The Delhi Airport was set up before independence and the airport belonged to the then Civil Aviation Department. This land was subsequently transferred by an Act of Parliament, namely the International Airports Authority of

India Act, 1971, to the then constituted International Airports Authority of India on 'as is where is' basis. Thereafter, the land was vested in the Airports Authority of India by the Airports Authority of India Act, 1994. No details of land records have been passed on by the erstwhile organizations to the new organizations. Though Airports Authority of India has been making efforts to get the details of land records, the same has been difficult to acquire, being an old record. The total area of land handed over to DIAL was based on the demised area Map. As regards survey, the airport boundary has been shown in Schedule 25 of OMDA and Schedule-1 Lease Deed. The demise area is shown on a map in Schedule 25 of OMDA and Schedule-1 of Lease Deed.”

XI. Change in Major Development Plan and increase in Ground Floor Area

70. Article 8.3 of OMDA required DIAL to prepare a Master Plan for the airport setting out the proposed development for the entire Airport over a 20 year horizon aligned with the traffic forecasts. It was required to provide for identifiable traffic triggers for undertaking specific capital expenditure projects. Clause 3.5 of the State Support Agreement provided that the Master Plan so prepared should be submitted to the Government of India. Within 30 days of the submission, the GoI was to provide in writing to the JVC its comments or suggested changes. If no comments were provided within the prescribed time limit, it was to be deemed that Government had no comments or changes to suggest and the submitted Master Plan was to be treated as the final Master Plan. Ministry of Civil Aviation did not suggest any changes to or provide any comment when the Master plan was submitted by DIAL. As per Article 8.3.7 of OMDA, DIAL was to develop the airport in accordance with the applicable Master Plan. Further Article 8.4.2 required DIAL to submit the Major Development Plans relating to the design, development and construction of terminal buildings and parallel runways at the airport.

71. As per the Major Development Plan prepared by M/s Mott MacDonald, Consultant, the ground floor area of the Terminal T3 was estimated to be 451611 Square meters which was revised to 4,70,179 square meters at the time of financial closure in January 2008. Against this, DIAL actually constructed 5,53,887 square metres of area at IGI Airport, Delhi. Thus the actual built up ground floor area exceeded the Major Development Plan by nearly 83,708 square metres (17.80 per cent). The financial auditors (M/s. KPMG Advisory Services Private Limited) appointed by AAI to verify the final project cost submitted by DIAL, reported (15 October, 2010) that the ground floor area for peak hour passenger at T3 was higher than most of the leading airports in the Asia Pacific Region. M/s. Engineers India Limited, the technical auditor, appointed by AAI also opined in August 2010 that "due to this increase in area, all other items of the project have increased proportionately". Neither MoCA nor AAI took any action for such gross violation of the Master Plan and the consequent increase in the project cost.

72. When the Ministry/AAI was asked as to whether they were aware that the construction at the airport was not as per the approved master plan and if so,

what action had the Ministry taken against DIAL for violation of Master Plan and consequent increase in Project cost, the Ministry replied as under:—

“Post award of the concession, as mandated in Clause 8.3.1 of the OMDA, the GMR led Consortium (DIAL) undertook an independent and detailed traffic forecasting study through M/s Mott MacDonald (UK), a leading global aviation expert. The study highlighted the requirement for phasing of development as well as creation of larger infrastructure based on higher traffic volumes in a quicker time-frame.

Table below shows the differences between traffic estimates provided by AAI (SH&E) as part of the bid documents, post bid traffic forecast study as per OMDA (through Mott MacDonald, UK) and actual traffic.

IGIA Traffic Projections (mppa) — Calender Year			
Year	AAI (SH&E)	Mott MacDonald	Actuals
2005	12.5	—	~15.00
2006	13.8	16.11	19.29
2010	17	28.67	28.53
2012	19.9	36.71	~34.00 (Expected)
2016	27	49.49	—
2025	45	79.04	—
2032	61	99.98	—
2036	72	112.1	—
2040	85	—	—

It is evident from the table above that the Actual Traffic handled by IGIA in 2005 & 2006¹ was higher than the projections provided by AAI, as part of the bid document, based on the traffic forecast study by SH&E.

It may further be noted that as per the Mott MacDonald Traffic Forecast study, IGIA is expected to handle 100 mppa (final design capacity) in year 2032 while as per AAI (SH&E) forecast data, this capacity will be reached post 2040.

DIAL, as part of its bid submission, had prepared and submitted a list of **encumbrances**, which were obstructing the master plan foot print, to be removed /relocated for availability of free site for proposed development as per Initial Development Plan (IDP):—

- Three flight kitchens (Taj SATS/Oberoi/Ambassador)
- "Indian" (Airlines) and Air Sahara hangars

¹ DIAL took over the operations from AAI on 3rd May, 2006

- "Indian" (Airlines) Overhaul Complex
- Unauthorized residential areas within the airport land (Nangal Dewat/ Nangal Dairy)
- Centaur Hotel
- Customs House
- Post and Telegraph Office
- International cargo terminal (part)
- CWC (Central Warehousing Complex)
- AAI Workshop
- CISF Complex
- Two petrol stations (BPCL/HPCL)
- Others to be identified by LTA during detailed site survey

Based on the revised traffic projections (Mott MacDonald) as well as the non-removal/non-relocation of the various encumbrances in the Development Footprint, the Master Plan had to be revisited. Keeping intact the principles of the IDP, DIAL submitted the Master Plan fulfilling the various requirements of the OMDA (including traffic triggers), which catered to a phased development process. The revised Master Plan was submitted to Airports Authority of India (AAI) and Ministry of Civil Aviation (MoCA) in September, 2006 in pursuance of Article 3.5 of the SSA and 8.3 of OMDA; and subsequently finalized in December, 2006. This Master Plan envisaged the development of IGIA over 5 phases.

As part of the Major Development Plan for Phase 1 (to be completed by March, 2010), DIAL was expected to undertake/execute the following development work:—

1. Revamping of Terminal 1A, 1B, 1C and Terminal 2
2. Construction of New Runway 11/29 and associated Taxiways
3. Construction of New Integrated Terminal (T3) and associated works
4. Other projects, as mandated in Schedule 7 of OMDA (Mandatory Capital Projects)."

73. The Ministry further explained the position with regard to construction of terminal 1D and the subsequent phases of the Major Development Plan:—

“In addition to the above, the Consortium had to undertake the Construction of Terminal 1D to handle the growing passenger traffic to minimize terminal congestion while T3 was under construction. This was necessitated as the actual traffic in 2007 (~20 mppa) was significantly higher than the total terminal capacity (12 mppa).

The subsequent phases of the Major Development Plan *i.e.* Phases 2, 3, 4 & Saturation Phase; envisage similar asset creation to meet the growing traffic movement (passenger & cargo), based on the traffic triggers over the remaining part of the Concession Period.

It may be noted that the initial Cost Estimate for Phase 1 development was based on the initial set of 700 drawings. However, as part of the process, when these 700 drawings were detailed to develop floor-wise plans, the Cost was finalized based on ~53,000 drawings and specifications. All these drawings were constantly monitored, reviewed, audited and approved by the Independent Engineer (M/s Engineers India Limited), appointed by AAI.

Further, AERA undertook an independent audit of the Project Cost through two independent renowned agencies (M/s Engineers India Limited and M/s KPMG) and a detailed stakeholder consultation process, while allowing the project cost for the purposes of DF.

It may be noted that during the project cost audit of Phase 1 commissioned by AERA, M/s Engineers India Limited concluded that ~90% of the increase in area was consistent with the philosophy of providing better facilities to the passengers (increase in area of External Concourse for Meeters & Greeters, provision of Forecourt on the Departure level, area towards installation of a world-class baggage handling system, additional customs counters etc.) and to meet space requirements for smooth functioning of other stakeholders like airlines, ground handlers, oil companies etc. (office requirements, apron level ramp access for baggage, provision of sub-stations at basement and sub-basement level to save cost of cables and utility tunnels).

Hence, no adverse conclusions were drawn by the independent auditor in respect of increase in the floor area of the Terminal, except an area of 8,652 sq. mt. which is 1.6% of the total area of the terminal. This additional space developed has been utilized for passenger comfort and is mainly for providing enhanced retail and Food & Beverage (F&B) options to the passengers. As per the report and recommendation of the independent engineer, construction cost corresponding to this area (₹200 Crore) has been excluded from the project cost by AERA. Therefore DIAL gets no returns on this additional area. In effect, while passengers have got additional area and services, AAI gets 45.99% of revenue generated in this area, DIAL gets no returns on the investment made in creating that particular area.

In conclusion, there has been no 'violation' of the Master Plan and no action was necessary to be taken by the Ministry.”

XII. Actual Project Cost *vis-à-vis* Original Project Cost increased by ₹3882 crore

74. As per the Business Plan, the original project cost approved by DIAL and communicated to AAI on 18 January, 2008 was ₹8,975 crore. Actual project cost as on 20 July, 2010, as claimed by DIAL, was ₹12,857 crore. However, the final project cost adopted by Airports Economic Regulatory Authority (AERA) for arriving at the Regulatory Asset Base (RAB) was ₹12,502.86 crore. The variation between the approved project cost and the final project cost was ₹3,882 crore, *i.e.* 43.25 per cent higher than the original project cost.

75. As per the original estimates the entire funding was proposed to be through equity, debt, security deposits and internal accruals. However, this was reduced to 72.68 per cent of the total fund requirements of the actual project cost. This financial gap was mainly met by levy of DF which constitutes 27.32 per cent of the total capital outlay. OMDA did not envisage the funding of project cost through levy of DF from passengers since the entire funding was to be through debt and equity only.

76. Further, the Project Cost was approved by AERA in 2010. Audit observed and MoCA confirmed that the project cost involved was not approved and monitored by any Government agency. Since the project cost was not approved and monitored by any Government agency, the Committee specifically enquired about the need for approving the project cost by AERA after the completion of the project and subsequent levy of Development Fee which was to bridge the funding gap. The Ministry in its reply made the following submission:—

“The AERA Act, 2008 does not contemplate approval of project cost by AERA. For the purpose of aeronautical tariff determination, it arrives at an appropriate allowance of project cost. AERA upon receiving application for review of DF for Delhi airport, observed that DIAL had stated in its application that the project cost has escalated from the original level to an amount of ₹12857 crore. AERA got this project cost audited through two independent auditors, *i.e.*, M/s EIL and KPMG. Based on the recommendations of the independent auditors and comments of AAI and MoCA on these reports, AERA arrived at the allowable project cost for the purpose of determination of DF for the Delhi Airport. The AERA in its DF Order has not approved or disapproved any component of the project cost in respect of Delhi Airport.”

77. When the project cost was not approved or monitored by any Government agency, the Committee wanted to know the need for AERA to allow the project cost reported by DIAL. The Committee were informed that the quantum of allowable or disallowable project cost was central to determination of Development Fee or aeronautical tariff. Therefore AERA examined/audited the project cost. A portion of project cost was also disallowed by AERA. It was further clarified that MoCA had no role to play in their process of tariff fixation.

78. On being asked to explain the reasons for the project cost not being monitored by any Government agency especially when the target revenue as per State Support Agreement had a direct relationship with the total project cost, the Ministry in a written, reply submitted as under:—

“In line with Section 8.5.8 of OMDA, AAI appointed an Independent Engineer whose responsibilities in line with Schedule 21 were:

- to review all designs, drawings, specifications and procurement documents to assess compliance with.
 - Finalized Major Development Plan (if applicable), and

- Development Standards and requirements as detailed in Schedule 1 and with the finalized Major Development Plan.
- to review tenchmarking' exercise carried out by JVC for the project specifications and cost against national and international airport projects of similar scope and nature.
- to review development reports submitted by JVC to assess compliance of works undertaken.

DIAL was also required to undertake a project cost benchmarking study. According to this study done by reputed independent consultants, the project cost of Delhi Airport was found to be the lowest on a 'per square meter' basis when compared with similar international developments.

Tariff fixation taking into account target revenue and project cost is done by AERA under AERA Act, 2008 and it is up to AERA to allow/disallow project costs for the purposes of tariff. MoCA does not play any role in tariff fixation.”

XIII. Transfer Assets on Expiry of OMDA

79. As per Article 19.6 of OMDA, in the event of AA! acquiring the transfer/non-transfer assets of DIAL while terminating the contract, the same shall be valued by a valuer appointed by AAI to ascertain the fair market value. Transfer assets include aeronautical and non-aeronautical assets existing as on the date of transfer. All the assets categorized as transfer assets shall necessarily be acquired by AAI on the expiry of the term of OMDA. These will include assets created by the Development Fees as well. In other words, it would mean that AAI and indirectly Government of India will have to pay for the assets created with the money collected from the travelling public as development fees.

80. According to submissions made by MoCA (March 2012), the provisions of Article 19.6 of OMDA are procedural in nature, the rights of parties upon termination by AAI are covered in Article 17.3.1 of OMDA and DF is utilized only for creation of transfer assets and not in relation to non-transfer assets. The amount was subtracted from total admissible CAPEX and, therefore, does not confer any pecuniary benefit to the airport operator. But the contention of Audit was that Article 17.3.1 was not relevant here as it provided for valuation of assets at the time of termination of contract in the event of default by DIAL. However, the relevant Article 19.6 of OMDA clearly provided valuation of transfer/non-transfer assets in the event of cessation of contract. Audit has observed that the assets created using DF would be valued at fair value to be paid by AAI to DIAL in the event of cessation of agreement.

81. When asked about the basis on which MoCA/AAI would differentiate the assets created by DIAL using DF for valuation to transfer/non-transfer assets in the event of cessation of contract as per Article 19.6 of OMDA, the MoCA informed that Airport Development Fee collected from the passengers was utilized for the creation of Aeronautical assets only. At the end of the concession period, as per Article 18.1 (d) of OMDA, the Transfer Assets (which include all assets

created through DF) would be handed over to AAI free of cost. Further, it was added that no non-transfer assets have been built by DIAL from DF funds.

82. asked to elaborate the provisions of Article 17.3.1 and Article 18.1 of OMDA which dealt with right of the parties upon termination of the contract, the Ministry furnished the following information:—

“Article 17.3.1 and Article 18.1 apply/arise in two different situations. Article 17.3.1 under Chapter XVII "Default" expressly provides for the right of AAI to submit a notice of its intention to terminate this Agreement ("**Notice of intention to Terminate**"). This clause is applicable in the situation of termination of contract (OMDA) prior to the normal expiry period which is 30 years from the Effective Date.

Article 18.1 dealt under Chapter XVIII "Term, Expiry & Transfer" expressly provides for the Term and Expiry in the event this (OMDA) Agreement shall continue in full force and effect from commencement of the Effective Date until the 30th anniversary of the Effective Date. Therefore Article 18.1 of OMDA is applicable in the event of this Agreement is **not extended** or **if extended** at the end of the Term.”

XIV. Mandatory Capital Projects (MCPs)

83. Article 8.2 of Chapter VIII of OMDA stipulated that DIAL was to commence, carry out and complete the Mandatory Capital Projects (MCPs), latest by 31 March 2010, as set out under schedule 7 of OMDA. In terms of OMDA and the schedule, DIAL was required to complete all 33 MCPs by 31 March 2010 out of which 15 MCPs were to be completed within a period of 24 months of signing of OMDA *i.e.* by 3 April, 2008.

84. Audit scrutiny has revealed that out of 15 MCPs to be completed by April 3, 2008, 11 MCPs were delayed for periods ranging from 87 days to 236 days. As per the clause 1 of Schedule 6 of SSA, DIAL was not entitled for any incentive in respect of base airport charges as 11 MCPs were not completed as per schedule. However, MoCA approved (February 2009), 10 per cent increase in the aeronautical charges including landing, parking, passenger service fee (facilitation component only), X-Ray Baggage and Housing Charges at IGI Airport, New Delhi *w.e.f.* 16th February 2009, as incentive to DIAL. Therefore, the permission to increase 10 per cent charges as incentive for base airport charges was against the provisions of SSA and was an undue favour to DIAL.

85. In response to the Audit observations the Ministry stated that the delay in completion of MCPs was attributable to circumstances and situations beyond the control of DIAL since the works that were carried out in an operational airport involved the coordination with various external agencies such as airlines, security, immigration, etc. To a specific query of the Committee as to whether DIAL was aware of these facts while entering into the contract and fixing the time schedule for completion of work, the MoCA in its reply furnished as under:—

“It is submitted that DIAL was aware of the complexity of the work involved

as well as the stipulated timelines while entering into the contract. However, following issues had not been anticipated by DIAL:

- A four month delay in getting approvals from security agencies such as BCAS, IB, RAW, and SPG for relocation of VVIP areas.
- Unavailability of "as built drawings" for underground utilities like sewage lines, water supply lines, power cables, fire fighting lines, and various other cables, etc. with AAI - as a result the relocation of these utilities caused considerable delays, affected the progress of developments as well as renovation works.
- Significant delays in Vacation of areas under use by Indian Airlines in spite of numerous verbal and written follow ups."

86. Further, the Committee also sought explanation from the Ministry regarding the basis on which DIAL was given incentive for timely completion when the works were not completed as per schedule. To this the Ministry, submitted that:—

“After considering all the aspects, AAI considered the request of DIAL under Article 8.2.2 of OMDA which provides for charging liquidated damages by AAI when no satisfactory explanation for delay in the commencement of MCPs is provided by the JVC (at its sole discretion) and recommended to the Ministry a onetime waiver of the condition to grant extension without penalty under Art. 20.3.1 of OMDA.

Ministry considered the explanation given by AAI and Independent Engineers and accordingly waiver **without penalty** was granted by the competent authority on 16.2.2009. Further, the waiver was specific to 10 MCPs only and was given in view of the lawful explanation given to JVC and certified by the Independent Engineers, which was in accordance with OMDA provisions.

In view of above, DIAL was entitled for an increase of 10% in Base Airport charges *i.e.* Landing, Parking, Housing, X-Ray Baggage and Passenger Service Fee (PSF) from third year as envisaged under Schedule 6 of SSA. It is pertinent to note that the incentive which DIAL was entitled from the commencement of the 3rd year *i.e.* 03.05.2008 was given to them only *w.e.f.* 16.02.2009.”

XV. Revenue Sharing: Aeronautical/non-aeronautical airport charges

87. As per existing airport business operations, there are two systems in vogue for levying aeronautical and non-aeronautical charges termed as Single Till or Dual Till. Under Single Till system, all the revenue and cost are put together in respect of all aeronautical and non-aeronautical airport services and in case of Dual Till System, revenues are distributed between aeronautical and non-aeronautical services separately. AERA has recorded that non-aeronautical services are less capital intensive and are considered to be more profitable. Using OMDA's

provisions, DIAL has outsourced most of the non aeronautical services through the mechanism of JVs. While OMDA allowed DIAL to sub contract any service, Audit observed that this had an impact on the revenue to be shared with AAL. The provision of Dual Till taking into account only 30 per cent of the revenue generated by non aeronautical services gave an unfair advantage to the DIAL at the cost of the Government/passengers. Outsourcing of these services through JVs, has put additional burden on passengers in the form of DF on one hand and has deprived AAI of the revenue, on the other. Many of these services outsourced were "non-aeronautical" as per OMDA but as per AERA Act, these were categorised as aeronautical services.

88. Elaborating on the till system, the Ministry furnished information about various till systems as under:—

“The business of airport comprises two separate elements:

- (i) Provision of aeronautical services (which under AERA Act are services provided for navigation, surveillance and supportive communication thereto for air traffic management; for the landing, housing or parking of an aircraft or any other ground facility offered in connection with aircraft operations at an airport; for ground safety services at an airport; for ground handling services relating to aircraft, passengers and cargo at an airport; for the cargo facility at an airport; for supplying fuel to the aircraft at an airport; and for a stakeholder at an airport), for which the charges, may be determined by AERA.
- (ii) Services other than aeronautical services (which are generally termed as non-aeronautical services), examples of which are commercial activities like duty free shops, general retail, hotels and motels, conference/business Centre, food & beverage, parking, airline offices, advertisement, etc.

In line with the labeling of a service as aeronautical or non-aeronautical, the revenue and expenses attributable to these two groups can also be separated.

Generally, aeronautical services are capital-intensive as they involve basic infrastructure like runways, terminal building, cargo carousals, security screening, fuel supply, etc. non-aeronautical services have much lesser capital intensive expenditure. Therefore, non-aeronautical services are much more profitable than aeronautical services. In Indian context, it has been seen that almost entire non- aeronautical income is contributed mainly by the passengers and cargo facility use.

Single Till Economic System — under single till, all the revenues (aeronautical as well as non-aeronautical) are combined together and put into, so to say, a drawer (*i.e.* till). Out of this total revenue, the expenditure of both the services is taken out to yield surplus, which then is considered for determining charges for aeronautical services (charges for non-aeronautical services are not regulated).

Dual Till Economic System — Under this approach, assets used for aeronautical and non-aeronautical services are first required, to be separated. Similarly, revenue and expenditure associated with aeronautical and non- aeronautical services are also segregated. The surplus, if any, pertaining only to aeronautical services is then considered (reckoned) towards determining the charges for aeronautical services. The surplus from non-aeronautical services is left entirely at the hands of the airport operator as profit.

Hybrid Till or Mixed Till System— Under this approach also, assets used for aeronautical and non-aeronautical services are first required to be separated. Similarly, the revenue and expenditure associated with aeronautical and non- aeronautical services are also segregated. Thereafter, a certain portion of non- aeronautical revenue surplus (say a certain %age thereof), along-with the surplus, if any, pertaining to aeronautical services, is considered (reckoned) towards determining the charges for aeronautical services.”

89. When asked to explain the basis for adoption of hybrid till system in Delhi airport while the Regulator adopted single till system for tariff fixation in all other major airports of AAI, the Ministry submitted that:—

“The structure of tariff of the airports were deliberated by IMG and EGoM in its several meetings before issuing the RFP. *Vide* para 6.2.2.1 to 6.2.2.3 of the EGoM Note dated 09.02.2005, EGoM was apprised about the tariff setting principle and recommendations of the IMG. IMG had recommended that in addition to setting out principles for tariff approach in SSA, the revision of aeronautical tariff be kept constant in real terms in year 1, thereafter, the same could increase @ 10% in real terms in the 2nd year and 15% in real terms in the 3rd year with a base as the preceding year. The EGoM approved the tariff principle as recommended by IMG with the following directions:

- That the current tariff base of AAI and its increase will be an interim arrangement till AERA is set up.
- AERA will be put in place in a definite time-frame.
- AERA will set tariff on the basis of accepted international practices, reasonable and efficient costs. This will be stated in the concerned document upfront for the information of the bidders.
- It must be made clear that the tariff base as contained in (i) above will not be a subject matter of negotiation post bid, after selection of the successful bidder.

EGoM in meeting on 15.02.2005 decided that a "hybrid shared till" "price cap approach" be adopted for fixation of aeronautical tariff *i.e.* aeronautical tariff to be fixed based on the price cap approach, with 30% of non-aeronautical revenue to be considered for subsidizing the

aeronautical tariff. This approach was based on the approach followed in UK and Australia.

Accordingly, the above provisions were set out in the SSA and also mentioned about establishment of AERA. Further, in terms of the provisions of AERA Act [Section 13 (1) (a)], while determining tariff for aeronautical services at major airports, AERA is to take into consideration provisions of OMDA offered by the Central Government in any agreement or memorandum of understanding or otherwise. As per the opinion of the Ministry of Law and Justice, OMDA and SSA is a concession granted by the Government. Tariff determination formulae has been prescribed in Schedule —I of the SSA. As per this, 30% of non-aeronautical revenue should be taken into account by AERA while determining the aeronautical charges. In other words, 46% of the remaining 70% of non- aeronautical revenue is to be shared with AAI by DIAL. The latter is also shared by AAI in terms of dividend on its share.”

90. When specifically asked if the adoption of hybrid till system had favoured DIAL at the cost of the passengers, the Ministry *inter-alia* replied that:—

“DIAL does not gain any undue financial advantage as it is managed by a Joint Venture Board having AAI Directors and audited by independent auditors.”

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

91. Article 2.1.2(iv) of OMDA recognized the exclusive right of DIAL to contract and/or sub-contract with third parties all the functions to be undertaken by DIAL. It was noticed that many of the services to be provided by airport operator like DIAL had been outsourced to as many as 11 Joint Venture companies. DIAL has equity share in these companies ranging from 26 per cent to 50 per cent. The revenue share of DIAL in these companies ranges from 10 per cent to 61 per cent. DIAL has also collected ₹503 crore from these ventures as security deposits, which do not form part of the revenue of DIAL shareable with AAI and is reflected in the financial statements of DIAL as unsecured loans. It was noted that OMDA does not debar DIAL to contract or sub-contract any function relating to the management of the airport. DIAL thus can outsource both aeronautical and non-aeronautical services, though so far it has outsourced only non-aeronautical services. But the outsourcing of all the services in future could not be overruled as on date which would significantly affect the revenue share adversely in long run.

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

93. According to Audit equity participation of DIAL in all eleven JVs made them related entity and not on arms length as per contract. Neither Government nor the AAI has exercised any access to the books of accounts of these eleven JVs and thus Audit couldnot ascertain whether the revenue share of DIAL was as per OMDA. The position was further complicated by the fact that many of these services were "non-aeronautical" as per OMDA but as per the AERA Act, these were aeronautical services. As per OMDA, therefore, DIAL would be competent to determine tariffs for these services but as per AERA Act, AERA would be competent to determine tariffs for these services. In a case of determining tariff for X-ray baggage charges, DIAL did not furnish comments sought by AERA on a consultancy paper. In fact, the legal confusion is apparent from the following extracts of AERA's order No. AERA20011/DIAL-C/2010-11 dated 10 December, 2010: "It is an admitted position of DIAL that as per Section 2(a)(v) of the AERA Act 2008, services provided for cargo facility (which includes X-Ray screening) at an airport is an aeronautical service. However, with reference to a concession agreement, they have claimed that cargo handling and services (which includes X-ray) is a non-aeronautical service and requested for compliance with the concession agreement."

94. The Audit had noted that in order to ensure revenue share as per OMDA to AAI, OMDA provided for appointment of an Independent Auditor by AAI in consultation with DIAL to certify the applicable revenue used for final verification/reconciliation of the annual fee. The Independent Auditor, however, had no access to the books of accounts of the JVs. Therefore, the sole criterion for sharing 45.99 per cent revenue with JVC was not ascertained by Audit.

95. According to Audit, only three JVs dealing with cargo and car parking operationalised during 2009-10. Audit observed that there was substantial reduction in revenue share of ₹103.29 crore to AAI for the period December 2009 to December 2010 on account of transfer of cargo and car parking business to JVs.

96. The MoCA in its response (June 2011 and March 2012) stated that the matter regarding recognition of entire revenue of concessionaires/JV companies should be added to the revenue of DIAL, or not, was referred to the Ministry of Law and Justice for their opinion. To this, the Ministry of Law and Justice opined that:—

“Article 8.5.7 imposes a liability on the JVC (DIAL) to indemnify the AAI in case of the default of the sub-contractors formed or to be formed. It is silent about the sharing of the revenue of the sub-contractors formed or to be formed.

Article 11.1.2 imposes an obligation to pay @ 45.99% of the projected overall revenue for the said year. It is silent about any share in the revenue generated or to be generated by the sub-contractors formed or to be formed.”

However, the MoCA further submitted that:

“It is further submitted that prior to handing over the IGI Airport to JVC (DIAL), the Non-aeronautical activities (except Cargo) were carried out by

AAI by way of grant of Concession to the highest (revenue) bidders. The legacy of AAI has been continued by DIAL. Further, world over, the airport operators manage non-aeronautical activities primarily through concessionaires to make use of their expertise in respective areas. Accordingly, OMDA in Articles 2.1.2 (iv) and 8.5.7(i)(a) confers right to DIAL to sub-contract or sub-lease to third parties certain entrusted airport services. The DIAL Board took a legal opinion from Justice (Retd.) D.P. Wadhwa, former Supreme Court Judge before deciding to invest as a minority partner, in joint ventures for carrying out certain non-aeronautical activities viz., Multi-Level Car Parking, Advertisements, Fuel Farm. Moreover, the DIAL Board constituted a Sub-Committee to look into the preferred model for the concessioning of non-core activities. As per the recommendations of the Sub-Committee, the matter of investment in JVs was duly approved by the DIAL Board. Joining the selected concessionaires for carrying out some of the non-aeronautical activities in a joint venture was deliberated by the Board of DIAL which has representatives of AAI. The Board after detailed deliberation decided to go ahead with it.

It may be noted that besides 45.99% sharing of revenue, AAI would also get its share in the dividend income of DIAL from such Joint Ventures Companies.”

97. MoCA further stated (March 2012) that the financial statements of the Joint Ventures formed by DIAL for various non-aeronautical services already formed part of independent Audit Report for each quarter and were made available at the time of audit. However, the Audit contested that financial statements of JVs stated to have been part of independent Audit Report for each quarter were not made available to them.

98. In response to a query of the Committee about the aggregate security deposits collected by DIAL from the eleven JVs, the MoCA stated that ₹512.82 crore had been collected. Out of this amount, about ₹190 crore had been ploughed back as equity by DIAL in the JVs and the remaining amount had been used to meet part of the cash losses (against DIAL's cash losses of ₹840.79 crore in last 2 years). These deposits were to be refunded at the end of the concession term.

99. The Committee desired to know whether the financial statements of these eleven JVs were verified by the Independent Auditors appointed by AAI and made available to the Auditors for verification. The Committee also asked whether the Independent Auditors appointed as per OMDA had access to the accounts of the eleven JVs formed by DIAL. To these questions, the Committee were apprised as under:—

“As per OMDA provisions, AAI has appointed Independent Auditors — namely M/s Thakur Vaidyanath from 2009 to March 2012 and M/s Ved Jain & Associates from April, 2012—to verify and certify the revenues of DIAL. As part of this role, the Auditors also verify the revenue accruing to DIAL from JVs. For compliance with this, the revenue certificates of

all JVs are made available to the AAI appointed Auditors. In accordance with the various concessions awarded by DIAL there is a clear requirement stipulated to provide for revenue certificates on a periodic basis, duly authenticated by auditors/chartered accountants.

It may be noted that the Independent Auditors have only certified the Revenue of these JVs based on certification of Chartered Accountants. Revenue share received from these JVs is being audited as per practice mentioned above.”

100. Regarding gross revenue of 11 JVs and revenue share of DIAL in it, the Committee were informed that:—

“All JVs share a percentage of their gross revenues with DIAL. The gross revenues of the JVs has been defined under each agreement and it primarily comprises their regular Business Revenues. The details regarding Gross Revenue of JVs and the Revenue Share paid to DIAL by JVs during respective financial years is as under:

Financial Year	Gross Revenue of 11 JVs (₹ Cr.)	Revenue Share to DIAL (₹ Cr.) (a)	Land License Fee (₹ Cr.) (b)	Total Revenue (₹ Cr.) (a + b)
2009-10	91.95	40.27	6.00	46.27
2010-11	866.11	245.66	34.67	280.33
2011-12	1225.07	358.86	45.24	404.10”

101. Elaborating on the issue of revenue from non-aeronautical service the representative of the DIAL deposed before the Committee as under:—

“We have spent a lot of time to increase non-aeronautical revenue. For the last seven years non-aeronautical revenue has gone up by 4.3 times as compared to passenger traffic which has gone up by 1.7 times. Enough efforts have been put to increase the non-aeronautical revenue. The total non-aeronautical revenue went up from ₹315 crore to over ₹1000 crore in seven years. That means, one of the key efforts of DIAL management is to ensure increase in non-aeronautical revenue and to offset to the extent possible the aeronautical revenue so that the tariff rates would come down.”

102. The Committee were informed that the selection of the Concessionaires to outsource certain selected non-aeronautical specialized services was done by DIAL in a completely transparent manner and through a competitive bidding process. In most cases, the formation of the JV with the Concessionaire was after the award of Concession. Of the 11 JVs, 9 were formed by the Concessionaires and two were incorporated by DIAL. None of the selected concessionaires are Group companies or affiliates of any of the DIAL shareholders. Hence the transaction was done at an arm's length basis. Further, the Committee were also informed that MoCA had also directed for a special audit of the 11 JVs to verify the above.

103. During the course of examination, the Committee desired to know from the Ministry whether Directors representing AAI/MoCA in the Board of DIAL had raised any objection to the formation of JVs by DIAL and whether any action was taken by the Directors representing MoCA/AAI to protect the interest of AAI/Government. Further, the Committee sought to know whether this issue of formation of JVs by DIAL was brought to the notice of Board of AAI/Government and also about the opinion of Ministry of Law in this regard. The MoCA in its reply furnished the following:—

“The legal opinion from MoL&J was sought on the following points:

- (i) Whether formation of Joint Ventures by DIAL and assigning of its obligations for provision of certain non-aeronautical services is permissible under OMDA?
- (ii) What would be the legal interpretation and scope of the terms and expressions "obligation and liability" and "indemnify" used in the Article 8.5.7 of OMDA.
- (iii) In case answer to query 1 is in the affirmative, then whether the revenue share of AAI as laid down in the Article 11.1.2.1 of OMDA, implies that each JVs set up for performance of non-aeronautical services should also have the same revenue share with AAI.

In reply to above, MoL&J had opined as under:

- Formation of Joint Venture companies by DIAL and assigning of its obligations for provision of certain non-aeronautical services is permissible as long as the same is in compliance with provisions of Article 8.5.7 of OMDA.
- Article 8.5.7 imposes a liability on the JVC (DIAL) to indemnify the AAI in case of the default of the sub-contractors formed or to be formed. It is silent about the sharing of the revenue of the sub-contractors formed or to be formed.
- Article 11.1.2 imposes an obligation to pay @ 45.99% of the projected overall revenue for the said year. It is silent about any share in the revenue generated or to be generated by the sub-contractors formed or to be formed.
- Article 8.5.7 and 11.1.2 are two different provisions dealing with different issues and independent of each other.

It is further submitted that prior to handing over the IGI Airport to JVC (DIAL), the Non-aeronautical activities (except Cargo) were carried out by AAI by way of grant of Concession to the highest (revenue) bidders. The legacy of AAI has been continued by DIAL. Further, world over, the airport operators manage non-aeronautical activities primarily through concessionaires to make use of their expertise in respective areas. Accordingly, OMDA in Articles 2.1.2 (iv) and 8.5.7(i)(a) confers right to

DIAL to sub-contract or sub-lease to third parties certain entrusted airport services. The DIAL Board took a legal opinion from Justice (Retd.) D.P. Wadhwa, former Supreme Court Judge before deciding to invest as a minority partner, in joint ventures for carrying out certain non-aeronautical activities viz., Multi-Level Car Parking, Advertisements, Fuel Farm. Moreover, the DIAL Board constituted a Sub-Committee to look into the preferred model for the concessioning of non-core activities. As per the recommendations of the Sub-Committee, the matter of investment in JVs was duly approved by the DIAL Board. Joining the selected concessionaires for carrying out some of the non- aeronautical activities in a joint venture was deliberated by the Board of DIAL which has representatives of MI. The Board after detailed deliberation decided to go ahead with it.

It may be noted that besides 45.99% sharing of revenue, AAI would also get its share in the dividend income of DIAL from such Joint Ventures Companies.”

104. When asked to comment on the declining trend in the income from cargo and car parking the Ministry stated as under:—

“It is true that income from Cargo and car park showed a declining trend. Earlier cargo activity was carried out by DIAL itself. However OMDA mandated DIAL to engage two independent entities for cargo operations. These two activities also required significant investment for upgradation of capacity and service quality. So DIAL decided to concession out these activities. As a result about 450 crores has been invested in the two cargo JVs and about 300 crores in the car park JV. The revenue share will go up once the capacity is fully utilised.”

XVII. Sharing of revenue from existing leases with DIAL resulted in loss of ₹23.15 crore

105. Audit pointed out a loss of ₹23.15 crore (March 2011) to AAI, due to lease rent in respect of existing leases being collected by DIAL in contravention of Article 2.6 of OMDA, read with Article 2.1.1 of the Lease Deed with DIAL. According to the provisions of OMDA/Lease Deed, the lease rent from existing leases was receivable by AAI till the expiry of respective lease periods.

106. Further, the lease rent from the existing leases (continuing as on effective date) was receivable by AAI till the expiry of respective lease period. However, the same was allowed to be collected by DIAL and shared with them. Further, though OMDA was signed in 2006, MoCA/AAI had not taken a decision on this issue yet. When the Committee sought clarifications on these issues, the MoCA in a written submission stated as under:—

“It may be noted that while replying the various queries to the prospective bidders, AAI in reply to query nos. 862, 906 and 913, *inter-alia*, replied that except for the Carved Out Assets all the lease rentals with effect from the effective date of the transaction shall accrue to the JVC. Hence,

no further action was required by MoCA in this matter. However, on the request of AAI, MoCA sought a legal opinion from Ministry of Law and Justice on the issue.

As per the opinion of the M/o Law and Justice, with regard to the existing leases, as per the provisions of the article 5.2 (b) of the OMDA, the same get transferred to the JVC. Therefore, all benefits, liabilities and obligations under such contracts and agreements, including lease agreement, also accrue to the JVC. Therefore, it is wrong to suggest that the lease rent from existing leases was receivable by AAI till the expiry of respective lease periods.

The MoCA also informed that this position was also clarified to all the bidders in the pre-bid conference.”

107. The DIAL also informed that all revenue coming from the existing leases, AAI receives its shares of 45.99%. Hence, there was no undue benefit to DIAL.

XVIII. Delayed Payment of retirement compensation by DIAL

108. Audit had pointed out in 2010-11 that against a claim of ₹250.88 crore towards retirement compensation in terms of provisions of Chapter VI of OMDA, DIAL had paid only ₹80 crore. This resulted in loss of interest of ₹19.73 crore (June 2010) due to delay in payment of the balance amount of ₹170.88 crore towards Retirement Compensation. Release of the balance amount was delayed by DIAL on the plea that there was no specific provision in OMDA as to the timing of payment of Retirement Compensation to AAI.

109. MoCA directed AAI to recover the retirement compensation without penal interest from DIAL by March 2010. The MoCA also intimated (May 2010) that any payment due after 01 April 2010 automatically attracted the penal interest on State Bank of India Prime Lending Rate plus 10 per cent. Against this, the AAI allowed DIAL to pay the said amount as monthly instalments spread over a period of 10 years without any contractual obligations. This decision of AAI was against the directions of MoCA resulting in loss of interest amounting to ₹58.57 crore calculated at 8 per cent per annum.

110. Asked to explain why AAI decided against the directions of MoCA in permitting DIAL to make the retirement compensation payable in monthly instalments spread over a period of 10 years and also whether this decision of AAI had the approval of MoCA/Board of AAI, the MoCA made the following submissions:—

“As per the provisions of Article 6.1.4 of OMDA, the DIAL is mandated to pay Retirement Compensation (RC) in respect of such number of employees who had not opted for absorption in DIAL within the Operation Support Period.

There were total 2338 employees. Out of these, 251 retired. Of the remaining 2087, DIAL was obliged to pay RC in respect of 60% of them *i.e.* 1111(60% of 2087 less 141 who joined DIAL). Out of these 1111, 293 have taken VRS so far.

RC, as defined in OMDA, means Average VRS cost. AAI VRS scheme comprised one time *ex-gratia* payment to an employee on his retirement and a monthly payment to be paid to him over a period of 10 years from May, 2009 to April, 2019. However, AAI calculated the amount of RC in one lump sum. This was disputed by the DIAL, on the ground that the monthly compensation claimed by AAI for a 10 year period till 2019 at one go, did not take into account the time value of money. The matter was deliberated between DIAL and AAI and finally an agreement was reached between the two. The agreement envisaged full payment of *ex-gratia* amount in one lump-sum in respect of all the 1111 employees by DIAL to AAI and monthly payment in respect of them over the next 10 years (2009-2019) within 7th of every month.

In accordance with the agreement, DIAL paid an amount of ₹85.77 crores towards *ex-gratia*. Out of this, a liability of about ₹20 crore only has since been duly discharged. DIAL is regularly releasing the monthly payments to AAI.”

XIX. Funds diverted from PSF (Security Component) ESCROW Account for purchase of Security Equipment by DIAL

111. The Passenger Service Fee (PSF) is an amount collected from each embarking passenger at the airports by the airlines. The PSF has two components viz Security Component (SC) which constitutes 65 per cent and Facilitation Component (FC) which is 35 per cent of the total charge. OMDA provides that the concerned airlines shall collect the entire PSF from embarking passengers and would remit the amount in two groups—65 per cent as SC to AAI and 35 per cent as FC to DIAL directly. As per Clause 3.1.A.4 of SSA, Government of India, throughout the term of the State Support Agreement (SSA), shall control some reserved activities which would include Customs and Immigration control, Quarantine, Health, Meteorological and Security Service, etc. as mentioned in Para 3.3.1 of SSA. The facilitation component payable to DIAL could be revised under the provisions contained in OMDA by DIAL while the security component payable to AAI can be revised as and when directed by Government of India.

112. As per clause 3.3.5 of SSA, DIAL was to procure and maintain, at its own cost, all security systems and equipment. However, in contravention of the provisions of SSA, MoCA *vide* its order dated 16 April, 2010, directed that the entire cost incurred on purchase of security equipment could be met from PAS (SC). This resulted in undue favour to DIAL which led to loss of ₹239.69 crore during 2006-11 to the public exchequer. In addition, DIAL also debited ₹4.34 crore (up to the year 2009-11) towards insurance charges to PSF (SC) Account which was otherwise to be borne by the DIAL as per Article 8.5.6(i) of OMDA.

113. SSA clearly stipulated that the cost of security equipment and also the insurance charges would be met by the airport operator. But MoCA permitted DIAL to meet the cost of security equipment and the insurance charges of security equipment out of the PSF (SC) account. On being asked whether this order of

MoCA was not a post contractual benefit to DIAL, the Ministry responded as under:—

“Post signing of OMDA/SSA, the security scenario had changed drastically and necessitated up-gradation of the existing security equipment at the airports including introduction of very high capital intensive new security equipment, such as Perimeter Intrusion Detection System (PIDS), In-line XBIS system, CCTV, BDDS, Bollards, etc. A need was felt by the Government to upgrade the security equipment available at the airports to the level of best in the world. Accordingly, the issue of PSF (SC) (Passenger Service Fee—Security Component) was examined in this Ministry and it was decided to seek opinion of Ministry of Law/Attorney General as to whether the extant arrangement provided in Rule 88 of Aircraft Rules, 1937 for collection of PSF is legally tenable and if not, what kind of amendment is required to the rule and whether AAI can be considered as a single licensee in respect of its airports within the meaning of Rule 88 so that it can pool the PSF amount of its airports for payment of security charges?

Ministry of Law had, *inter-alia*, opined as under:

- (i) There is no need for any amendment in the Rules to continue the extant arrangement.
- (ii) The license under Rule 78 originally granted to the Authority has already been transferred in the name of JVCs (after the lease of the Delhi and other leased airports). Therefore, as far as such lease airports are concerned, the Authority (AAI) cannot be validly considered as the single licensee for the purpose of collection and utilization of PSF (SC) in respect of such airports. Therefore, the amount of Security component may be utilized for relevant purpose only in the leased out airports concerned and if any residue remain, the same could be utilized only for the security purposes of the airport concerned. However, the Authority will continue to be a single licensee for collection and utilization of PSF for the rest of the airports, which are under its exclusive control and operation.

Accordingly, Government decided that the expenditure on the security equipment be made out of PSF (SC). The point raised by Audit that the cost of security equipment is to be met by the JVC (DIAL) as mandated in SSA is valid and noted. It will be implemented henceforth. It is submitted that reverting the earlier transaction will result into re-determination of Regulatory Asset Base (RAB) and UDF and would cause avoidable complication. Pertinent to note that the ultimate burden of the cost of security—equipment would by and large fall on the passengers if not as PSF (SC) then as UDF.”

XX. Irregular withdrawal from ESCROW Account

114. The MoCA informed the Audit in January, 2010 and April, 2010 that the security related expenses permitted under PSF (SC) should not include expenditure on any other security staff or other administrative set-up created/engaged by the airport operators. The Association of Private Airport Operators (APAO) represented to MoCA (9 July, 2010) for clarifications regarding the applicability of the above guidelines. MoCA (5 July, 2010) clarified that the guidelines dated 16 April, 2010 may have only prospective application. Accordingly, DIAL under the cover of this clarification, debited all the expenditure incurred during 2006-10 towards private security agencies including consultant fee to PSF (SC) account.

115. Therefore, the clarifications issued by the MoCA regarding withdrawal of expenses made to private security agencies including consultant fees by the airport operators during 2006-10 led to irregular withdrawal of ₹26.05 crore from PSF (SC) ESCROW Account by DIAL with consequent loss to the Government and undue favour to the private operator *i.e.* DIAL. MoCA (March 2012) accepted the audit observation and had asked DIAL to reverse the entry on this account.

116. However, DIAL in their submission to Committee stated that it has contested this letter of 17-05-2012 in the Delhi High Court and requested MoCA to await the outcome of the case. The High Court has stayed any coercive action by MoCA towards recovery of the amount.

117. When the Committee enquired the reasons for the Agenda Notes and Minutes of the Board Meetings of DIAL being not made available to Audit, the Ministry in its reply stated that DIAL was a private company. Its accounts could not be audited by C&AG. DIAL, however, has Directors from AAI on its Board. These Directors were responsible for protecting the interest of AAI in DIAL.

118. When Committee reminded the Ministry that CAG was the sole auditor of AAI and AAI had 26% share in DIAL and also AAI has representatives on the Board of DIAL and thus CAG had the right to examine the minutes of DIAL to verify whether the directors representing AAI had taken care of the interest of AAI in the joint venture, the Ministry replied that the matter was referred to the Ministry of Finance for clarification as to whether such documents could be provided. However, the reply from the Ministry of Finance was still awaited in MoCA (November, 2013).

PART II

RECOMMENDATIONS AND OBSERVATIONS

The Committee note that in pursuance of the Policy on Airport Infrastructure 1997, the Cabinet approved the restructuring of airports of Airport Authority of India (AAI) in January 2000 through long term lease route and directed that after detailed plans were prepared for development of any airport, each such case for lease should be separately brought up for the consideration of the Cabinet Committee on Economic Affairs (CCEA). Accordingly, action was initiated by the Ministry of Civil Aviation (MoCA) to restructure and upgrade Delhi, Mumbai, Chennai and Kolkata airports through the long leasing route. Financial and Legal consultants were appointed and work of due diligence and transaction structure started. In this process the MoCA felt that the joint venture route had certain advantages over long term lease route. The Cabinet in December, 2002 considered the proposal for restructuring of four airports through JV route by formation of separate Joint Venture Company (JVC) for each airport with selected bidder in which AAI would have five per cent equity and directed the MoCA to discuss the proposal with Ministry of Finance and Ministry of Company Affairs. In July, 2003 Ministry of Finance opined that the proposal should be restricted to Delhi and Mumbai only. The Cabinet in September, 2003 approved the proposal for restructuring of Delhi and Mumbai airports through JV route by formation of two separate companies between AAI and the selected JV partners. The Cabinet also approved formation of Empowered Group of Ministers (EGoM) comprising Minister of Finance, Minister of Disinvestment and Minister of Civil Aviation to decide on the modalities including design parameters, bid evaluation criteria, etc. based on which JV partner was to be selected. Later on in June, 2004, the Minister of Defence became the Chairman of the EGoM. This EGoM in February, 2005 approved all the key principles of the Request for Proposal (RFP) document alongwith the draft transaction documents *i.e.* OMDA, SSA, SHA, Lease Deed Agreements, Communication, Navigation, Surveillance and Air Traffic Management (CNSATM) Agreement and State Government Support Agreement. After evaluation of the technical and financial bids, EGoM recommended the JV partner which was also approved by the Cabinet on 1st February, 2006. For IGIA, Delhi, the approved JV partner was M/s GMR Infrastructure Consortium which comprised of six private entities. AAI incorporated on 1st March, 2006 a subsidiary company namely M/s Delhi International Airport Private Limited (DIAL). After the OMDA was signed on 4 April, 2006 with the JV partner, 74% of the equity shares were sold to them in accordance with the Shareholders Agreement. In terms of the agreement, share capital of ₹200 crore was jointly held by AAI (26 per cent), GMR Infrastructure Ltd. (31.10 per cent), GMR Energy Limited (10 per cent), GVL Investment Ltd.

(9 per cent), Malaysia Airport (Mauritius) Pvt. Ltd. (10 per cent) and India Development Fund (3.90 per cent). Later on, shares of IDF were acquired by GMR Group. The paid-up equity capital of DIAL as on 31 March, 2011 was ₹2450 crore with the share of AAI at 26 per cent. The Delhi airport was handed over to M/s DIAL with effect from 3 May, 2006. Notably, the Terminal T3 was completed within time for the Commonwealth Games 2010 and w.r.t. development of infrastructure, IGIA can be considered a success as there have been significant improvements in services at Indira Gandhi International Airport for the travelling public. It is also noteworthy that the Airports Council International had adjudged the airport as the second best in the world in the category of 25-40 million passengers per annum. The Committee found several lacunae and shortcomings in the operationalisation of the JV mode and implementation of OMDA and SSA. The Committee examined the Subject in depth, heard the representatives of MoCA, AAI, DIAL, GMR and others. The findings of the Committee are contained in the ensuing paragraphs.

Conflict between OMDA and AERA Act

2. Prior to AERA Act coming into force, the agreement signed between AAI & DIAL was OMDA. This agreement gave DIAL the freedom to fix tariff for non-aeronautical services. For aeronautical services, the responsibilities of fixation of tariff was with the Government of India and later, after its establishment, with the Regulator, *i.e.* the AERA. The Committee note that in terms of Section 13(2) of AERA Act, one of the functions of the Authority is to determine the tariff for the aeronautical services. However, categorization of services into aeronautical services differs substantially between OMDA and the AERA Act. Ground Handling Service and Cargo Handling Service are treated as non-aeronautical services in OMDA but are categorised as aeronautical services under AERA Act. The non-aeronautical services being less capital intensive and more profitable, gave financial advantage to DIAL because in terms of SSA, the targeted revenue for the purpose of tariff fixation takes into account only 30 per cent of the revenue generated by DIAL from non-aeronautical services. MoCA's defence in this regard has been that the provisions of OMDA and AERA Act have been harmonized through Section 13(1)(a)(vi) of AERA Act which provides that due consideration be given to concession granted by the Government under any agreement. Hence, Cargo and Ground Handling Services are regulated by AERA as aeronautical services at Delhi and Mumbai airports. The Committee would like to be apprised of the financial impact of the concessions granted by the Government under OMDA and the revenue ensured by the Government from the DIAL after ground handling services and cargo handling services were categorized as aeronautical services.

Concession Period

3. The Committee note that in terms of Article 18.1(b), DIAL enjoys the unilateral right to extend the concession period for another 30 years on the identical

terms and conditions provided no JVC event default takes place during 20th and 25th year of first concession period. The Cabinet Note of September 2003 specifically envisaged that concession period of next 30 years could be subject to 'mutual agreement and negotiation of terms'. Surprisingly, this condition was missing in OMDA signed in April 2006 though the MoCA denied extending any favour to DIAL on the ground that the concession period was decided by the EGoM constituted by the Cabinet to finalise various transaction documents. The Committee note that the Cabinet in September 2003 had given permission only for privatisation of airports. Further, the extension of concession period was not automatic/unlimited as conditions like satisfactory performance in first 30 years was stipulated under OMDA. These provisions relating to extension of lease period were finalized before Request for Proposal was issued to the qualified bidders. The Committee note that the initial concession period of 30 years could be extended by another 30 years. Asked about the reasons for extending the concession period by another 30 years, the Ministry submitted that it was felt that the investment would need a longer time-frame and also to attract more bidders for Delhi and Mumbai airports, the EGoM made a provision for further extension of 30 years. This was finally approved by the Cabinet. The Committee would like to know how this joint venture would pave the way for future airport development and modernization in this Country.

Right of First Refusal

4. The DIAL was given unilateral right to manage the IGIA for sixty years and in addition to it, SSA gave DIAL the Right of First Refusal (RoFR) with regard to any second airport planned within 150 Km radius of the IGIA. The Second airport was to be planned through a competitive bidding process in which DIAL too would participate and in case of being unsuccessful, DIAL would be allowed to match its bid with the most competitive bid, if it was within 10 per cent of that bid. This condition was applicable in the first 30 years. The Ministry, in response, submitted that development of second airport is based on triggers like, existing airport reaching saturation point, traffic sharing and host of other factors which are clearly inbuilt in Policy on Airport Infrastructure 1997. Further, the Ministry added that as per the study conducted by International Civil Aviation Organisation (ICAO), second airport may not be needed until 2022. According to the Ministry, the RoFR condition was approved by EGoM and laid down before the issue of RFP wherein DIAL was not the final bidder. The Committee, observe that the second new airport, if planned, functioning in the competitive environment will be under the regulatory regime of AERA and will not have the benefit of dual till or hybrid till system. It would, therefore, be virtually impossible for a new bidder to share a large percentage of revenue and survive in a competitive environment in which the existing Delhi airport already would have significant benefits. The submission of the Ministry was that the matter was considered in the IMG & the EGoM and it was felt that, based on global experience the absence of RoFR, the JVC would be exposed to

significant investment risks if a second airport came in the vicinity. Moreover, the second airport at Delhi may not be needed until 2022 and at Mumbai till the traffic reaches the saturation point of 40 million. The Ministry also submitted that safeguards have been provided to ensure competitiveness and transparency. The Committee hope that the assurances given would be fulfilled.

Misuse of Upfront Fee

5. As per Article 11.1.1 of OMDA a onetime upfront fee of ₹150 crore was fixed for each of the Delhi and Mumbai airports by MoCA on the basis of decision of Inter Ministerial Group (IMG) who considered average revenue earning from both the airports. It was also clarified that upfront fee had no relation to either the extent of land or the assets of the airport. However, it was seen that the upfront fees was the basis for leasing out additional land of 190.19 acres for aeronautical purposes. The Ministry of Civil Aviation attempted to justify its actions by submitting that AAI got a much higher amount of about ₹ 6 crore in comparison to the amount that it would have got through nominal lease rental basis. Further, it was also added that this additional land of 'Excluded Premises' could have been transferred to DIAL without any compensation to AAI as this land is to be used only for aeronautical purposes. However, the leasing of land by AAI to DIAL was in return of its share of 45.99% of the total revenue and, therefore, lease rental from DIAL was inconsequential. On the other hand, leasing to other Government entities like DGCA and BCAS who were charged ₹2.41 crore per annum is only in return of lease rental. Asked about the basis of charging ₹150 crore upfront fee from the JVC, the MoCA submitted that different models were discussed by the EGoM. The EGoM, after discussion, approved the quantum of upfront fee of ₹150 crore as also recommended by the IMG. The Ministry further submitted that the leasing of land by AAI to DIAL was in return of its share of 45.99 per cent of the total revenue and therefore the question of lease rental was inconsequential and that it would not be correct to make comparison with the lease charges imposed on DGCA and BCAS. Taking note of the submission of the MoCA, the Committee would like to know the total earnings of DIAL and the revenue earned by the Government year-wise, in terms of its approved share, to enable the Committee to infer whether public interest was substantially subserved by such a negotiated settlement as claimed.

Commercial Exploitation of land

6. The Committee notice that AAI leased out 4799.09 acres of land as demised premises at ₹100 annually to DIAL and for 190.19 acres a one time fee of ₹6.19 crore was charged. As per OMDA, DIAL was allowed to utilize 5% of the total land area i.e. 4799.09 acres of demised premises (i.e. 239.95 acres) for commercial exploitation. DIAL had projected an earning capacity of ₹681.63 crore per acre from this land in terms of license fee over the concession period of 58 years. The projected earning capacity for 239.95 acres worked out as ₹1,63,557 crore wherein AAI share as ₹75220 crore i.e. 45.99 per cent of the total revenue.

As of February, 2013, DIAL leased out only 45 acres of land. As against the projection of ₹1.92 crore per acre for 2012-13, DIAL actually received a lease rental of ₹1.96 crore per acre. The current value of the land as ascertained from AERA and valued by M/s Merrill Lynch in the report of August, 2011 worked out at the rate of ₹100 crore per acre. To a query of the Committee, the Ministry stated that the sole bidding criterion was the OMDA Fee which is the revenue share of AAI from gross revenue of the airport and it captured the earning potential of the airport from both airport activities and the land. Hence the value of the land was not considered by the EGoM. Ministry further stated that commercial exploitation of land is a misnomer because there are limitations on the use of land by DIAL which was earmarked as per fixed norms which were made available to AAI before the award of the contract to DIAL. The decision to allow 5 per cent of land for commercial exploitation was taken by EGoM on the advice of Department of Economic Affairs and Financial Consultant (FC) and did not go through the route of market valuation of land. This area is subjected to monitoring by AAI and MoCA from time to time. Five per cent of land for commercial development and non-inclusion of revenue from non-transfer assets for cross subsidy of tariff are the key reasons why the bidders quoted revenue share as high as 45.99 per cent for Delhi and 38.7 per cent for Mumbai airports. The AAI has leased out 4799.09 acres of land as demised premises. As per OMDA, DIAL could utilize 5 per cent of land area of 4608.9 acres (190 acres subsequently transferred and not included) of demised premises for Non-Transfer Assets *i.e.* commercial exploitation which works out to 230.44 acres and not 239.95 acres. As on 31.12.2009, 45.08 acres of land had been awarded by DIAL for commercial exploitation. DIAL expected to earn ₹89 crore in the Financial Year 2013. According to the submissions made before the Committee, DIAL suffered a cumulative loss of more than ₹1706 crore whereas in 2013 DIAL was expected to earn ₹1859 crore through aeronautical revenues. The Ministry submitted that as against the permissible commercial exploitation of 5 per cent land, DIAL had not so far used even 1% against the limit of 5%. It was further submitted that it would not be proper to consider the usage of 5% of airport land for commercial purposes as 'subsidy in kind'—as 'AAI is the biggest beneficiary of these clauses'. The Committee would like to be apprised of the total revenue year-wise earned by the AAI from DIAL after taking over the Delhi airport as also the projected revenue share in the next three years.

Airport Development Fee

7. Article 13.1 of OMDA specifically provides that the "JVC shall arrange financing and/or meeting all financing requirements through suitable debt and equity contributions in order to comply with its obligation including development of airports pursuant to the Master Plan and the major development plans". The Committee are, however, dismayed to observe that instead of finding ways of debt

and equity contribution, in February 2009, MoCA allowed DIAL to levy a DF at IGIA for the purpose of funding or financing the cost of up-gradation, expansion or development of the Airport in contravention of the provisions of Article 13.1 of OMDA. The rates of levy of OF were ₹600 per departing domestic passenger and ₹1300 per departing international passenger. When the Committee sought justification for levying the Development Fee, the Ministry submitted that the DIAL in 2008 proposed the development of the airport at an estimated cost of ₹8975 crore but the proposal to collect fund for the development by way of refundable security deposit from the hospitality district was rejected by the Ministry on the ground that excessive high order of security deposit for about five and a half years of annual lease rental would impact revenue shareable by AAI. The Ministry also submitted that additional equity infusion was regretted by AAI and therefore the private partner could not infuse further equity. Lenders also refused to enhance the debt due to constraints on serviceability of debt. Furthermore, only ₹1471 crore worth refundable security deposit could be arranged by the DIAL from disposal of commercial land as against an originally envisaged amount of ₹2,738 crore due to restrictions imposed by MoCA/AAI. Hence in terms of Section 22A of the AAI Act 1994 the Ministry approved levy of Development Fee purely on *ad-hoc* basis to bridge the funding gap of ₹1827 crore for a period of 36 months. The Committee also note that the issue of DF came up before the Supreme Court and the Hon'ble Supreme Court ordered that DF could not be levied and collected by the lessee (*i.e.* DIAL) on the authority of letter issued by the Central Government. Further, the Supreme Court declared that *w.e.f.* 01.01.2009 no DF could be levied or collected from the embarking passengers at major airports under Section 22A of the 1994 Act unless AERA determined the rate of such DF. Notably the levy of DF was not quashed by the Court. Subsequently, the Committee observe that after taking into consideration the submissions of DIAL as well as the views and comments of various stakeholders, AERA determined the amount of DF. DIAL collected DF amounting to ₹2302.20 crore uptill January, 2013 and an amount of ₹1262.01 crore proposed to be recovered till March, 2016 (total ₹3564.21 crore). The DF was later reduced to ₹100 per domestic departing passenger and ₹600 per international departing passenger *w.e.f.* 01.01.2013 from ₹200/- and ₹1300/- respectively. The Committee would like to know the circumstances and the rationale for fixing such a high Development Fee which was later reduced substantially.

DIAL's Financing of Project

8. The Committee note that out of the total capital expenditure of ₹12857 crore, the promoter's equity was ₹2450 crore out of which 74 per cent (₹1813 crore) was contributed by promoters and remaining 26 per cent by AAI. The Committee also note that out of the total capital expenditure of ₹12,857 crore, only 19 per cent of the capital expenditure was contributed by the promoter's contribution, ₹5266 crore were from loans and ₹1471 crore was from security

deposits. In other words, only ₹50 crore was by way of internal accruals and ₹3415.55 crore was from DF contributed by passengers. The Committee find it intriguing that with mere ₹50 crore from internal accruals and equity contribution of ₹2450 crore in which 26 per cent is AAI's contribution, DIAL got an airport for thirty plus thirty (30+30) years in addition to rights for commercial exploitation of 5% of the demised land. Notably, the contribution of internal accruals in case of Indira Gandhi International Airport has been the barest minimum (₹50 crore) as against ₹1999 crore in case of Mumbai airport. The Committee would like to be apprised of the global practices of PPP models operating in the field of infrastructure development.

Deficient land records at IGI Airport

9. The Committee note that as per records of the Directorate of land of the AAI, as on 9 February, 2011, the total land available at IGI Airport was 5196 acres of which 4799.09 acres was Demised Premises and 306.91 acres was Carved out Assets. However, details of the land such as Khasra number, land award, etc. were not available for verification by the Audit. The Ministry put the onus of maintaining such land records on the other Ministries/Departments who had been looking after the affairs of the airport since its inception prior to independence. It was also submitted that the land records could not be transferred to new department/organization and, at this stage, it was difficult to acquire such old records. Regarding total area handed over to DIAL, the Ministry stated that it was based on the demised area Map which is shown in schedule 25 of OMDA and schedule 1 of the Lease Deed. The Committee are distressed to note that in the absence of proper records of the land of IGIA and also given the fact that no joint physical survey was conducted, public land was transferred to DIAL. Furthermore, given the commercial potential of the public land and also the right of DIAL to commercially exploit 5% of the land, the Committee recommend that necessary survey of the land be undertaken and physical markings erected to identify the demised land and carved out assets for future and the Committee apprised within six months.

Change in Major Development Plan and Ground Floor Area

10. The Committee note that against the area of 470,179 square meter indicated in the Major Development Plan, DIAL constructed 553,887 square meters of area exceeding by 83,708 square meter (17.80 per cent) at IGIA Delhi. However, Ministry said that post award of the concession, as per OMDA, the DIAL undertook an independent and detailed traffic forecasting study which highlighted phasing of development. The study also indicated that the actual traffic handled was higher than that projected by AAI which indicates that IGIA is expected to handle 100 mppa in the year 2032 which according to AAI forecast has to reach in 2040. Based on the revised traffic projections, the revised Master Plan was submitted to AAI and MoCA in September, 2006 in pursuance of Article 3.5 of the SSA and 8.3 of OMDA

which was finalized in December 2006 for development of IGIA in 5 phases. The Financial Auditors (M/s KPMG Advisory Services Private Limited) appointed by AAI reported (2010) that the ground floor area for peak hour passenger at T3 was higher than most of the leading airports in the Asia Pacific Region. The Technical Auditor *i.e.* M/s Engineers India Ltd. also concluded that approximately 90% of the increase in area was consistent with the philosophy of providing better facilities to the passengers. However, an area of 8,652 square meter which is 1.6% of the total area of the terminal, has been utilized for passenger comfort and is mainly for providing enhanced retail and Food & Beverage (F&B) options to the passengers and as per recommendation of independent engineers, construction cost (₹200 crore) of this area has been excluded from the project cost by AERA. The Ministry further submitted that, DIAL did not get any additional return from this additional area, the passengers got additional area and services and the AAI got 45.99% of revenue generated from it. While taking due note of the submission of the Ministry, the Committee recommend that in future a suitable clause may be incorporated in the PPP agreement about the flexibility permissible under the Master Plan.

Project Cost

11. The Committee note that the original project cost approved by DIAL and communicated to AAI on 18 January, 2008 was ₹8975 crore. However, the actual project cost as on 20 July, 2010, as claimed by DIAL, was ₹12857 crore which was considered by AERA and finally adopted for arriving at Regulatory Assets Base (RAB), was ₹12502.86 crore. The variation in cost was ₹3882 crore *i.e.* 43.25 per cent higher than original project cost. This increased cost also increased the gap in funding of the project which was being met through the Development Fee imposed on passengers departing from the Delhi Airport. Originally, full project cost was to be met by the concessionaire. Notably, however, the project cost was reduced to 72.68 per cent of the actual cost as DF constituted 27.32 per cent of the capital outlay though OMDA did not envisage the funding of project cost through levy of DF. Further, the AERA Act did not contemplate approval of project cost by AERA. However, for the purpose of aeronautical tariff determination, AERA arrived at an appropriate allowance of project cost and the MoCA had no role in tariff fixation. The Committee are surprised to note that the project cost was neither monitored nor approved by the Ministry before finalization of such a large project. Taking note of the unique nature of the PPP model, the need for proper monitoring and the paramount need to safeguard public interest, the Committee recommend that the PPP model be discussed threadbare so as to formulate transparent rules and credible institutional mechanism after fullest consultation with all the stakeholders.

Mandatory Capital Projects

12. The Committee were apprised that out of 15 Mandatory Capital Projects (MCPs) to be completed by April 3, 2008, 11 MCPs were delayed for periods ranging from 87 days to 236 days. As per SSA, the DIAL was

not entitled to any incentive in respect of base airport charges due to delay in completion of MCPs. However, MoCA approved 10 per cent increase in the aeronautical charges on various services *w.e.f.* 16th February, 2009. On being asked, the MoCA defended its action by submitting that delay in completion of MCPs was attributable to circumstances and situations beyond the control of DIAL as the works being carried out in an operational airport involved co-ordination with various external agencies. It was further submitted that though the DIAL was aware of these complexities while entering into contract, issues such as delay in security clearance from IB, R&AW, etc., unavailability of 'as built drawings' of underground utilities like sewage line, water supply lines, power cable, delay in vacation of areas under use of IA, etc., were not anticipated. After considering the request of DIAL under Article 8.2.2 of OMDA, one time waiver of the condition was granted without penalty. Further, the waiver was specific to 10 MCPs only. As regards increase of 10 per cent in base airport charges it was given *w.e.f.* 16.02.2009 as against entitlement from 03.05.2008. The Committee, however, observe that the fact remains that inordinate delays took place in completion of the projects and inspite of the delays, incentives in respect of base airport charges were given to DIAL. The Committee would like to be informed of the latest status of all the MCPs and the reasons for giving incentives despite the delays in completion of the projects.

Revenue Sharing

13. Under the provisions of OMDA, DIAL has outsourced most of the non-aeronautical services through the mechanism of JVs which has impacted, adversely, the revenue to be shared with the AAI. The Dual Till takes into account 30 per cent of the revenue generated by non-aeronautical services and this gave an unfair advantage to the DIAL at the cost of Government/passengers. Many of these services outsourced were 'non-aeronautical' as per OMDA but subsequently these have been treated as aeronautical services as per AERA Act. Outsourcing of these services through JVs, put additional burden on passengers in the form of DF on the one hand and has deprived AAI of the revenue, on the other. While replying to the concerns raised by the Committee, the Ministry stated inter-alia that EGoM on 15.02.2005 decided that 'hybrid/shared till' 'price cap approach' be adopted for fixation of aeronautical tariff with 30% of non- aeronautical revenue to be considered for subsidizing the aeronautical tariff. The Ministry also submitted that this approach is practiced in UK and Australia. Accordingly, these provisions were set out in the SSA and it was also mentioned about establishment of AERA. AERA is to take into consideration provisions of OMDA offered by the Central Government in any agreement or memorandum of understanding or otherwise. The opinion of Ministry of Law and Justice in this regard is that OMDA and SSA are concessions granted by the Government. MoCA also added that as per this, 30% of non-aeronautical revenue should be taken into account by AERA while determining the aeronautical charges. In other words, 46% of the remaining 70% of the

non-aeronautical revenue is to be shared with AAI by DIAL. The latter is also shared by AAI in terms of dividend on its share. The MoCA further submitted that, DIAL does not gain any undue favour as it is managed by the JV Board having AAI Directors and audited by independent auditors. The Committee note that only Delhi and Mumbai airports are under the 'hybrid till system' and all other airports in the Country are under 'single till system'. They feel that the shared 'till' has actually increased the burden on the travelling passengers as the aeronautical tariffs are not subsidized by a significant part of non-aeronautical tariff. Further, most of the non-aeronautical services which are low capital intensive and high revenue services, are frozen in OMDA and differ significantly from the provisions of AERA Act. The Committee, therefore, urge Government to consider this aspect while awarding contracts for other airports under PPP in future.

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

14. The Committee note that many of the services had been outsourced by DIAL to as many as 11 Joint Venture companies. Equity shares of DIAL in these companies range from 26 per cent to 50 per cent. The revenue share in these companies ranges from 10 per cent to 61 per cent. DIAL also collected ₹503 crore from these ventures as security deposit and reflected as unsecured loans in its financial statement. When queried, the MoCA clarified that the aggregate security deposits collected by DIAL from the 11 JVs is ₹512.82 crore out of which about ₹190 crore has been ploughed back as equity by DIAL in the JVs and the remaining amount has been used to meet part of the cash losses that DIAL has suffered in the last 2 years *i.e.* 2010-11 and 2011-12 (₹840.79 crores). These deposits are refundable at the end of the concession term. The Financial statements of these JVs form part of Independent Audit Report for each quarter. The Ministry categorically averred that none of the selected concessionaires are Group companies or affiliates on any of the DIAL shareholders. On the issue of JVs, the Ministry of Law and Justice opined that JVs are permissible under Article 8.5.7 of OMDA and Article 11.1.2 imposes an obligation to pay @ 45.99% of the projected overall revenue for said year. However, it is silent about any share in the revenue generated or to be generated by the Sub-contractors formed or to be formed. The apprehensions of the Committee that the outsourcing of non-aero services by DIAL would adversely impact revenue sharing were sought to be allayed by the MoCA by stating that the efforts were made by DIAL to increase the non-aeronautical revenue and the same was raised from ₹315 crore to over ₹1000 crore in seven years. This meant that to the possible extent aero revenue would be offset and consequently tariff rates would come down. The Committee also note that given the equity participation of DIAL in these JVs, these sub-contracts are violation of the principle of arms length as enshrined in the OMDA. The Committee would like to know how the revenue share would go up once the capacity of cargo operations and car park are fully utilized especially when the income from these two have shown a declining trend after these businesses were transferred to JVs. As recommended by the Committee else where in this

report, a transparent mechanism be evolved after fullest consultation with the stakeholders with respect to the audit of PPP projects and the Committee apprised in due course.

Delayed payment of Retirement Compensation by DIAL

15. The Committee note that in 2010-11, against a claim of ₹250.88 crore towards Retirement Compensation (RC) in terms of provisions of Chapter VI of OMDA, DIAL had paid only ₹80 crore. This resulted in payment of interest of ₹19.73 crore (June 2010) due to delay in payment of the balance amount of ₹170.88 crore towards RC. DIAL pleaded that there was no specific provision in OMDA for timing of payment of RC to AAI. MoCA, however, directed AAI to recover the RC without penal interest from DIAL by March 2010, thereafter, penal interest of SBI Prime Lending Rate plus 10 per cent was to be levied. Against this, the AAI allowed DIAL to pay the said amount in monthly instalments spread over a period of 10 years without any contractual obligations. The decision of AAI was against the directions of MoCA resulting in loss of interest of ₹58.57 crore calculated at 8% per annum. While replying to these issues raised by the Committee, the Ministry submitted that as per OMDA, the DIAL is mandated to pay RC in respect of such employees who had not opted for absorption in DIAL within the operation support period. There were 2338 employees of which 251 had retired between 3.5.2006 to 2.5.2009. Of the remaining 2087, DIAL was obliged to pay RC in respect of 60% of them i.e. 1111 (i.e. 60% of 2087 less 141 who joined DIAL) out of which, 293 had taken VRS by July, 2009. As per OMDA, RC means average VRS cost. VRS of AAI comprised one time *ex-gratia* payment to an employee on his retirement and a monthly payment to be paid to him over a period of 10 years from May, 2009 to April, 2019. However, AAI calculated the amount of RC in one lump sum. This was disputed by DIAL on the ground that the claim of AAI for a 10 year period till 2019 at one go did not take the time value of money. It was further submitted that the matter was deliberated and finally an agreement was reached between DIAL and AAI that envisaged full payment of *ex-gratia* in one lump sum for 1111 employees to AAI and monthly payment over the next 10 years till 2019. The Committee, are surprised that the directions of the MoCA were not followed by the AAI and the RC was allowed to be paid by DIAL in monthly instalment without any penal interest. The Committee find that the Ministry had erred in safeguarding the interests of the employees of AAI and failed to enforce its directives. The Committee are saddened to note that the Government condescended wilfully to the breach of OMDA and therefore recommend that the MoCA enforce the contractual obligations as per the OMDA.

Diversion of funds from PSF (Security) ESCROW Account

16. The Committee note that against the provision of SSA, the Ministry allowed the DIAL to use funds from PSF (SC) ESCROW Account for purchase of security system and equipment which resulted in undue benefit to DIAL and loss of ₹239.69 crore during 2006-11 to public exchequer. Using Ministry's directions

it also debited ₹4.34 crore till 2009-11 towards insurance charges of PSF (SC) Account which were otherwise to be borne by the DIAL as per OMDA. While replying to the query of the Committee, MoCA stated that post signing of OMDA/SSA, the security scenario had changed drastically and necessitated up-gradation of existing security equipment at the airport at the level of best in the world. Further, it was submitted that the issue of PSF (SC) was referred to the Ministry of Law and Justice, who opined *inter-alia* that (i) there was no need to amend the Rule 88 of Aircraft Rules 1937 to continue the extant arrangement, and (ii) licence under Rule 78 originally granted to AAI had already been transferred to the JVCs (after the lease), thereafter AAI is not the single licensee for the purpose of collection of PSF (SC) and therefore, the amount of security component was to be utilized only for the security purpose of the airport concerned. The MoCA submitted that, accordingly, Government decided that the expenditure on the security equipment be made out of PSF (SC). The MoCA, however, accepted the point raised by Audit and assured that in future the cost of security equipment will be met by the JVC as mandated in SSA and 'implemented hence forth'. The Ministry further submitted reversion of the earlier transaction would result in redetermination of Regulatory Asset Base and User Development Fee (UDF) and would cause avoidable complication. Since the MoCA has accepted the Audit objection, the Committee hope that such lapses do not recur.

Irregular withdrawal from ESCROW Account

17. The Committee note that according to MoCA (January and April, 2010) the security related expenses permitted under PSF (SC) should not include expenditure on any other security staff or other administrative set-up created/engaged by the airport operator. On a representation of the Association of Private Airport Operators (APAO) to MoCA for clarifications on applicability of the above guidelines, the Ministry clarified that it will have prospective application. Accordingly, DIAL debited all the expenditure incurred during 2006-10 towards private security agencies including consultant fee to PSF (SC) accounts which resulted in irregular withdrawal of ₹26.65 crore by DIAL from PSF (SC) ESCROW Account with consequent loss to the Government. The Committee were apprised that the Ministry had asked the DIAL to reverse the entry but DIAL chose to contest the matter in the Delhi High Court and the High Court stayed any coercive action by MoCA towards recovery of the amount. The Committee would await the judgement of the High Court.

NEW DELHI;
31 January, 2014
11 Magha, 1935 (Saka)

DR. MURLI MANOHAR JOSHI
Chairman,
Public Accounts Committee.

APPENDIX I

MINUTES OF THE FOURTEENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2012-13) HELD ON 4TH OCTOBER, 2012

The Public Accounts Committee sat on Thursday, the 4th October, 2012 from 1500 hrs. to 1735 hrs. in Committee Room 'D', PHA, New Delhi.

PRESENT

Dr. Murli Manohar Joshi — *Chairman*

MEMBERS

Lok Sabha

2. Shri Anandrao Vithoba Adsul
3. Shri Anant Kumar Hegde
4. Shri Bhartruhari Mahtab
5. Shri Sanjay Brijkishorlal Nirupam
6. Shri Sarvey Sathyanarayana
7. Dr. Shashi Tharoor
8. Dr. Girija Vyas

Rajya Sabha

9. Shri Prasanta Chatterjee
10. Shri Prakash Javadekar
11. Shri Satish Chandra Misra
12. Shri Sukhendu Sekhar Roy
13. Shri J.D. Seelam

SECRETARIAT

1. Shri Devender Singh — *Joint Secretary*
2. Shri Abhijit Kumar — *Director*
3. Smt. A. Jyothirmayi — *Deputy Secretary*

Representatives of the office of the Comptroller and Auditor General of India

1. Shri A.K. Patnaik — Deputy C&AG
2. Shri Gautam Guha — Director General (Commercial — I)
3. Smt. Ila Singh — Principal Director (Ex-Officio MAB-III)

Representatives of the Ministry of Civil Aviation

1. Shri K.N. Shrivastava — Secretary (Civil Aviation)
2. Shri S. Machendranathan — Additional Secretary & FA
3. Shri Alok Sinha — Joint Secretary
4. Shri V.P. Agarwal — Chairman, AAI

2. At the outset, the Chairman welcomed the Members of the Committee, the Audit Officers, the representatives of the Ministry of Civil Aviation and Airport Authority of India to the sitting of the Committee convened to have briefing on the subject '**Implementation of Public Private Partnership — Indira Gandhi International Airport, Delhi**' based on the C&AG Report No. 5 of 2012-13 (Performance Audit). He also drew the attention of the representatives to Direction 55(1) relating to confidentiality of the matter till the report was presented to the House.

3. The representative of the Ministry then made a power point presentation and briefed the Committee on various issues relating to the subject which *inter-alia* included conflict between OMDA and AERA Act in defining aeronautical and non-aeronautical services; long concession period of 60 years in violation of commitment given to the Cabinet; misuse of upfront fee; collection of development fee by DIAL in contravention of statutes and agreement; non-supply of basic land records to Audit; Permission to DIAL for commercial exploitation of land to the detriment of public revenue; highly concessional lease rent; diversion of Passenger Service Fee amount; etc. The queries raised by the Members of the Committee were also clarified with regard to certain points, to which the representatives of the Ministry could not provide the requisite information, the Chairman directed them to submit written replies within fifteen days.

4. The Chairman then thanked the representatives of the Ministry for deposing before the Committee. The Committee also thanked the representatives of the Officers of the C&AG of India for providing valuable assistance to the Committee in the examination of the subject. The Committee also decided to hear the representatives of the concerned Ministry after receipt of complete answers/ information from them.

The witnesses then withdrew.

A copy of the verbatim proceedings of the sitting was kept on record.

The Committee then adjourned.

APPENDIX II

MINUTES OF THE TWENTY-SIXTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2012-13) HELD ON 13TH FEBRUARY, 2013

The Committee sat on Wednesday, the 13th February, 2013 from 1430 hrs. to 1645 hrs. in Committee Room 'A', Parliament House Annexe, New Delhi.

PRESENT

Dr. Murli Manohar Joshi — *Chairman*

MEMBERS

Lok Sabha

2. Shri Sandeep Dikshit
3. Shri Sanjay Brijkishorlal Nirupam
4. Shri Abhijit Mukherjee

Rajya Sabha

5. Shri Prasanta Chatterjee
6. Shri Prakash Javadekar
7. Shri J.D. Seelam
8. Shri N.K. Singh
9. Prof. Saif-ud-Din Soz

SECRETARIAT

1. Shri Devender Singh — *Joint Secretary*
2. Shri A. Jyothirmayi — *Deputy Secretary*

Representatives of the office of the Comptroller and Auditor General of India

1. Shri A.K. Patnaik — Deputy C&AG
2. Shri Gautam Guha — Director General
3. Ms. Sandhya Shukla — Principal Director
4. Shri V. Patwardhan — Principal Director
5. Smt. Sudha Rajan — Director

Representatives of Delhi International Airport Pvt. Ltd. (DIAL)

1. Mr. I. Prabhakara Rao — Chief Executive Officer
2. Mr. K. Narayanarao — Director
3. Mr. Sidharth Kapur — Chief Financial Officer—Airport Sector
4. Mr. Radhakrishnababu G. — Chief Financial Officer
5. Mr. Arun Bhagat — Executive Vice President—Strategic Planning Group
6. Mr. Shobhit Gupta — General Manager—Legal

Representatives of the Ministry of Civil Aviation

1. Shri K.N. Shrivastava — Secretary, Civil Aviation
2. Shri S. Machendranathan — Spl. Secretary
3. Shri Alok Sinha — Joint Secretary
4. Shri L. Rajasekhar Reddy — Director
5. Shri V.P. Agarwal — Chairman, AAI

2. At the outset, the Chairman, welcomed the Members of the Committee, the Audit Officers and the representatives of the '**Delhi International Airport Pvt. Ltd. (DIAL)**' to the sitting of the Committee convened to take oral evidence on the subject '**Implementation of Public Private Partnership—Indira Gandhi International Airport, Delhi**' based on the C&AG Report No. 5 of 2012-13 (Performance Audit). He also drew the attention of the representatives to Direction 55(1) relating to confidentiality of the matter till the report was presented to the House.

3. The representative of the 'DIAL' then made a power point presentation and briefed the Committee on various issues relating to the subject which *inter-alia* included conflict between OMDA and AERA Act in defining aeronautical and non-aeronautical services, long concession period of 60 years, issue of upfront fee, collection of development fee by DIAL, commercial utilization of land, highly concessional lease rent, etc. The queries raised by the Members of the Committee were also clarified. With regard to certain points to which the representatives of the DIAL could not provide the requisite information, the Chairman directed them to submit written replies within a week.

4. Some of the Members also desired that the Committee should undertake an on-the-spot study visit to Delhi Airport to have a practical knowledge of the issues being examined by the Committee before finalization of the Report.

5. The Chairman then thanked the representatives of the DIAL for deposing before the Committee.

The witnesses then withdrew.

6. Thereafter, the representatives of the Ministry of Civil Aviation were called in. The Chairman, informed the representatives of the Ministry that PAC Secretariat would be forwarding a copy of the 'Presentation' made by DIAL on the subject alongwith queries of the Members for their responses. After receipt of the comments/replies of the Ministry, the Committee would decide on further course of action.

7. The Chairman then thanked the representatives of the Ministry for appearing before the Committee. The Committee also thanked the officers of the C&AG of India for providing valuable assistance to the Committee in the examination of the subject.

The witnesses then withdrew.

A copy of the verbatim proceedings of the sitting was kept on record.

The Committee then adjourned.

APPENDIX III

MINUTES OF THE SIXTEENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2013-14) HELD ON 30TH JANUARY, 2014

The Public Accounts Committee sat on Thursday, the 30th January, 2014 from 1130 hrs. to 1400 hrs. in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Dr. Murli Manohar Joshi — *Chairman*

MEMBERS

Lok Sabha

2. Shri Anandrao Vithoba Adsul
3. Dr. Baliram
4. Shri Sandeep Dikshit
5. Dr. M. Thambidurai
6. Shri Bhartruhari Mahtab

Rajya Sabha

7. Shri Prasanta Chatterjee
8. Shri Prakash Javadekar
9. Dr. V. Maitreyan
10. Shri N.K. Singh
11. Smt. Ambika Soni

SECRETARIAT

1. Shri Devender Singh — *Joint Secretary*
2. Shri Jaya Kumar T. — *Additional Director*
3. Shri D.R. Mohanty — *Deputy Secretary*
4. Smt. A. Jyothirmayi — *Deputy Secretary*
5. Ms. Miranda Ingudam — *Under Secretary*
6. Shri A.K. Yadav — *Under Secretary*
7. Smt. Anju Kukreja — *Under Secretary*

Representatives of the office of the Comptroller and Auditor General of India

1. Shri A.K. Singh — Dy. C&AG
2. Smt. Usha Sankar — Dy. C&AG
3. Shri Gautam Guha — Director General of Audit
4. Smt. Ila Singh — Director General of Audit
5. Shri C. Gopinathan — Director General of Audit
6. Shri Jayant Sinha — Pr. Director of Audit
7. Shri Purushottam Tiwari — Pr. Director of Audit
8. Shri A.M. Bajaj — Pr. Director of Audit

2. At the outset, the Chairman welcomed the Members and the representatives of the Office of C&AG to the sitting of the Committee. The Chairman, then, apprised that the meeting was convened to consider and adopt nine Draft Reports (five Original and four Action Taken Reports) of the Committee. Thereafter, the Committee took up the following draft Reports one by one for consideration:

- (i) *** *** ***;
- (ii) *** *** ***;
- (iii) Draft Report on '**Implementation of Public Private Partnership—
Indira Gandhi International Airport, Delhi**';
- (iv) *** *** ***;
- (v) *** *** ***;
- (vi) *** *** ***;
- (vii) *** *** ***;
- (viii) *** *** ***; and
- (ix) *** *** ***.

3. After detailed deliberations, the draft Reports at Sl. Nos. (i), (ii) and (iii) were adopted with some modifications/amendments that are given at *Annexure* and the rest were adopted without any changes. The Committee also authorized the Chairman to finalise these Reports, in light of their suggestions and the factual verifications received from the Audit and present the same to the House on a date convenient to him.

4. The Chairman thanked the Members for their valuable suggestions on the consideration of the Draft Reports.

The Committee then adjourned.

***Matter does not pertain to this Report.

ANNEXURE

Modifications/Amendments made by the PAC in the draft Reports

Sl. No.	Page No.	Recommendation Para/Line No.	For	Read
1	2	3	4	5
1.	***			
	***	***	***	***
2.	***			
	***	***	***	***
3.	Draft Report on 'Implementation of Public Private Partnership—Indira Gandhi International Airport, Delhi'			
(i)	66	7/last line	The of OMDA.	The Committee would like to know the circumstances and the rationale for fixing such a high Development Fee which was later reduced substantially.
(ii)	67	8/fifth-sixth line	against the whole PPP	against ₹ 1999 crore in case of Mumbai airport.
(iii)	69	10/last line	While taking such violation	While taking due note of the submission of the Ministry, the Committee recommend that in future a suitable clause may be incorporated in the PPP agreement about the flexibility permissible under the Master Plan.
(iv)	70	11/second-ninth line	The Committee collected as DF	The Committee are surprised to note that the project cost was neither monitored nor approved by the Ministry before finalization of such a large project. Taking note of the unique nature of the PPP model, the need for proper monitoring and the paramount

***Matter does not pertain to this Report.

1	2	3	4	5
				need to safeguard public interest, the Committee recommend that the PPP model be discussed threadbare so as to formulate transparent rules and credible institutional mechanism after fullest consultation with all the stakeholders.
(v) 74		14/last line	Further... .. in due course	As recommended by the Committee elsewhere in this report, a transparent mechanism be evolved after fullest consultation with the stakeholders with respect to the audit of PPP projects and the Committee apprised in due course.
(vi) 77		17/last two sentences	The Committee ... the case	The Committee would await the judgment of the High Court.