

**IMPLEMENTATION OF PUBLIC PRIVATE
PARTNERSHIP PROJECT AT CHHATRAPATI SHIVAJI
INTERNATIONAL AIRPORT, MUMBAI**

MINISTRY OF CIVIL AVIATION

**PUBLIC ACCOUNTS COMMITTEE
(2015-16)**

FORTY SIXTH REPORT

SIXTEENTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

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Presented to Lok Sabha on: 28.04.2016

Laid in Rajya Sabha on: 28.04.2016

**LOK SABHA SECRETARIAT
NEW DELHI**

April, 2016/ Vaisakha 1938 (Saka)

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**COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2015-16)**

Prof. K.V. Thomas - Chairperson

MEMBERS

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Sudip Bandyopadhyay
4. Shri Ranjit Singh Brahmputra
5. Shri Nishikant Dubey
6. Shri Gajanan Kirtikar
7. Shri Bhartruhari Mahtab
8. Shri Ramesh Pokhriyal "Nishank"
9. Shri Neelgagan Rishi
10. Shri Dushyant Singh
11. Shri Janardan Singh Sighriwal
12. Dr. Kirit Somaiya
13. Shri Anurag Singh Thakur
14. Shri Shivkumar Udasi
15. Dr. P. Venugopal

RAJYA SABHA

16. Shri Naresh Agrawal
17. Shri Satyavrat Chaturvedi
18. Shri Anil Madhav Dave
19. Shri Vijay Goel
20. Shri Bhubaneswar Kalita
21. Shri Shantaram Naik
22. Shri Sukhendu Sekhar Roy

SECRETARIAT

1. Shri A.K. Singh - Additional Secretary
2. Shri Tirthankar Das - Additional Director
3. Shri A.K. Yadav - Deputy Secretary

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2014-15)

Prof. K.V. Thomas - Chairperson

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9. Shri Neiphiu Rio
- 10* Shri Dushyant Singh
11. Shri Janardan Singh Sigriwal
- 12† Shri Shiv Kumar Udasi
13. Dr. Kirit Somaiya
14. Shri Anurag Thakur
- 15‡ Shri P. Venugopal

RAJYA SABHA

16. Shri Satyavrat Chaturvedi
17. Shri Vijay Goel
18. Dr. Satyanarayan Jatiya
19. Shri Bhubaneswar Kalita
20. Shri Shantaram Naik
21. Shri Sukhendu Sekhar Roy
22. Shri Ramchandra Prasad Singh

* Elected w.e.f. 3rd December, 2014 *vice* Shri Rajiv Pratap Rudy who has been appointed as Minister w.e.f. 9th November, 2014.

† Elected w.e.f. 3rd December, 2014 *vice* Shri Jayant Sinha who has been appointed as Minister w.e.f. 9th November, 2014.

‡ Elected w.e.f. 3rd December, 2014 *vice* Dr. M. Thambidurai who has been chosen as Hon'ble Deputy Speaker, Lok Sabha and has since resigned from the membership of the Committee.

INTRODUCTION

1. I, the Chairperson, Public Accounts Committee (2015-16) having been authorised by the Committee, do present this Forty Sixth Report (Sixteenth Lok Sabha) on 'Implementation of Public Private Partnership project at Chhatrapati Shivaji International Airport, Mumbai' based on C&AG Report No. 15 of 2014 (Performance Audit), Union Government 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 18th July, 2014.

3. The Public Accounts Committee (2014-15) took up the subject for detailed examination and report. The Committee hold informal discussion with the representatives of the Ministry of Civil Aviation/AAI/IAL on the subject during their study visit to Mumbai in 2015 and in 2016. As the examination of the subject could not be completed due to paucity of time, the Public Accounts Committee (2015-16) re-selected the subject to continue the examination and took evidence of the representatives of the Ministry of Civil Aviation at their sitting held on 16th November 2015. 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 25th April, 2016. 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 Committees 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, Airport Authority of India and IAL 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 and the PAC Secretariat in preparation of the Report.

NEW DELHI;
26 April, 2016
06 Vaisakha, 1938 (Saka)

PROF. K.V. THOMAS
Chairperson,
Public Accounts Committee

REPORT

PART - I

I. BACKGROUND

With a view to set up world class international airports in the country, Cabinet approved the restructuring of airports of Airport Authority of India (AAI) in January, 2000 through long term lease route in pursuance of the Policy on Airport Infrastructure (PAI) 1997. While approving the restructuring of airports 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 partner. 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 State (Independent Charge) of Civil Aviation 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. Subsequent to the formation of the new Government, the Minister of Defence was made the Chairman of the EGOM when the EGOM was reconstituted in June 2004.

5. The EGOM in February 2005 approved all the key principles of the Request for Proposal (RFP) document along with 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 Chhatrapati Shivaji International (CSI) Airport, Mumbai, the JV partner approved was M/s GVK Consortium. The consortium comprised of three private entities namely (i) GVK Industries Limited; (ii) Airports Company South Africa Limited; and (iii) Bidvest Group Limited.

8. AAI incorporated a subsidiary Joint Venture Company (JVC) on 2 March 2006 and named Mumbai International Airport Private Limited (MIAL). After the OMDA was signed on 4 April 2006 between AAI and the JV partners, AAI transferred 74 per cent of the equity shares in MIAL to JV partner in accordance with the Shareholders' Agreement (SHA). In terms of the agreement, the issued share capital of MIAL was ₹200 crore which was jointly held by AAI (26 per cent), GVK Airport Holdings Private Limited (37 per cent), Bid Services Division (Mauritius) Limited (27 per cent) and ACSA Global Limited (10 per cent). Subsequently, on 18 October 2011, 1,08,00,000 shares (out of 5,40,00,000 shares) of Bid Services Division (Mauritius) limited were acquired by GVK Airport Holdings Private Limited raising its stake in MIAL to over 50 per cent. The paid up equity capital of MIAL as on 16 April 2012 was ₹1200 crore with the share of AAI at 26 per cent, GVK Airport Holdings Private Limited (50.5 per cent), Bid Services Division (Mauritius) Limited (13.5 per cent) and ACSA Global Limited (10 per cent).

II. AUDIT REVIEW

9. This report is based on Audit Report No. 15 of 2014 for the year ended March 2013. The Audit Report No.15 of 2014 was prepared after taking into account the findings of Audit as contained in their Report No.5 of 2012-13 and the recommendations of PAC thereon as contained in their 94th Report (15th Lok Sabha) on the subject "Implementation of PPP project at IGI Airport, Delhi". The Audit observations pertain to operationalization of the JV mode and implementation of the OMDA and SSA. The intention was to protect the revenue interest of the Government of India. The decision to enter into a Joint Venture to develop and manage CSI Airport at Mumbai was first of its kind along with the IGI Airport at Delhi. Some of their important observations made by Audit in this case are identical to the observations made in case of IGI Airport Delhi which includes 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; 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; deficient land records at CSI Airport; change in Major Development Plan; funds diverted from PSF (security component) escrow Account for purchase of Security Equipment by MIAL; and irregular withdrawal from PSF (SC) Escrow Account.

10. Performance Audit of Implementation of Public Private Partnership (PPP) project at Chhatrapati Shivaji International (CSI) Airport, Mumbai was conducted by the audit to assure that the revenue interest of the Government was protected. The actual operation of PPP arrangements in CSI Airport, Mumbai was also studied and its impact on government and other stakeholders assessed.

11. Against this backdrop, the Public Accounts Committee (2014-15 and 2015-16) 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, AAI and MIAL and obtained post evidence replies. Besides, the Committee also visited the CSI Airport, Mumbai in January 2016 to have an on-the-spot assessment of the project. Based on written and oral depositions by the Ministry, the Committee examined the subject in detail and discussed some of the issues as enumerated in the succeeding paragraphs.

III. DESCRIPTIONS OF THE TRANSACTION DOCUMENTS

12. Consequent to the decision to hand over CSI Airport to the Joint Venture Company i.e. MIAL 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): Together with the State Support Agreement (SSA), OMDA is the most important document and formed the soul of the PPP in CSI Airport, Mumbai. The OMDA, signed on 4 April 2006 between AAI and MIAL, 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.

(ii) State Support Agreement (SSA): Complementary to the OMDA, the State Support Agreement was signed between Government of India represented by MOCA and MIAL on 26 April 2006. It laid down the responsibilities and obligations of MOCA and MIAL 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 27 April 2006 between the Government of Maharashtra and MIAL to provide support services to the project. The agreement provided that the State Government will provide support to MIAL 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 MIAL.

(iv) Lease Deed Agreement: The Lease Deed agreement was signed on 26 April 2006 between AAI and MIAL 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 26 April 2006 between AAI and MIAL according to which the former was to provide air traffic services support at the airport as AAI was authorized to provide necessary air traffic services within the country's air space and at all civil airports.

(vi) Shareholders Agreement: Signed on 4 April 2006 by AAI and MIAL 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, MIAL 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 MIAL. Accordingly, an agreement was signed on 28 April 2006 between MIAL and ACSA Global Ltd. (Airport Operator) to provide airport services.

IV. PROJECT MANAGEMENT

(i) Design constraint

13. CSI Airport Mumbai has a design constraint on account of cross alignment of the two runways (runways 09/27 and 14/32). The initial plan submitted by GVK at the time of bidding proposed a parallel runway to increase the runway capacity of the airport. However, this proposal was shelved due to involvement of large scale relocation of facilities and need for acquisition of privately owned land. With this constraint, Audit observed that the maximum passenger traffic handling capacity of CSI Airport, Mumbai even after modernisation and up-gradation will be 40 million passengers per annum. This saturation point is expected to be reached by 2015 as per traffic projections. Thus, the airport will reach its design capacity by the time its modernisation and up-gradation is completed.

14. The MOCA informed the Committee that Development of second airport was envisaged as CSIA, due to land constraint, would become saturated in future. They also gave detailed plans of MOCA to control congestion at the CSIA, since Juhu and Navi Mumbai airports were at planning stage. In their written submission, they stated as follows:

"M/s MIAL has constructed and operationalized the new Terminal at CSIA, Mumbai with a passenger handling capacity of 40 million passenger per annum (mppa). Further, as part of the airside development program, MIAL has taken many initiatives to increase airside capacity beyond 40 mppa. Improvements in ATC processes, DGCA regulations and introduction of other best practices have led to operational efficiencies such as reduction in runway occupancy time and reduction in aircraft separation. The airside capacity has already improved due to High Intensity Runway Operations. Hourly movements have substantially increased and MIAL is handling comfortably 48 hourly movements. Further increase in airside capacity is also possible if larger aircraft are used by airlines on at least ten most busy domestic routes such as Mumbai-Delhi, Mumbai-Bangalore, Mumbai-Hyderabad, etc, and some international routes especially the Middle East. In fact few airlines such as Emirates and Singapore Airlines have already started operating larger aircraft such as A-380 from Mumbai on international routes and various other airlines are also in the process of commencing operations shortly from Mumbai with larger aircraft.

15. During evidence before the Committee a representative of the AAI further added that in 2002, when the restructuring of the airport was approved, the Mumbai Airport

handled about 12.26 million passengers. It was handed over in 2006, it was handling from the Terminal 1A, 1B and 2C of CSIA. In 2006, the total capacity was 19 million and it handled about 18.4 million. As on today, the capacity is 40 million, which has been created and the size reached is 36.63 million. It is upgradable to 50 mppa by 2020.

16. In reply to a query of the Committee regarding plan of action for expediting NMIA Project to relieve the congestion at CSI Airport, Mumbai, the MOCA submitted as under:

"In order to meet the capacity constraints, second airport at Navi Mumbai has been planned as envisaged in State Support Agreement. Government of India has granted 'In Principle' approval to Govt. of Maharashtra (GoM) for setting up of a Greenfield International airport at Navi Mumbai in Maharashtra. The airport is proposed to handle a passenger capacity of 25 MPPA (extendable to 60 MPPA) and will be developed under the Public-Private Partnership (PPP) mode by setting up a Special Purpose Company (SPC) with equity participation from City and Industrial Development Corporation of Maharashtra Limited (CIDCO). The NMIA project has already received approvals from Ministry of Civil Aviation, Ministry of Environment & Forests, and Ministry of Defence. The project requires an area of 1864 Ha, out of which 1572 Ha has been acquired. State Government has already completed the Request for Qualification (RFQ) stage and has projected to operationalize first phase of the airport by December, 2020".

(ii) Right of first refusal

17. State Support Agreement (SSA) allows MIAL a Right of First Refusal (ROFR) on the second airport planned within 150 km radius of the CSI Airport, Mumbai. If MIAL is unsuccessful in the competitive bidding process for the second airport, it would be allowed to match the best bid, provided MIAL's bid lies within a 10 per cent range of the most competitive bid and MIAL has performed satisfactorily without any material default at the time of exercising the ROFR. This condition will be applicable for the first 30 years. Allowing such ROFR thwarts competition and provides MIAL with a natural advantage on the second airport. MOCA had earlier assured Public Accounts Committee on similar provision in case of Delhi International Airport Limited (DIAL) that safeguards had been provided to ensure transparency and Competitiveness.

18. The Committee desired to know the safeguards envisaged by MOCA to ensure competitiveness in the bid for second airport in the face of ROFR. The MOCA replied as under:

" Government of India has entered into State Support Agreement (SSA) with M/s MIAL. Vide Clause 3.4 of the Agreement, MIAL has been given right to exercise Right of First Refusal (ROFR) with regard to a second airport within a 150 km (One Hundred and Fifty Kilometer) radius of the Airport. However, while granting ROFR to M/s MIAL, certain safeguards have also been incorporated so that MIAL does not take unwarranted advantage of the provision. The salient features and safeguards envisaged in the SSA are as follows:

- i. The "Right of First Refusal (ROFR)" with regard to a second airport within a 150 km (One Hundred and Fifty Kilometre) radius of the Airport has been given to the JVC i.e. MIAL by following a competitive bidding process, in which the JVC can also participate if it wishes to exercise its ROFR.
- ii. In the event, the JVC is not the successful bidder but its bid is within the range of 10% of the most competitive bid received, the JVC will have the ROFR by matching the first ranked bid in terms of the selection criteria for the second airport.
- iii. For the purpose of exercising the ROFR, JVC has to perform satisfactorily at the existing airport i.e. CSIA, Mumbai without any material default under any Project Agreement at the time of exercising the ROFR.
- iv. A sunset clause has been provided that RoFR will not be available to JVC after initial 30 years of first term.
- v. Existing JVC is not to be consulted in the planning process of the second airport.
- vi. RoFR applies within 150 KM of the existing airport. However, ROFR is not available with the JVC in case of any proposal by GOI to develop a second airport at Chakan, Pune or at any other place in its vicinity."

19. In reply to a query of the Committee regarding formation of a new subsidiary company - Navi Mumbai Airport Developers and steps taken to ensure that it does not derive any additional benefits on second airport, the MOCA submitted as under:

"In terms of clause 3.4.1 the State Support Agreement, the Right of First Refusal with regard to a second airport within 150 km radius of the Airport will be given to MIAL by following a competitive bidding process in a transparent manner and in compliance to the provisions of Article 2.2.1 of OMDA. This RoFR has to be within 10% of the highest bid which will lead to aggressive bidding enhancing the competition further."

20. In response to another query of the Committee, the Ministry furnished a written reply wherein it is informed that in the 47th Board Meeting of MIAL, a decision has already been taken to wind up the subsidiary viz. 'Navi Mumbai Airports Developers Private Limited'. The process of winding up is already initiated by MIAL.

(iii) **Concession Period**

21. MIAL enjoys unilateral right to extend the concession period of 30 years for another 30 years 'on the same terms and conditions', provided no event of default had taken place during the 20th to 24th year of the first concession period. Absence of review clause, thus, virtually allows MIAL the right to operate the airport for a period of 60 years with the terms and conditions frozen in OMDA. On similar provision made in case of Delhi International Airport Limited (DIAL), the Public Accounts Committee in their 94th Report had desired to be apprised how the joint venture would pave the way for future airport development and modernization in the country.

22. The Committee desired to know from the MOCA about their plans to devise an appropriate strategy to effectively comply with the concern expressed in PAC recommendation in view of benefit conferred upon MIAL which would translate into almost an automatic extension of the initial concession period to another 30 years. The Ministry in their reply furnished as under:

"There are no benefits conferred upon MIAL by the right to extend the concession period for another 30 years in terms of Article 18.1 (b) of OMDA. While entering into an Agreement with the JVC, it was ensured to check the unwarranted benefits to it by laying down the stringent conditions on JVC such as adherence to laid down standards, performance indicators, mandatory investment, satisfactory performance throughout the period, Objective Service Quality Requirements etc. Non-compliance of which attracts penalties and liquidated damages which can lead to termination and cancellation of the agreement by AAI and government. Hence, JVC does not have automatic right to extend the period but is subject to conditions and review by AAI and further subject to overall stringent yardsticks laid down in OMDA and monitored by AAI.

Further, Airports have long gestation periods and the investor needs long term period to plan and execute projects apart from making considerable upgradation depending on the requirement. The longer lease tenure improved the attractiveness of transaction and bidders were able to factor in the improved cash-flow and investment recovery profile while bidding for this project. It would enable the concessionaire to recover its investment with a reasonable rate of return. Besides, the extension provision was part of the bidding process and known to all the bidders. The prospect of long lease term resulted into high Revenue Share of 38.7% for the CSIA, Mumbai. Hence, no extra or new benefit has been conferred on MIAL.

It is prominent to notice that the case of implementation of PPP of Mumbai airport was one of the pioneer efforts in the Civil Aviation Sector as there was no such precedence available before the Government. Hence, there was apprehensions

among the prospective bidders regarding, availability of enough opportunity for them to extract the profit out of their huge investment made by them. These airports required huge investment and management skill to build and operate them as world class airports. If AAI were to do it, there would have been a severe resource crunch for AAI and it could not have taken up development of other airports."

23. The Committee enquired to know whether MOCA had explored the global experience of PPP projects at the time of implementation of PPP project at Mumbai airport. The MOCA replied as under:

Airport projects involve very long gestation periods that lead to high-level of uncertainty and cost-overruns. These uncertainties are further accentuated by the fact that continuous capital expenditure on account of capacity saturation as well as technological advancements may be required periodically. This uncertainty may increase the risk perceptions, thereby having a negative impact on the bankability of the project. Hence, a longer concession period was suggested in the Cabinet Note dated 01.09.2003 in line with the practice followed in various international airports concessions. The details of various PPP projects undertaken across the globe are as under:

Table I: Major international infrastructure projects undertaken through PPP mode

Project Name	Year	Country	PPP Mode	Type	Total Project Cost	Financing Mix (Debt: Equity)	Government support
Kenya-Uganda Railways	2006	Kenya, Uganda	Concession	Brownfield	USD 404 million	70:30	Leasing of assets
National Referral Hospital	2008	Lesotho	Concession	Brownfield	USD 100 million	85:15 (excl. govt. equity)	USD 80 million equity
City Link, Melbourne	1996	Australia	Concession / BOT	Greenfield	USD 2.2 billion	59:41	None
Second seven crossing bridge	1992	UK	DBFO	Greenfield	USD 1	91:9	None
Rosario-victoria bridge	1997	Argentina	DBOM	Greenfield	USD 385 million	32:68	48% Grant
Vasco-de-gama Bridge	1994	Portugal	Concession	Brownfield	USD 1.2 billion	59:41	36% Grant
Karnataka Urban Water Supply Improvement Project	2005	India	OMT	Brownfield	USD 14 million	80:20	None
Amritsar Intercity Bus Terminal Project	2004	India	Concession	Brownfield	USD 3.6 million	56:44	None

Table II - Major Brownfield airport projects undertaken through PPP mode Project

Project Name	Year	Country	PPP Mode	Total Project Cost	Financing Mix (Debt: Equity)	Government support
Up-gradation, Operation and Maintenance of Hamburg International Airport	2000	Germany	Concession	USD 453 million	63:37	Leasing of assets
Rehabilitation, Operation and Maintenance of Domestic Terminal at Murtala Muhammed Airport	2003	Nigeria	Concession	USD 200 million	75:25	Land and assets lease
Rehabilitation, Expansion and Operation of the Queen Alia International Airport	2007	Jordan	Concession	USD 675 million	41:59	Land and assets lease
Expansion of the Pulkovo Airport in St Petersburg	2009	Russia	Concession	USD 1,552 million	60:40	Land and assets lease
Up-gradation & Expansion of King Abdul Aziz International Airport Hajj Terminal	2006	Saudi Arabia	Concession	USD 320 million	80:20	Land and assets lease

Source: "Infrastructure PPP financing in India", a report prepared by the World Bank in 2007

24. On being enquired whether MOCA is maintaining a regular and well documented review of financial as well as operational performance of MIAL, the Ministry replied as under:

"There are several expressed provisions in the OMDA for Monitoring and supervision of the operational and financial performances of the JVC. Chapter 10 of the OMDA mandates the JVC to submit reports on regular basis such as Monthly activity report (passenger traffic, aircraft movements, cargo, etc.), Other operating statistics as required by MCA, AAI, ICAO, IATA and Relevant Authorities, Reports on various indicators of performance measurement, Quarterly financial accounts, Annual budget, Latest update of Business Plan, Annual maintenance program, the daily traffic record, and other such reports/information as required by AAI.

For the above purpose, an Institutional Mechanism is in place in form of a Joint Venture Cell (JVC) in the Airports Authority of India for monitoring of the performance of all the Public Private Partnership (PPP) projects in Airport Sector including CSIA, Mumbai. The JV Cell maintains the data relating to CSIA, Mumbai and monitors its performance at AAI level and furnishes these data to MoCA as and when required. Further, Independent Engineers for monitoring the

project construction works/procurements and Independent Auditor to certify the revenue details for the purpose of Annual Fee payable by concessionaire to AAI have been appointed.

At the Ministry level, a separate dedicated unit (the "OMDA Implementation Oversight Committee" or "OIOC") under the chairmanship of Secretary, MOCA has been set up as a 'single point of contact' for the JVC and to ensure that the Conditions Precedent as contemplated under OMDA are duly met/fulfilled. The Committee meets regularly and reviews the performance of JVC.

Besides, a regulatory Authority namely, Airports Economic Regulatory Authority of India (AERA) has been established for determination of tariff and promoting competition in airport related services. AERA determines the aeronautical charges for CSIA, Mumbai based on the Financial and Operational performance of the airport."

(iv) Change in scope of work and Master Plan

25. As per OMDA, MIAL had to submit the Master Plan and Major Development Plan for development of CSI Airport, Mumbai, before the expiry of six months from the date of execution of OMDA to AAI for its information and MOCA for its review and comments. Specific schedule for MOCA's suggestions and MIAL's action thereupon leading to firming up of the plans is also laid out in the SSA. MIAL submitted the initial Master Plan and Major Development Plan (MDP) on 03 October 2006, revised Master Plan in 2007 and revised MDP in 2007 after seven and thirteen months respectively as against the time limit of 15 days specified in SSA. Subsequently in March 2011, MIAL submitted a modified Master Plan. Master Plan for the project, thus, remained flexible for over five years (October 2006 to March 2011). MOCA accepted changes in Master Plans and did not comment about the delay in submission of the same Master plan 2007 which had reflected major change in scope of work centralizing passenger handling facilities at Sahar instead of a terminal building for all international passengers and 60 per cent domestic passengers at Sahar. This change led to increase in costs and contributed to delay in project execution. However, this change did not alter the capacity constraint of the airport as capacity remained at 40 mppa.

26. The Committee enquired whether there was any change in FAR (Floor Area Ratio) after change in Master Plan. The Ministry informed that there was change in

FAR (FSI) due to construction of new integrated terminal of the airport. The change in FAR (FSI) is in compliance with local laws.

27. The Committee enquired about the action taken, if any, by MOCA against delay in submission of Master Plan by MIAL. The Ministry submitted as under:

"As per requirement of OMDA, MIAL submitted a Master Plan in October 2006 to MOCA/AAI. In this Master Plan, Major Development Plan was provided inter-alia envisaging to modify and refurbish existing Terminal 2 (T2). Master Plan submitted was reviewed by MOCA/AAI and it was commented that it may have been appropriate for JVC to consider development of ultimate terminal under one roof at Sahar. MIAL considered the suggestions to have the Terminal under One-roof because of the various advantages between earlier and the new plan of "one roof". MOCA/AAI were required to provide suggestions to Plan in the overall interest, modernization and passenger facilitation. It may be noted that there is no provision in OMDA to approve the Project Cost which fall under the purview of AERA under SSA. MOCA vide its letter No. AV.24011/015/2006-AAI (Pt.I) dated 27th October, 2006 provided interim comments to MIAL which were based on inputs from AAI. MIAL acknowledged receipt of interim comments/ suggestions of MoCA and further mentioned that it awaits final comments of ministry in order to respond to the same as stipulated under SSA. The Initial master plan provided for construction of parallel runway, unified integrated building etc. However, based on the ground realities like non availability of land due to encroachment, the runway work could not be taken up. Hence, the same was dropped to be subsequent development plan. After considering all the comments of AAI / MoCA, MIAL submitted a Master Plan in May 2007 and MDP in November 2007. In view of the changed circumstances and change of scope of work a revised Master Plan in 2011 was submitted by MIAL taking into consideration all requirements of the additional work and deletion of work which were not feasible as stated above. The master plan was revised by MIAL depending upon the progress of the work and there was no delay."

28. The Committee enquired whether the change in scope of work for integrating passenger handling facilities at Sahar justified in view of the present plans to retain both the terminals i.e. T1A and T1C. The Ministry replied as under:

"MIAL has taken many initiatives to increase airside capacity beyond 40mppa. In the long run, with more advanced and larger aircraft coupled with best flying and operating practices, airside capacity is bound to increase. Given the fact that Terminal 2 cannot be expanded any further due to land constraints, and to strike a balance between possible increase in airside capacity and optimization of available resources, it was felt essential to utilize part of Terminal 1 facilities. Further, in order to efficiently utilize night parking capacity at Santacruz and also to avoid unnecessary movement of aircraft/ busing of passengers, use of part of Terminal 1 is necessary.

Keeping this in mind, in the revised Master Plan 2011, MIAL had proposed to retain Terminal 1A and Terminal 1C to meet the future demand / growth beyond 40 mppa. It may be noted that Terminal 1C has been newly constructed in 2010, whereas Terminal 1A was commissioned in 1992, which was recently refurbished / renovated by MIAL. Final decision about retaining Terminal 1A/ T1C/ T1B is to be taken in due course considering relevant facts about estimated final airside capacity, traffic growth and overnight parking requirements at Terminal 1 due to parking space constraints at Terminal 2.

Hence, integrating passenger handling facilities at Sahar was imperative to minimize/ eliminate inter terminal transfers, where there is no possibility to provide rapid transportation. Besides, regulatory requirements are so cumbersome yet unavoidable that it is essential to provide integrated terminal."

(v) Mandatory Capital Projects

29. As per OMDA, MIAL had to complete 32 Mandatory Capital Projects (MCPs) by March 2010. Out of these 32 MCPs, 28 were to be completed by May 2008. One of the MCPs (S-06) was not completed on time and was delayed by two years SSA provided for incentive to MIAL through a 10 per cent increase in airport base charges provided MCPs were completed by May 2008. MOCA allowed the incentive to MIAL though MIAL failed to complete the project in time. The scope of another mandatory capital project (S-09) for the terminal building was revised and its implementation delayed by two years (actual completion date being March 2012 as against scheduled completion date of March 2010). The original scope of work included completion of the international terminal building. Even with the mandatory capital project completed in March 2012, the international terminal could be made ready only by January 2014. In addition to MCPs, Master Plan 2007 had listed a set of 45 other capital works which included airside works, terminal works and city side development which were necessary for overall execution of the project. Actual progress of work was slow with only three works having been completed in Phase 1 (ending 2010) as against the targeted eight. Although AAI had the right to levy liquidated damages on MIAL, no communication urging MIAL to speed up the work was on record.

30. In view of inordinate delay in completion of terminal facilities, the Committee desired the MOCA to justify achievement of efficiency advantages expected from the PPP arrangement. The Ministry in their reply furnished as under:

"CSI airport is severely land constrained airport. Development of airport heavily depended on timely availability of various land pockets and also on removal of impediments like relocation of certain facilities. Mumbai airport had a large number of inherent problems which were specific to this airport which caused delay and MIAL could not be blamed for the same. Shifting of Shivaji statue was a complex issue and took a lot of time to resolve. Notwithstanding the severe challenges illustrated above, the PPP arrangement successfully derived the solutions by applying innovations, diligence and deploying best of talents and practices to successfully complete the state of the art integrated passenger terminal T2 and to upgrade the airside to world class standards. All this was achieved essentially on the site of existing airport while the airport operations were in full swing and highest standards of passenger services were maintained. Airport Service Quality (ASQ) ratings of CSIA has consistently improved.

As per Economic Impact Study conducted by National Council of Applied Economic Research, in 2009-10, around Rs 286.3 billion or 0.44 per cent was contributed by CSIA's operational activities to India's GDP. Its contribution relative to the regional economy (Maharashtra) was 3.35 per cent of the state's GSDP. In terms of employment contribution, CSIA's operations sector has contributed about 1,425 thousand jobs (0.31 per cent of the national employment) in 2009-10 and as a ratio to Maharashtra's employment it contributed 2.90 per cent. The report has indicated that during the construction period i.e. FY 2008-09 to 2015-16, the economic contribution of CSIA's construction in terms of value added and employment to the national and regional economy is estimated as: Direct contribution of ₹ 75.5 billion in income and 20,000 jobs to the national economy indirect (multiplier impact) contribution of Rs 122.3 billion in income and 1,078,000 jobs to the national economy. Hence, economic and efficiency advantages expected from the PPP arrangements are obviously achieved."

31. The Committee then enquired about the reasons for not levying liquidated damages in view of the article 8.3.8 of OMDA for delay in Other Capital Projects. The Ministry in their written submission furnished as under:

"Clause 8.3.8 of OMDA provides for the penalty to be imposed by the AAI in case of failure of the JVC to implement the Capital Projects within the Target dates. Highlights of the provision set out in the Clause 8.3.8 of the OMDA are as under:

i. The Master Plan has to incorporate target dates for construction of individual facilities (the "Targets") which should be linked to traffic trigger points or otherwise.

- ii. The JVC is to ensure that each of the Targets is met fully and on time.
- iii. Default in Commencement: In the event that a project set out in the approved Master Plan is not commenced at the designated traffic trigger or such other trigger and there is no explanation provided by the JVC to AAI that is satisfactory to AAI (at its sole discretion), AAI shall have the right to levy liquidated damages on JVC equivalent to 0.5% of the estimated capital cost of the project for each week the project is delayed, on the JVC.
- iv. In the event there is delay in commencement of a project, and liquidated damages have been paid in respect of such delay, and in spite of delay in commencement, the relevant project is completed within the time period set forth in the Master Plan, then the liquidated damages already received in respect of delay in commencement shall be returned by AAI to the JVC without any interest.
- v. Default in Completion: AAI shall have the right to levy liquidated damages on JVC at the same rate in the event the time period for the completion of the project exceeds the time period of construction set out in the Master Plan, subject to the delay not being on account of delay in commencement, in respect of which liquidated damages have been paid by JVC to the AAI.
- vi. The total liability of the JVC under this Article 8.3.8 for delay in respect of a particular project shall not exceed 10% of the capital cost of the relevant project.

From above, it is evident that the "Targets" have to be linked to traffic trigger point or otherwise and any default in completion should be backed with appropriate justification. Out of 8 projects to be completed in Phase I, MIAL completed 3. Out of the remaining five projects indicated in Phase 1 of development. Hence, any delay in completion of these projects does not affect traffic handling capacity of the airport. In view of absence of any linkage to traffic trigger, imposition of Liquidated Damages under clause 8.3.8 is not applicable.

Besides, except for two works (S06 and S09), other Mandatory Capital Projects (MCPs) were completed in time. The reasons for delay were examined through an Independent Engineer and the reasons for delay were found to be justified and rescheduling was allowed by MOCA for completion of the projects. The delay in completion of MCPs was attributable to circumstances and situations beyond the control of MIAL as the works were being carried out with significant operational constraints.

As already mentioned CSI Airport is a severely land constrained airport and development of airport is contingent on availability of land either to be retrieved after slum rehabilitation or to be obtained from agencies including Air India, MET, CPWD, Ministry of Health etc.

It may be observed that retrieving such land is not in control of MIAL.it may kindly be observed that in majority of the cases project could not start because of non-availability of land. However, it has been ensured that

projects which were to be commenced and completed due to traffic trigger are not delayed thereby fully compliant with OMDA. In all the cases AAI has been kept informed about non-availability of land. Hence, MIAL has always provided lawful explanation for any delay. There is no question of any LD to be imposed."

32. Giving details about the planning of MOCA for strengthening the monitoring structure related to progress of work, the Committee were informed as under:

"A robust monitoring structure is already in place as detailed below:

a) Independent Engineer: AAI has appointed an Independent Engineer (IE) to monitor the project progress and to send periodical reports to AAI. Based on these reports of IE AAI is following up with MIAL on various projects.

b) MIAL Board: MIAL Board monitors progress of the project where nominees are senior officials of AAI/MoCA.

c) OMDA Implementation Oversight Committee (OIOC): As per provisions of OMDA a committee, OMDA Implementation Oversight Committee chaired by Secretary, MOCA periodically meets to, inter alia, review progress of the project and resolution of, inter alia, issues relating to project implementation."

V. PROJECT FINANCING

(i) Increase in Project costs and assessment of efficiency of capital expenditure

33. OMDA and SSA do not specify any cost for the project. The initial estimate of project cost was ₹5,826 crore (2006) which has been revised upward by MIAL progressively in 2008, 2010 and finally in 2011 to ₹12,380 crore. The major reasons for increase in project cost were change in scope of work to *developing a new integrated common user terminal at Sahar and delay of 17 months for relocation of Shivaji Maharaj statue*. AERA restricted project cost to ₹11,647.46 crore for the period upto March 2014. As significant expenditures have been shifted to future control periods (beyond 2013-14) by AERA, the project costs are set to increase further. AERA also noted deficiencies reported by Technical and Financial Auditor in implementation of projects like process deficiencies, non preparation of detailed cost estimates, consideration of high risk premium etc.

34. In response to a query of the Committee regarding grant of extension of time to MIAL while considering the fact that the Shivaji statue was located in the demised premises handed over to MIAL in 2006, and, hence, responsibility of MIAL, the Ministry stated as under:

"It is a matter of fact that location of Shivaji statue was in the demised premises that was handed over to MIAL in 2006 and need of its relocation was known all along, once decision to construct new integrated terminal complex was taken. However, in view of sensitivity involved in such relocation, it was essential for MIAL to have dialogue with all stakeholders. Most importantly relocation of statue required permission of Government of Maharashtra (GoM) under State Government administrative mandate. MIAL initiated dialogue with all concerned stakeholders, including GoM, for this purpose and conclusion of the issue took time. Once permission of GoM was granted in August 2011, statue was relocated immediately. Though it looks it took a long time to relocate the statue, but fact remains that under political circumstances prevailing in the state, especially in Mumbai, it was impossible to predict with certainty the definite timeline to achieve the same. Hence granting extension of time in this respect was fully justified and necessary."

35. As per State Support Agreement, the target revenue & hence airport tariff increase with increase of total project cost. The Committee asked whether MOCA have plans to cap project costs in future projects. The Ministry responded as under:

"Airports Economic Regulatory Authority of India has come up with its Normative Approach for Economic Regulation of the Major airports and has issued a Consultation Paper in this regard. This consultation paper, inter alia, envisages to put a ceiling on the capital cost for arriving at the Target Revenue while determination of Aeronautical Tariff at major airports. The proposed approach of AERA is at consultation stage".

36. The Technical & Financial Auditor had pointed out a set of deficiencies in project implementation on which no action had yet been initiated by AAI/MOCA. The Committee wanted to know if MOCA would consider putting in place a suitable monitoring mechanisms such that concerns regarding inefficient project implementation could be addressed. The Ministry in their reply furnished as under:

"A suitable monitoring mechanism is already in place. In line with Section 8.5.8 of OMDA, AAI appointed an Independent Engineer whose responsibilities as per Schedule 21 are:

- 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 benchmarking 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. In this regard, Independent Engineer shall ensure that
 - i) Owners requirements, Master Plan requirements, specifications and design parameters in any agreement or agreed through OMDA mechanism have been fully addressed/ complied with.
 - ii) Quantity are reasonable.
 - iii) Reasonable and fare time for completion of projects(excepting Mandatory Capital Projects/ Stage-I projects) has been given.
- To review the award of any contract in relation to any and all aspects of design, construction, completion, commission and development of the Airport or any other commercial contract to any Group Entities of the JVC.
- To perform any other duties as would be deemed necessary and specified in the appointment letter.

Both Technical and Financial Auditors had pointed out certain process related issues and made a general comment that it led to increase in Project Cost. However, they had not ascribed any additional cost, specifically to these items. They had stated that it is difficult and subjective to assess the impact of the process related issues in quantitative terms. Observation of Technical and Financial Auditors were suitably responded during determination of Development fee and tariff determination by AERA. Such submissions were duly considered by AERA."

(ii) Airport Development Fee

37. As per OMDA, MIAL was to arrange for financing through suitable debt and equity. OMDA also provided that MIAL can list its shares on Mumbai and/or National Stock Exchange. As per the initial financing plan, the project cost of ₹5,826 crore was to be financed entirely through equity, internal accruals and debt. As the project cost increased progressively, MIAL sought and was allowed to levy Development Fee (DF) on passengers to cover the funding gap. No efforts were made to secure sources of financing for the project as envisaged in OMDA. With AERA's approval to levy of DF of ₹3,400 crore in December 2012, DF accounted for 29.19 per cent of project funding while the equity stake of the private partners of MIAL at ₹888 crore contributed a mere 7.6 per cent. The debt of MIAL had also not altered even as the project cost nearly doubled thus indicating that the finance risk for the project had not been appropriately transferred to the JV partner.

38. The Committee enquired if MOCA, before entering into the agreements consider the total capital expenditure required for the project and the quantum expected to be

borne by the JVC and the financing pattern of the project, if any, agreed upon. The Ministry in their response furnished as under:

"As per the provisions of OMDA, MIAL had to prepare a Master Plan and Major Development Plan for development of airport in accordance with the standard parameters set forth in the agreement. There was no provision for approval of Project Cost in the bid or subsequent to award by AAI/ MOCA. Accordingly, the Independent Engineers scope of work also did not contain provision for monitoring the project cost. The project cost was to be reviewed by AERA, while determining DF/tariff for CSIA. It may be noted that AERA had disallowed certain expenditure in the project cost. Financing pattern was, in general, to be debt and equity, however no specific financing pattern is part of OMDA. Development Fee was sanctioned as per provisions of the statute, and OMDA is governed by Indian Laws."

39. The Committee further desired to know whether MOCA did suggest/insist on MIAL employing alternate financing modes like listing of shares in stock exchanges as envisaged in OMDA rather than allow levy of Development Fee and in case of further increases in project costs (as is likely on account of shifting expenditures to future control periods), whether MOCA intend to allow further levy of Development Fee on passengers. The Ministry has replied as under:

"No, Sir. The determining factor for the grant of concession was the Revenue share quoted by bidders and not the Project Cost. Chapter 8 of OMDA sets out in detail the obligations of MIAL. Cost of the different phases of the project was not the determining factor. However it is obligatory on MIAL to ensure that the airport at all times meets the requirement of an international world class airport. Further MIAL is required to develop, manage and operate the airport in accordance with good industry practice. As a result, it was not mandatory for the Ministry to consider the Project Cost before entering into the agreements. Further, though OMDA provides for listing options, it was found to be not feasible considering the strategic interest of AAI through its 26% shareholding which would have been reduced to below 26% and that would not have been acceptable to AAI.

As regards, allowing DF in the future, AERA under section 13(1)(b) is mandated to determine the amount of Development Fee w.r.t CSIA, Mumbai taking 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 determines the amount of DF in accordance with the provisions of Section 13(1)(b) of the AERA Act read with Section 22A of AAI Act."

40. Interest on loan amount has been included in the quantum of DF levied on the passengers. The Committee wanted to know the reasons for the same. They also

enquired about the plans of the Ministry to address the concern in future projects, considering that the finance risk in the project has not been effectively transferred to the private partner. The Ministry in their reply stated as under:

"The DF is determined by AERA under section 13(1)(b) of the AERA Act, 2008 read with section 22A of AAI Act, 1994. However, as per Rules of the Airports Authority of India (Major Airports) Development Fee Rules, 2011, framed by the Government, the money deposited in the Development Fee Receipt Account can be used to pay for the servicing of debt to the lenders raised against Development Fees. Accordingly, in pursuance of these provisions of the Development Fee Rules, 2011, interest on loan raised against DF has been allowed by AERA and included in the quantum of DF to be levied on the passengers"

(iii) Assessment of funding Gap

41. During the process of finalization of levy of DF, AERA and MIAL both arrived at different figures for actual funding gap. This was due to difference in assessment of estimates of internal accrual. MIAL assumed internal accrual of ₹2,464 crore. The financial auditor estimated it at ₹4,021 crore after adding depreciation and deferred tax liability to profit after tax. AERA pointed out that accruals estimated by MIAL were based on their tariff expectations which were uncertain. AERA arrived at an internal accrual of ₹1,151.26 crore considering the actual cash balance (as on March 2012) and adding projected depreciation for two years (2012-13 and 2013-14). Lower estimation of internal accrual resulted in a higher funding gap which in turn led to levy of a larger DF on passengers

42. The low estimation of internal accruals resulted in higher quantum of DF. The Ministry while giving explanation for such low estimation of internal accruals furnished as under:

"CSI Airport, Mumbai has been restructured through joint venture route and leased to MIAL for a period of 30 year (further extendable of another 30 years) under Section 12A of the Airports Authority of India (AAI) Act 1994.

The Development Fee is levied under section 22-A of AAI act. This act was amended in 2003, much before signing of OMDA. Applicability of the act was in the knowledge of all the bidders It may further be noted that while delivering the judgement dated 26.04.2011, on the issue of whether levy of DF could be explicitly mentioned the Concession Agreements entered into with the JVCs

(DIAL & MIAL), Hon'ble Supreme Court in its conclusion, inter-alia, observed the following:

"...Though Airports Authority can utilize the fees levied by it, for all or any of these purposes mentioned in clauses (a), (b) and (c) of Section 22A, what can be assigned by the Airports Authority to a lessee under a lease entered into under Section 12A of the 1994 Act is the power to levy fees for the purposes mentioned in clause (a) of Section 22 A of the 1994 Act....."

Further Hon'ble Court has also observed that..."since we have held that the function of establishment and development of a new airport in lieu of an existing airport and the function of establishing a private airport are exclusive functions of the Airports Authority under the 2004 Act, and these statutory functions cannot be assigned by the Airports Authority under lease to a lessee under Section 12A of the Act, the lease agreements, namely, the OMDA and the State Support agreement could not make a provision conferring the right on the lessee to levy and collect development fees for the purpose of discharging these statutory functions of the Airports Authority. We, therefore, do not think it necessary to refer to the clauses of the OMDA and the State Support Agreements executed in favour of the two lessees to find out whether the right of levying and collecting the development fees has been assigned to the lessees or not.

Therefore, when the Airports Authority makes a lease of the premises of an airport (including buildings and structures thereon and appertaining thereto) in favour of a lessee to carry out some of its functions under Section 12, the lessee, who has been assigned such functions, will have the powers of the Airports Authority under Section 22 of the Act to collect charges, fees or rent from the third parties for the different facilities and services provided to them in terms of the lease agreement".

.....In the absence of such contractual relationship, the liability of the embarking passengers to pay development fees has to be based on a statutory provision and for this reason Section 22A has been enacted empowering the Airports Authority to levy and collect from the embarking passengers the development fees for the purposes mentioned in clauses (a), (b) and (c) of Section 22A of the Act. In other words, the object of Parliament in inserting Section 22A in the 2004 Act by the Amendment Act of 2003 is to authorize by law the levy and collection of development fees from every embarking passenger de hors the facilities that the embarking passengers get at the existing airports"

In view of the above conclusions of Hon'ble Court, it is clear that Govt cannot give power to levy DF through an agreement; it can only be done through statutory provisions and as stated above. The statutory provisions were known to all the bidders upfront before issue of RFP. Hence, observations of Audit that financing of the project can be done only as per clause 13.1 of OMDA is not correct.

It may further be noted that the very concept of DF came into being through the Act 43 of 2003 (section 6 and section 7) which was passed by Parliament in 2003 for privatizing the Delhi and Mumbai airports. AAI Act, 1994 was amended

suitably and Government came out with the bidding documents in 2005 for Delhi and Mumbai airport privatization based on the amended AAI Act, 1994 facilitating the levy of DF; as is clear from the newly incorporated Section 22A. The AAI Act, 1994 was specifically listed as one of the governing legislation for the aviation sector in India in Paragraph 6.2 (Pg. 98) of the Information Memorandum dated 1st April 2005, provided to all potential bidders at the time of privatization of Mumbai Airport. The AAI Act, 1994 (amended in 2003) was also provided to all bidders in the CD #1 accompanying the RFP documents released on 1st April 2005. This amendment to AAI Act, (and specifically section 22A) was also reiterated by the Hon'ble Minister of Civil Aviation in the Parliament on 2nd December 2004 and publicised by National Media like Press Trust of India and Business Standard. Hence, there was no need to expressly repeat all provisions of the AAI Act in the bid documents.

Though OMDA provides for listing options, it was found to be unfeasible considering the strategic interest of various stake holders which would have been reduced. Development Fee was considered as a last resort after refusal of further equity by stake holders, unwillingness on the part of the lenders to finance the project etc.

Further, AERA has determined the DF in respect of Mumbai Airport after considering all the factors and after due diligence of the relevant provisions of AAI Act. AERA has given detailed reasoning for approval of DF in their order. The internal accruals calculation by MIAL and independent auditor was based upon increased tariff sought by MIAL while filing its Multi Year Tariff Proposal (MYTP) to AERA. Since AERA has allowed much lower tariff (164.29%) compared to 881.29% asked by MIAL, projected internal accruals had to be reduced correspondingly and AERA has considered the same while finalizing means of finance after taking into account actual funds that would be available for project funding after netting of funds utilised for operations capex, disallowed project cost and other current assets."

VI. REVENUE SHARING

43. The financial bidding criterion for selection of JV partner was the revenue share of JV with AAI. MIAL shares 38.7 per cent of the revenue to AAI. As MIAL outsourced its activities it may result in further reduction of revenue to AAI.

(i) Aeronautical tariff in 'shared till' arrangement

44. The State Support Agreement has adopted a shared till model for CSI Airport, Mumbai where only 30 per cent of non-aeronautical revenue is considered while fixing aeronautical tariffs. Other airports (barring IGIA, Delhi) follow a single till model where the entire non-aeronautical revenue is considered. The shared till model results in higher aeronautical tariff. Thus, the burden on passengers would be higher in CSI

Airport, Mumbai. PAC in its report on DIAL urged the Government to consider the aspect that shared till actually increased the burden on travelling passengers as aeronautical tariffs were not subsidised by a significant part of non-aeronautical tariff which are low capital and high revenue services while awarding airport contracts under PPP in future.

45. The Committee enquired to know whether MOCA has carried out any exercise towards calculating financial impact resulting from categorization of cargo & ground handling services. The Ministry, in their reply, stated as under:

"The structure of tariff of the airports was deliberated by IMG and EGoM in its several meeting before issuing of 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:

- (i) That the current tariff base of AAI and its increase will be an interim arrangement till AERA is set up.
- (ii) AERA will be put in place in a definite timeframe.
- (iii) 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
- (iv) 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 formula 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, 38.70% of the remaining 70% of non-aeronautical revenue is to be shared with AAI by MIAL. The latter is also shared by AAI in terms of dividend on its share. MIAL does not gain any undue financial advantage as it is managed by a Joint Venture Board having AAI Directors and audited by independent auditors

Further, structure of tariff determination was part of bid process where 30% of gross non-aero revenue (other than revenue from Non-Transfer Assets) was to be utilized for cross subsidization of aero charges. Based on these stipulations only, bidders submitted bids and revenue share as high as 38.7% was quoted by GVK led Consortium. This revenue share is not a pass through hence passengers are not burdened with this substantial amount which goes to AAI. This amount is available to AAI for development of other airports.

It may be noted that bids submitted by bidders at the time of privatization of the Airports were based upon explicit understanding that Shared Till Mechanism will be adopted for tariff determination. Hence, no undue advantage has been given to MIAL on this account."

46. In response to recommendation of PAC as contained in their 94th Report (15th LS) on DIAL, the MOCA stated that Government of India is in the process of formulation of a policy on Economic Regulation for airport sector keeping in view all aspects.

(ii) Conflicts between OMDA and AERA Act in defining aeronautical and non-aeronautical services

47. There are inconsistencies between provisions of OMDA and SSA signed for CSI Airport, Mumbai and the Airports Economic Regulatory Authority (AERA) Act, 2008. The definition of aeronautical and non-aeronautical services differs substantially between OMDA and AERA Act. Ground handling and cargo handling services have been designated as non-aeronautical services in OMDA but are defined as aeronautical services under the AERA Act. The 'Target Revenue' for fixing airport charges takes into account only 30 per cent of the revenue generated from non-aeronautical services. Tariff payable by the passengers will be cross subsidized only to the extent of 30 per

cent by revenues generated from cargo and ground handling services in case of CSI Airport, Mumbai. As cargo and ground handling services constitute a major source of revenue for the airport, this provided undue financial advantage to MIAL at the expense of higher tariff imposed on the passengers PAC in its report on DIAL, on the same issue, advised MOCA to apprise financial impact of the concessions granted by Government under OMDA and the revenue ensured by the Government from the JV after Ground handling services and Cargo Handling services were categorized as aeronautical services.

48. The Committee desired to know if MOCA has carried out the exercise of calculating financial impact resulting from categorization of cargo & ground handling services. The Ministry replies as under:

" The Cargo and Ground Handling Services have always been shown as non-aeronautical services as per the Annual Account Statement of AAI, which was regularly laid in the Parliament. The aeronautical and non-aeronautical services were defined in OMDA based on the legacy followed by AAI for its own airports, whereas provisions in AERA Act were made much later, as per the will of the Parliament.

Schedule 6 of the OMDA categorizes Cargo Handling Services and Ground Handling Services as Non-Aeronautical Services. Clause 12.2 of the OMDA specifically provides for the Tariff and Regulation for charges for Non-Aeronautical Services stating that Subject to Applicable Law, the JVC shall be free to fix the charges for Non- Aeronautical Services, subject to the provisions of the existing contracts and other agreements. These terms and conditions are a part of Mumbai International Airport's bidding documents uniformly available to all the parties. Further, AERA Act, 2008 empowers AERA to determine tariffs at Major airports for aeronautical services provided at these airports including the Ground handling and Cargo handling service. However, at the same time section 13(1)(a)(vi) of the AERA Act also mandates the authority to take into consideration the concession offered by Central Government in any agreement, memorandum of understanding or otherwise. Since the AERA Act, 2008 has been enacted after OMDA and there is a provision in the AERA Act to give due consideration to the Concessions offered by GOI, it is evident that there is no conflict between AERA Act and OMDA for determination of tariff for these two services. In fact provisions of both AERA Act and SSA have been harmoniously applied by AERA by regulating all the aeronautical services, including cargo, ground handling, on the one hand and follow shared till approach for tariff determination as per SSA on the other hand.

As far as the financial impact of the concession granted by the Central Government, the charges for these services are regulated by AERA under AERA

Act, 2008. It is further added that AAI gets its revenue share from the gross revenue of MIAL which includes both aeronautical and non aeronautical revenues. Therefore, AAI continues to receive its revenue share thereon as per the agreed rates under OMDA, irrespective of treatment of such services as aeronautical or Non-Aeronautical. Hence, there is no impact of such treatment on the revenue share of AAI."

(iii) Outsourcing domestic and international cargo activities

49. MIAL had outsourced its cargo activities which is estimated to reduce cargo revenue by 40 per cent in a span of two years. As the cargo revenue subsidises tariff (30 per cent of cargo revenue being taken into account while working out airport tariff), fall in cargo revenues would lead to higher tariff and hence higher burden on the passengers. Besides, the revenue share of AAI will also reduce substantially with the significant reduction in cargo revenues. The MOCA agreed that there would be drop in revenue in the initial period due to outsourcing but pointed out that it would result in better infrastructure and increase in handling capacity.

50. The Committee desired to know the status of Build Own Operate Transfer projects for cargo activities, details of agencies presently handling cargo activities and involvement of any subsidiary of GVK in cargo activities. The MOCA informed as under:

"MIAL has concessioned out international cargo facilities for a period of three years to Container Corporation of India Ltd w.e.f. 18 February 2014 at revenue share of 69%. During this period any capex to be incurred by MIAL will be met out of deposit of Rs 125 crores provided by the concessionaire. Hence, MIAL shall not utilize its resource for capex upto ₹ 125 crores.

In case of domestic cargo, MIAL has introduced a new revenue stream as AAI was not handling domestic cargo at all. Domestic cargo has also been concessioned out to Container Corporation of India Ltd at revenue share of 42% on BOOT basis w.e.f. 1 September 2012. Outsourcing of domestic cargo was necessitated to pass on capital expenditure to concessionaire.

Cargo Service Centre India Private Limited (CSC) started Perishable cargo handling w.e.f 16 May 2011 at the higher of Minimum Annual Guarantee and revenue share @ 15%. Concession for a period of five years on BOOT basis after which entire facility will revert to MIAL at Re.1.

MIAL has introduced extra revenue stream which was not available in the past. It does not involve any capital expenditure from MIAL. Further, no subsidiary of GVK is involved in handling of cargo activities."

(iv) **Award of concession for operation of Hotel**

51. As per OMDA, all developments at the airport shall be as per the existing Master Plan and no development that is not envisaged in the Master Plan would be allowed to be undertaken. MIAL took up construction of a hotel near Terminal 1C in June 2009 though it was not included in the Master Plans in violation of the terms in OMDA. MIAL also outsourced the hotel operations to a group company of GVK (a Consortium of M/s. TAJ GVK Hotels & Resorts and Greenridge Hotels & Resorts), with a very small revenue share (4.65%) to MIAL. This was agreed to by AAI, though the arrangement would have significant adverse impact on the revenue share of AAI with AAI receiving only 1.79 percent of the gross earnings in the hotel project. As the hotel concession had been awarded to a group entity of MIAL, the upside in revenue would benefit the GVK group.

52. In reply to a query of the Committee the MOCA informed that MIAL has concessioned out the construction and operation of Hotel near Terminal 1C to a consortium of Taj GVK Hotels & Resorts Ltd and Green Woods Palaces & Resorts Pvt. Ltd., which is a related party, through a process of competitive bidding and in full compliance with the provisions of OMDA. However, it did not affect revenue share to AAI in any way. They further informed about the process of award of sub-contract for commercial use to private parties with particular reference to maintaining transparency in award of contract, as under:

"Selection of bidder was through tender in full compliance with provisions of OMDA. Revenue Share Percentage and MAG was decided based upon bids received and subsequent upward negotiations. To ensure arm's length transaction, probity auditor was appointed. Scope of probity auditor is governed by provisions of schedule 12 of OMDA. Appointment of probity auditor was also through a selection process. Terms of the contract were based on outcome of bidding. No specific comments were offered by the Independent Engineer.

MIAL had informed AAI about key terms of contract and AAI did not find any key term to be not-equitable or inconsistent with or contrary to the letter or spirit of OMDA. Since the entire process was under supervision of probity auditor and transaction being at arm's length, probity auditors certified and confirmed the same."

53. In reply to yet another query of the Committee regarding plan of MOCA to prevent grant of undue favour to Group Companies of the airport operator as in the

present instance, the MOCA stated that there are adequate safeguards under OMDA to deal with related parties transactions. In the present instance also no undue favour was granted to related party. Entire process was audited by Probity Auditor to ensure transparent process and finalisation of terms on arms length basis

(v) Delayed Retirement Compensation

54. As per OMDA, MIAL was liable to pay Retirement Compensation to AAI for unabsorbed number of general employees. As per Article 1.1 of OMDA, Retirement Compensation was to be based on AAI's latest available Voluntary Retirement Scheme. AAI allowed MIAL to pay Retirement Compensation as monthly instalments over ten years in violation of specific directives from MOCA which stipulated that MIAL should pay the balance amount immediately. This resulted in undue favour to MIAL and consequent loss of interest (₹71.37 crore) to AAI. PAC in its report on DIAL concluded that MOCA had erred in safeguarding the interests of employees of AAI and failed to enforce its directives while also recommending that MOCA enforce the contractual obligations as per OMDA.

55. When the Committee probed further to know whether any steps taken by MOCA to ensure enforcement of contractual obligations as per OMDA, the Ministry informed as under:

"As per the provisions of article 6.1.4 of OMDA, MIAL (JVC) is mandated to pay Retirement compensation of such number of employees who had not opted for the absorption in the JVC within the operation support period. The Retirement Compensation claim has been raised by AAI in accordance with OMDA provisions and as per the VRS scheme of AAI and hence no loss of AAI. Thus, there is no undue favour of MIAL. It is ensured that the provisions of OMDA are strictly followed."

VII. LEASING OF LAND

56. AAI leased out land in CSI Airport, Mumbai to MIAL for development of the airport. Audit has observed that Land records maintained by AAI were not proper which benefited MIAL.

(i) Maintenance of land records

57. The leased premises was not demarcated nor was its area defined before handing over the land to MIAL. Neither OMDA nor the lease deed signed between AAI

and MIAL demarcated and defined the specific details of leased land. Both documents were to have a map of the 'demised premises' which was left blank. AAI did not have up-to-date land records. As such, the area of CSI Airport, Mumbai stated to be 1875 acres in the Request for Proposals increased to 2006 acres on actual survey by MIAL. The very significant difference in areas quoted by AAI and MIAL raised questions on the quality of land records and documents maintained by AAI.

58. In reply to a query of the Committee regarding availability of land records and the present status of the same, the MOCA stated as under:

"At the time of handing over of CSI Airport to MIAL, the OMDA provided only the map of the demised premises and carved out assets and the land was handed over on as-is-where-in basis. No proper land records were available with AAI since the same was not handed over to AAI on its formation. However, MIAL subsequent to taking over the airport, surveyed the Total Area of Land as CSIA through Government of Maharashtra and accordingly property cards were prepared. As on date details of property cards vis-a-vis total area (in acres) are as follows:

Total land area as per OMDA and Supplementary Lease Deed dt.21.12.2011			2006.24
Increase in area due to correction in property cards			0.12
Total Area			2006.36
Property cards available (*including 17.08 acres of land permanently transferred to Indian Navy and Indian Air Force but property cards continue to be in name of AAI)		1975.10*	
<i>Property cards not available in name of AAI</i>			
Property where title is under dispute	27.49		
Property cards under process	3.77	31.26	2006.36

As already stated earlier, MIAL will be allowed to commercially exploit only 10% of original Demised Premises i.e. 10% of 1875 acres."

59. The Committee asked for the reasons for handing over the Government land to a private party for development without clearly earmarking the boundaries of airport land, demised premises and carved out area. The Ministry informed as under:

"The Mumbai 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.

As regards survey, a large part of the CSIA boundaries are covered with slums, and therefore it was not possible to earmark the boundaries of the airport land. Similarly, due to on-going litigations and adverse possession of land in some cases, it was not practically possible to earmark the boundaries of demised premises. Even property cards were not updated and were not available for major portion of airport land which MIAL took up on war footing and has got land records updated for substantial portion of land.

However, the total area of land handed over to MIAL was based on the demised area Map indicated in the Scheduled 25 of OMDA and Schedule 1 of the Lease Deed.

60. Meanwhile the Committee wanted to know whether MOCA has issued any instructions based on PAC recommendations on DIAL report to undertake joint survey of land and erect physical markings to identify the demised land and carved out assets for future. The Ministry in their reply furnished as under:

"As regards recommendations of the Hon'ble Committee w.r.t. IGIA, New Delhi, the required action to survey the land including physical markings in respect of all land – demised premises, carved out assets and excluded assets is being taken by the airport operator i.e. M/s Delhi International Airport Pvt. Ltd. (DIAL). This being a huge exercise and also the existing records are not available and the ownership details are also not readily available, it is anticipated that the work will take some time.

As regards land at CSIA, Mumbai, MIAL had, through Government of Maharashtra, conducted survey of Mumbai airport land area in 2006/2007. However, physical markings are still not possible in most areas due to reasons enumerated above. MIAL has obtained property cards for the land except land parcels where there are title disputes."

(ii) Carved out land transferred to MIAL on the basis of 'Upfront Fee'

61. 'Carved out assets' were primarily intended for the use of AAI as per OMDA and could be transferred to MIAL, if required, for aeronautical purposes with the condition that the parties (AAI and MIAL) should negotiate the terms and conditions of such transfer. AAI agreed to transfer 48.15 acres out of carved out assets to MIAL against a meagre consideration based on upfront fee paid by MIAL without negotiation of terms and conditions as provided in OMDA. MOCA maintained that upfront fee paid had no

relation to the extent of land and assets at airport. However, this upfront fee was the basis for transfer of part of carved out assets to MIAL.

62. As per OMDA, for transfer of additional land out of carved out assets, "negotiations in good faith" were to be carried out. In this context, the Committee desired to know whether such negotiations were carried out before transfer of carved out land. The Ministry in their detailed reply stated as under:

"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 be, and upon such request the Parties shall enter in to a lease deed for grant of such lease

- *Carved Out Assets are defined under Section 27 of OMDA*

The additional 48.15 acres demised to MIAL in terms of OMDA for aeronautical purpose 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 MIAL without any compensation to AAI as this land is to be used only for aeronautical purposes. Further, it also needs to be understood that the leasing of land by AAI to MIAL is

in return of its share of 38.70% of the total revenue. Annual Fee was quoted by bidders based on Revenue potential not based on quantum of land. Assuming that the terms and conditions mean to determine some compensation is outside the purview of OMDA. Terms and conditions could be like relocation of AAI facilities by MIAL at its cost, timing of handing over carved out assets, cost of densification of colony, cost of ATC Tower, timeline, quantum of land, facilities to be created by MIAL etc.

In fact upfront fee was not payable on any subsequent leasing of land. However, AAI could negotiate the upfront amount in proportion to ₹ 150 crores paid by MIAL. For this purpose AAI calculated amount to be paid by MIAL on the basis of ₹ 150 crores upfront fee paid by MIAL for, then estimated, 1875 acres, while lease rent under OMDA is ₹ 100 per annum only and extension of the same would have meant additional lease rent of Rs 2.57 per annum, instead AAI has got ₹ 3.852 crores over and above revenue share @ 38.7%. It will not be out of place to mention that upfront fee was to cover average profit which AAI would have earned in year 2003-04. Therefore, lease rental from MIAL is inconsequential. On the other hand leasing to other entities like performing the reserved activities is only in return of lease rental and hence this comparison itself is not correct."

(iii) Commercial exploitation of Land

63. OMDA allows MIAL to utilize ten percent of 'demised premises' for commercial exploitation. RFP issued by AAI in 2005 indicated the total area of Mumbai Airport as 1875 acres. OMDA signed in April 2006 did not indicate the total area of the airport but fixed the area of carved out assets as 76.3 acres. Accordingly, initially the land available for commercial exploitation was 179.8 acres, which increased to 190.1 acres in December 2011 on account of re-survey of the land which indicated total land as 2006.73 acres. MIAL benefitted by 10.23 acres of additional exploitable land. Further, with the transfer of carved out asset, the land eligibility of MIAL for commercial exploitation increased to 196.67 acres. The revenue from these activities would not be considered for determination of airport charges. However it has the potential for reduction of burden of levies on passengers.

64. On being enquired about the total area of land made available to MIAL for Aeronautical purposes, Non Aeronautical purposes and commercial purposes the Ministry in their reply, submitted as under:

"As per OMDA, the activities taken up at airport have been classified only as Aeronautical, Non-aeronautical and Essential activities. Aeronautical and Non-

aeronautical services are performed by the Airport operator whereas the Essential services are performed by the Government agencies. OMDA provides that MIAL can provide the Non-aeronautical services provided however that the land area utilized for provision of Non- Transfer Assets shall not exceed 10% of the total land area constituting the Demised Premises.

This issue was examined by the Public Accounts Committee in respect of Delhi airport also and has acknowledged the reply of MOCA.

After survey of land MIAL had intimated the following:

Total AAI Land (as per Supplementary Lease Deed dated 21 st Dec. 2011	Acres	Acres	Acres
Less			2006.73
Transferred to Indian navy and Indian Air Force on permanent basis		17.08	
Carved out as per OMDA (less already demised to MIAL)	32.32		
Carved out, now demised to MIAL but not to be calculated for the purpose of Non-Transfer Asset	43.98		
Carved out as per OMDA	76.30		
Carved out (Hotel Leela) but shown less in OMDA	0.49		
Carved out, as per lease deed but not OMDA, demised to MIAL, but the status of carved out disputed by MIAL.	4.17	80.96	
Land to be demised to MIAL subject to order of Bombay High Court.		7.66	105.70
Demised land eligible for calculation of 10% cap			1901.03
Land which can be used for commercial exploitation (10%)			190.10

65. It has been further informed that presently maximum area of land for Commercial exploitation based on 10% cannot exceed 190.11 acres. Land was given to MIAL on as-is-where-is basis. Any change in area is mainly due to correction of records. No extra piece of land has been given to MIAL other than demise or carved out assets as per provisions of OMDA and subject to end use restriction. In fact extent of slums has now been estimated to be 308.95 acres against 147 acres indicated in OMDA and 171 acres indicated in State Government Support Agreement.

66. MOCA also informed that as per Interim Development Plan by Special Planning Authority (SPA) i.e. MMRDA, 133 acres of land is earmarked for commercial exploitation. Question of commercial exploitation will always be governed by Development Plan approved by SPA. At any point of time if commercial utilization exceeds 10% of the total land, it will be violation of OMDA provisions and consequent

action against MIAL shall follow. MIAL is permitted to undertake certain commercial activities as per Schedule 6 of OMDA.

(iv) Unwarranted benefit to MIAL on relocation of activities and Change in land use

67. MIAL proposed to relocate non-aeronautical facilities (Air India Cabin catering and Chef-Air Flight Kitchen-3 acres) to carved out land which amounts to usage of additional carved out land for non-aeronautical purposes and was a violation of the OMDA provisions. OMDA enjoins that 'carved out land' could be used by MIAL only for aeronautical purposes. AAI/ MOCA agreed to this proposal. MOCA also agreed to the subsequent proposal of MIAL for change in end use of this vacated land for non-aeronautical purpose, on the condition that MIAL provide an alternate location of identical size for aeronautical purpose. Alternate site proposed was in an encroached area accepted by AAI/MOCA. 5 acres of land earmarked for AAI's Air Traffic Management Centre by MIAL was also in the encroached region. MIAL had been directed to provide suitable land to AAI.

68. The MOCA further informed that as per OMDA, the total non-aero /commercial land available to MIAL in any case is limited to 190.11 acres which 10% of the total demised premises. No land use change has been allowed resulting in increase in overall limit on commercial exploitation of land.

69. The Ministry also submitted that AAI has not agreed to alternate locations where the land is in encroached area. MIAL, in November, 2014, has already earmarked 5 acres of land to be handed over to AAI for Air Traffic Flow Management Centre.

(v) Land in possession of other government agencies

70. MIAL has listed nine pockets of land in and around CSI Airport in the possession of other government agencies. Intended use of such land altered over time as per successive Master Plans of MIAL. AAI/ MOCA allowed such changes to be made without any significant comment on these plans. Audit has observed that transfer of possession of identified land pockets (in possession of IMD, CPWD) to MIAL involves significant expenditure which would be loaded to the project cost in subsequent control periods and would, thus, lead to future increases in airport charges and possibly additional burden on passengers.

71. The Committee were informed that no change in use of land has taken place. A Yellow Fever Hospital to cater to the medical requirements of the passengers has been provided at the airport premises. The cost incurred and capitalized for construction of the hospital is ₹ 9.82 crores and the same has been formed part of Regulatory Asset Base (RAB). No other amount so far has been included in RAB relating to the Government agencies as work is still ongoing. Once projects are completed, MIAL needs to submit the details to AERA for its scrutiny and consideration about eligibility for inclusion under RAB.

(vi) Encroachment at CSI Airport, Mumbai

72. Two documents signed by AAI in 2006 i.e. Lease deed and State Government Support Agreement (SGSA) indicated two different figures as area under encroachment. This indicated lack of clear understanding of AAI regarding the area that was actually under encroachment. Area under encroachment increased from 147 acres to 308.96 acres which only highlight serious deficiencies in land records management. MIAL executed a contract with M/s. Housing Development and Infrastructure Limited (HDIL) to undertake activities relating to rehabilitation of encroachers and restoration of the Airport land under encroachment in lieu of the right to develop part of the land vacated by encroachers. The encroachment was to be removed within 48 months of commencement date i.e. by October 2011 or with further six months extension at MIAL's discretion. The contract was subsequently terminated by MIAL as the encroachment was not removed.

73. In reply to a query of the Committee regarding agreement between MIAL and M/s Housing Development and Infrastructure Limited (HDIL) for Slum Rehabilitation and related issues, the MOCA furnished as under:

"MIAL had also entered into a State Government Support Agreement (SGSA) with the Government of Maharashtra in 2006. The SGSA empowers MIAL to remove the encroachment from the airport land. For the purpose, Clause 3.1.2 of SGSA stipulates that if MIAL requires the use of any of the land at the airport site, which land is subject to encroachment and hindering the provision of Aeronautical Services and/or to construct, develop and maintain any aeronautical assets at the airport, it shall notify GoMh and AAI of the same and pursuant to receiving the aforesaid notice from Company, GoMh shall undertake its best efforts in providing support to the Company and AAI in clearing the land.

GoMh, vide Government order No. MRD 3305/ Circular No. 858/UD-7 dated 30th September, 2005, appointed Urban Development Department as a nodal agency for airport slum Rehabilitation. Accordingly, Mumbai Metropolitan Region Development Authority (MMRDA) was asked by GoMh to take necessary action for survey of slums for further action. MIAL entered into an agreement on 12th December, 2006, with MMRDA to assist MIAL in various functions relating to slum rehabilitation including appointment of developers to carry out the developments as per Slum Rehabilitation Authority (SRA) Scheme. In order to rehabilitate the slum dwellers to free airport land for airport development purposes, MIAL engaged M/s Housing Development and Infrastructure Limited (HDIL) as a developer through competitive bidding process. A Slum Rehabilitation Agreement was executed by MIAL with HDIL on 15th October, 2007.

There are about 75000 - 80000 hutments on airport land about 3-4 lacs people are involved. A large number of slum dwellers are ineligible under State Slum Rehabilitation Scheme. Slums around the airport are the largest slum in Mumbai, bigger than even Dharavi. It is not feasible that only eligible slum dwellers are rehabilitated and ineligible slum dwellers are removed. Slums around airport are also a grave security threat.

One of the conditions of the tender was that slum rehabilitation has to be ex-situ, i.e. developer should have at least 50 Acres of their land and construct tenements for rehabilitation of slum dwellers on such land. HDIL had submitted the bid asking for lump sum ₹640 crores and 35% cleared land i.e. about 97 acres being 35% of the 276 acres encroached land but without any title dispute. After negotiation, it was agreed that only about 23.5% of land being 65 acres and without any lump sum consideration will be available to HDIL on sub-lease basis, subject to the provisions of OMDA. Sub-lease was to be co-terminus with OMDA and all rights of AAI under OMDA were incorporated in the agreement entered into with HDIL. It may be noted that the no commercial value can be ascribed to any encroached land.

HDIL had to bear all the costs and expenses relating to the entire slum rehabilitation project as below:

- i. Cost of procuring the Land;
- ii. Cost of construction of tenements for the rehabilitation of the Protected Slum Dwellers and the cost of relocating the Protected Slum Dwellers from the Encroached Airport Land to transit tenements (if any) and from the transit tenements to the rehabilitation buildings;
- iii. Cost of transit tenements;
- iv. Costs of compliance;
- v. All charges to be paid to MMRDA including ₹ 20,000 per tenement pursuant to the Agreement dated December 12th, 2006 executed between MIAL and MMRDA.

- vi. Payment of infrastructure charges and other payments to the SRA or any other authority pursuant to the Applicable Law and Approvals;
- vii. Amount payable for the purpose of improvement of infrastructure in slum or slum rehabilitation areas;
- viii. Infrastructure development charges equal to double the infrastructure development charges as applicable;
- ix. All deposits payable to SRA or any other authority;
- x. Land under construction charges;
- xi. All fees and expenses for obtaining Approvals for the rehabilitation of the Protected Slum Dwellers and evicting and removing Unauthorised Slum Dwellers from the Encroached Airport Land;
- xii. Payments to be made concerning Slum Rehabilitation Project to consultants including PMC, architects, designers, security personnel and contractors;
- xiii. Cost of provision of all required off site infrastructure including as per requirements of Applicable Law, Government and other agencies;
- xiv. All expenses incidental and ancillary to implementation of the Slum Rehabilitation Project including the litigation costs to be incurred for the rehabilitation of the Protected Slum Dwellers and removal and/or eviction of Unauthorised Airport Slum Dwellers from the Encroached Airport Land;
- xv. Costs for removal of debris;
- xvi. Any cost, charges, tax (including service tax and works contract tax), stamp duty, registration charges, legal charges, levies, fees, cess as may be imposed from time to time for the implementation of the Slum Rehabilitation Project and any instrument in relation thereto, grant of any rights or benefits;
- xvii. Cost of formation of co-operative housing societies of slum dwellers;
- xviii. Costs of settlement and/or removal of Unauthorised Slum Dwellers from the Encroached Airport Land; and
- xix. All costs to be incurred in relation to conducting and completing the Plane Table Survey.

All above costs and charges are indicative and not exhaustive.

Since slum rehabilitation had to be on the land outside airport, no benefit from airport land by way of TDR could accrue to HDIL. Hence, whatever TDR HDIL had to receive was in relation with land procured by it and tenements to be constructed thereon for eligible slum dwellers as per slum rehabilitation scheme of Government of Maharashtra. Looking into enormity of ineligible slum dwellers,

it was agreed that in consideration of HDIL taking responsibility of clearing airport land by removing both eligible and ineligible slum dwellers, MIAL will sub-lease 65 acres of land to HDIL for commercial development as permitted under OMDA.

There was no commitment from MIAL whether HDIL gets any benefit or not other than 65 acres of land to be made available on sub-lease basis as consideration for the slum dwellers. It is pertinent to mention that 65 acres of land was subject to HDIL clearing entire 276 acre of airport land and handing over unencumbered possession to MIAL. Further TDR could accrue to developer; only on acquiring the land and construction of tenements on such land.

HDIL had to clear about 158 acres of land and handover to MIAL for operational use. Any sub-lease of land to HDIL was to be in phases only based on balance 118 acres of land cleared by HDIL. For each acre of land cleared other than 158 acres, only 0.55 acre of land was to be sub-leased to HDIL i.e. out of 118 acres, 65 acres of land was to be sub-leased to HDIL.

In view of the facts mentioned above, the issue of providing double benefit to HDIL by MIAL may not be appropriate.

As per agreement with M/s HDIL slum rehabilitation was to be implemented within a period of four years in different phases (2007 to 2011). HDIL could not perform in spite of repeated assurances to do so. Finally MIAL issued a Cure Notice to HDIL against which also HDIL could not perform and as a last resort, MIAL terminated the agreement with HDIL on 6th February, 2013. Subsequently, HDIL went for litigation and the matter is sub-judice with Arbitral Tribunal."

74. When the Committee further enquired whether SRA and MMRDA have gone overboard and given such benefit to a private company, the MOCA stated that the policies promulgated by Government of Maharashtra which was implemented by SRA, has been put in place after prolonged and detailed stakeholders consultations. MMRDA was taken on board by MIAL to ensure proper implementation of the approved SR policy of the Government of Maharashtra.

75. The Committee desired to know the details of any payment made by MIAL to HDIL to undertake the aforesaid activity and whether any penalty been imposed on HDIL for not fulfilling its contractual obligations. The Committee were informed by the MOCA as under:

"Due to non-performance, MIAL terminated the agreement with HDIL. The party aggrieved over the termination filed a petition in the Bombay High Court seeking relief on (i) Issuing injunction to stay the termination process; (ii) And to maintain status quo in respect of non-transfer assets.

The petition was summarily dismissed. HDIL challenged the Order before the Division Bench of Bombay High Court and the same was dismissed with direction to HDIL to pay cost of ₹5 lakhs to MIAL, ₹2.5 lakhs each to MMRDA and SRA. HDIL filed a SLP with Supreme Court of India which was also dismissed.

As per the provisions of the agreement, an arbitral Tribunal was constituted on 02/09/13 with Justice SH Kapadia (Retd) being nominated by MIAL, Justice AM Ahmadi was nominated by HDIL, and both the Co-arbitrators nominated Justice JB Patnaik as the presiding Arbitrator. All the appointees are former Chief Justice of Supreme Court. HDIL filed an application before the arbitral Tribunal seeking interim directions to allow the contract to be performed, a direction not to create any third party interest over the proprieties to the extent of 65 acres (land) which would have otherwise been given to HDIL after successful completion of the contract, a direction not to give the contract to any other person until the conclusion of the arbitral proceedings and a direction injunctioning MIAL from putting the slum dwellers in tenements constructed by HDIL.

The application was rejected by the Tribunal. MIAL has filed a counter claim of ₹11,807 crores in which an amount of ₹276.46 crores is towards Liquidated Damages."

76. While giving details of procedure and justification of transferring 65 acres of prime non-aeronautical area of developable land to HDIL, the MOCA stated that as per agreement with HDIL, no land was envisaged to be transferred. As a part of consideration in getting the encroached land of 276 acres vacated, having around 3 lakhs persons both eligible & ineligible slum dweller, the agreement provided for sub-lease of 65 acres of land to HDIL for carrying out commercial activities as provided in OMDA and AAI Act. No ownership rights or transfer of land on permanent basis was provided in the agreement.

77. The Committee then enquired as to how does MIAL/MOCA/State Govt. of Maharashtra propose to address the challenges of rehabilitation of encroachment and restoration of airport land. The MOCA in a written submission stated as under:

"Govt. of Maharashtra, on the recommendation of MOCA is formulating Airport Specific Slum Rehabilitation Scheme for CSIA. This Scheme along with its Development Control Regulations are being finalized by Govt of Maharashtra under Maharashtra Regional and Town Planning Act, 1966 (MRTP, 1966) as part of the statutory process of the State Govt.

As regards involvement of AAI in the slum rehabilitation project, MIAL had approached AAI for its approval for in-situ rehabilitation of slum dwellers as per policy of State Government or as per any other schemes as may be applicable.

AAI has given 'in principle' approval for in-situ slum rehabilitation. Besides, granting necessary approvals, AAI has the right to seek details of agreement to ensure OMDA compliance."

VIII. PASSENGER SERVICE FEE

78. 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 the Facilitation Component 35 per cent of the total PSF charge. As per SSA, respective airlines shall collect the entire PSF and distribute the Security Component (SC) to AAI and the Facilitation Component (FC) to MIAL directly.

(i) **Unauthorized expenditure**

79. As per State Support Agreement, MIAL was responsible for procuring and maintaining at its own cost, all security systems and equipment (except arms and ammunitions) as required by the Government of India (GOI) or the Bureau of Civil Aviation Security or its designated nominee(s)/representative(s) from time to time. MOCA permitted entire cost incurred on security equipment deployed at the airports to be met from PSF (SC). MIAL included cost of security equipment's in the PSF (SC) account. Thus, the order of the MOCA permitting the same to be met from the PSF (SC), overriding the provisions of SSA, resulted in extending unwarranted favour of ₹ 87.97 crore to MIAL. Using Ministry's directions, MIAL also charged ₹2.55 lakh towards insurance charges of PSF (SC) account which were otherwise to be borne by the MIAL as per OMDA. PAC in its report on DIAL had observed that such lapses should not occur.

80. The Committee desired to know status of the same issue in case of DIAL where MOCA has assured PAC that in future the cost of security equipment would be met by JVC as mandated in SSA. The Ministry in their reply stated as under:

"MoCA vide its Order dated 18.02.2014, has directed all the airport operators to reverse/reimburse back to the respective PSF(SC) escrow account, with in a period of one month, the total amount spent (on account of capital costs/expenditure) so far towards procurement and maintenance of security systems/equipment and on creation of fixed assets out of the PSF(SC) escrow account, together with the interest that would have accrued in normal course had

the said amount not been debited against the PSF(SC) escrow account. MIAL has filed a Writ Petition before Mumbai High court for quashing and setting aside the order. The Hon. High court has ordered the parties to maintain status quo and directed MOCA not to take any coercive action till the matter is finally decided by Hon'ble High Court. Hence, the matter is sub-judice."

81. In response to query of the Committee regarding the control mechanism that MOCA intends to put in place for ensuring that such lapses do not recur, the Ministry submitted that Rule 88A has been inserted in the Aircraft Rule 1937 to collect Airport Security Fee (ASF) for meeting security expenditure. Draft Standard Operating Procedure (SOP) has already been circulated for comments to all stakeholder. This SOP, *inter alia*, list out expenditure which can be incurred through ASF. Collection and utilization of ASF is being assigned to AAI to rule out any use which is not listed.

(ii) Unjustified Charge

82. In violation of MOCA order which specifies 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 operator, MIAL charged salary of ₹12.36 crore from PSF (SC) Escrow Account (2009-10 to 2011-12) in respect of security employees and other miscellaneous services from private agencies deployed at Mumbai Airport. PAC, in its report on DIAL had advised MOCA to look into matter and fix responsibility for avoidable loss to Government.

83. The Committee desired to know the present status in this regard in view of the recommendation of PAC in DIAL report, where PAC urged the GOI to fix responsibility for avoidable loss to Government. The MOCA stated that any perception that if any security expenses are incurred from PSF(SC) which has been objected by MOCA, is loss of Government is not correct. As security is the sovereign function, all security expenses have to be met by Government. In case any security related expenditure, whether revenue or capital, is not allowed to be incurred through PSF(SC) the same has to be collected through tariff from passengers. Any perception that MIAL has gained because of any expenditure incurred through PSF (SC) is misconception. Ultimately MIAL has to meet security related expenditure either through PSF(SC) or through amount collected through tariff.

PART – II

RECOMMENDATIONS AND OBSERVATIONS

Introductory

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 the then 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 of 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. Operation, Management and Development Agreement (OMDA), State Support Agreement (SSA), Shareholders Agreement (SHA), Lease Deed Agreements, Communication,

Navigation, Surveillance and Air Traffic Management (CNSATM) Agreement and State Government Support Agreement (SGSA). 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 CSIA, Mumbai, the approved JV partner was M/s GVK Consortium which comprised of three private entities. AAI incorporated on 1st March 2006 a subsidiary company namely M/s Mumbai International Airport Private Limited (MIAL). After the OMDA was signed on 4th 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), GVK Holdings Pvt. Ltd. (37 per cent), Bid Services Division (Mauritius) Limited (27 per cent) and ACSA Global Limited (10 percent). Subsequently, on 18 October 2011, 1,08,00,000 (out of 5,40,00,000) shares of Bid Services Division (Mauritius) were acquired by GVK Holdings Pvt. Ltd. raising its stakes above 50 per cent in MIAL. The paid-up equity capital of MIAL as on 16 April, 2012 was ₹1200 crore with the share of AAI at 26 per cent. The Mumbai Airport was handed over to M/s MIAL with effect from 3 May 2006. The Committee note that the Airports Council International had adjudged the CSIA Airport as the fifth best in the world among 235 airports in the category of 25-40 million passengers per annum and appreciate the improvements in services at CSIA. The Committee, however, found several lacunae and shortcomings in the operationalisation of the JV mode and implementation of OMDA and SSA which are similar to those found by the PAC in case of Delhi International Airport Limited (DIAL) (94th Report/15th LS). The Committee examined the subject in depth, took evidence of the representatives of MOCA, AAI, MIAL, GVK etc. and also conducted an on-the-spot study visit to obtain first hand knowledge and understand the ground realities at CSIA. The findings of the Committee are contained in the subsequent paragraphs.

Design Constraint

2. The Committee note that on account of cross alignment of the two runways, CSIA has a design constraint. The Committee also find that the initial plan of GVK for a parallel runway to increase the runway capacity of the airport

was shelved due to involvement of large scale relocation of facilities and consequent need for acquisition of privately owned land. Due to this constraint the capacity of CSIA was not to exceed 40 million passengers per annum (mppa) which was expected to be reached by 2015, even after the modernisation and upgradation. The Committee feel that even after modernization and upgradation of CSI airport, Mumbai, the airport would be unable to meet the demand of passengers. Meanwhile, the MOCA has also commenced the process for construction of another airport at Navi Mumbai i.e. Navi Mumbai International Airport (NMIA) to meet the future requirements of air passengers. It is expected that NMIA will be operationalised by December 2020. The Committee feel that the magnitude of problem, pertaining to passenger handling would be compounded with delay in development of NMIA. They, therefore, recommend MOCA to take a more pro-active role in expediting processes of inviting request for proposal, financial bids, finalisation of bids and award of contract for construction of NMIA, keeping in view the observations and recommendation of PAC contained in their 94th Report (15th Lok Sabha), without any delay as the CSIA is likely to reach its capacity much before 2020 i.e. targeted date of operationalisation of NMI Airport. Considering the delays expected in commissioning of NMIA and near saturation at CSIA, the Committee desire that another AAI airport at Juhu, Mumbai, which is also plagued with problems of encroachment, be secured and a plan be prepared to develop it as an alternative to handle small/charter traffic. The Committee would also like to be informed of the action taken by MOCA to deal with passenger congestion at CSIA till the NMIA become operational.

Right Of First Refusal

3. The Committee note that SSA gave MIAL the Right of First Refusal (RoFR) with regard to any second airport planned within 150 Km radius of the CSIA. The second airport, if planned through a competitive bidding process, then MIAL too would participate and in the event of being unsuccessful, MIAL would be allowed to match its bid with the most competitive bid, if it was within 10 per cent of that bid. The Committee note that this condition is applicable only in the first 30 years and was also stipulated in case of Delhi International Airport Limited (DIAL). The

MOCA had earlier submitted in response to recommendation of PAC as contained in their 94th Report on DIAL that competition and transparency will be ensured in the process whenever ROFR is exercised in future. The Committee hope that the assurance given by MOCA would be fulfilled.

Concession Period

4. The Committee note that in terms of Article 18.1(b) of OMDA, MIAL enjoys the unilateral right to extend the concession period for another 30 years on the identical terms and conditions provided no event of default takes place during 20th and 25th year of first concession period of 30 years as in the case of DIAL also. MOCA informed that this practice is in vogue in the aviation sector in all over the world where airports were given for 80 years and 100 years also to private operators. The Cabinet Note of September 2003 specifically envisaged that concession period of next 30 years will be subject to 'mutual agreement and negotiation of terms'. However, MOCA stated that 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. While giving the reasons for extending the concession period by another 30 years, the MOCA 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. The Ministry also informed that there are several expressed provisions in the OMDA for monitoring and supervision of the operational and financial performances of the JVC apart from 'OMDA Implementation Oversight Committee' (OIOC) and Airport Economic and Regulatory Authority (AERA). The Committee feel that in the absence of review clause and re-negotiation before extension of concession period, it appears as if MIAL has been allowed the right to operate the airport for a period of 60 years with the terms and conditions frozen in OMDA. They, therefore, recommend that review of performance by MOCA at regular intervals is all the more essential to safeguard the revenue interests of the Government as also to condition MIAL to deliver as per its committed outputs.

Change in Scope of Work and Master Plan

5. The Committee note that as per OMDA, MIAL had to submit the Master Plan and Major Development Plan for development of CSIA before expiry of six month from the date of execution of OMDA to AAI for information and to MOCA for review and comments. The schedule for comments of MOCA and MIAL's action taken thereon are laid down in the SSA. MIAL submitted the initial Master Plan and Major Development Plan (MDP) on 3 October 2006. The revised Master Plan and MDP was submitted to AAI and MOCA in 2007 after seven and thirteen months respectively as against the time limit of 15 days specified in SSA. Subsequently, MIAL submitted modified Plan in March 2011 thus, it remained flexible for over five years. MOCA, however, informed that Master Plan submitted in 2006 was revised by MOCA/AAI and commented that JVC consider development of Airport under one roof at Sahar. The MIAL considered the suggestion and submitted revised Plan of 'one roof'. The initial Plan which indicated parallel runway was also shelved on ground realities such as encroachment of Airport land. MOCA did not find any fault in delay as the revised Master Plan after incorporating all the changes was submitted in March 2011 considering additional work and deletion of works which were not feasible. MOCA also justified integrating of passenger handling facilities at Sahar as it was imperative to minimise inter-terminal transfer and to avoid cumbersome yet unavoidable regulatory requirements. The Committee strongly deprecate the vacillating approach of the MOCA/AAI resulting in development plan of CSIA remaining in doldrums for nearly 5 years.

Mandatory Capital Projects

6. The Committee note that as per OMDA, 32 Mandatory Capital Projects (MCPs) were to be completed by April 2010. Out of these 32 MCPs 28 MCPs were to be completed by May 2008. One MCP (S-06) was not completed in time and delayed by 2 years. And in case of another MCP (S-09), the scope of the project for terminal building was revised and its implementation was delayed by 2 years. Even MCPs completed in 2012 the international terminal could be made ready only by January 2014. Master Plan 2007 had listed 45 capital works projects of

which only three works in Phase I (2010) completed as against eight. As per SSA, the MIAL was not entitled to any incentive in respect of base airport charges due to delay in completion of MCPs. However, the Committee are dismayed to note that MOCA allowed the incentive to MIAL though MIAL failed to complete the project in time. The MOCA defended its action on ground that delay in completion of MCPs was attributable to circumstances and situations beyond the control of MIAL as the works being carried out in an operational airport involved co-ordination with various external agencies. Deprecating this attitude on the part of the Ministry, the Committee exhort the Ministry to take appropriate measure to ensure that incentive such as increase in base airport charges are not given when inordinate delays take place in completion of projects for unjustifiable reasons.

Status Of Other Capital Projects

7. Status of other capital projects is yet another matter of concern for the Committee. The Committee find that in addition to the MCPs, as mentioned in the previous paragraph, Master Plan 2007 had listed a set of 45 other capital works which included varieties of works such as airside works, terminal works and city side development which were necessary for overall execution of the project. The Committee are pained to note that MIAL could only execute/complete three projects in phase 1 as against the targeted 8 projects. While deprecating the delay caused in timely completion of the projects by MIAL, the Committee desire the Ministry to be cautious in future while discharging their duties in over-seeing or examining the execution of any projects to guard against any loss of revenue interest of the Government of India.

Increase In Project Cost

8. The Committee note that OMDA and SSA did not specify any cost estimate for the project. The initial project cost was ₹5826 crore as on 2006 which was revised by MIAL in 2008, 2010 and finally in 2011 to ₹12380 crore i.e. increase of more than 100 percent of original cost estimate. However, it was considered by AERA and finally restricted to ₹11647.46 crore for the period up to March 2014. The Committee apprehend that since significant expenditure have been shifted to

future control period (2013-14) by AERA, the project cost is likely to increase further. The Committee feel that this increased cost resulted in widening the gap in funding of the project which was being met through the Development Fee imposed on passengers departing from the CSI 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. However, MOCA justified increase in project cost and extension of time to revision in various plans was also approved by them. To cap the project cost in future in such projects which lead to increase in airport tariff, the AERA has come up with its Normative Approach for Economic Regulation of the Major airports and has issued a Consultation Paper in this regard. This consultation paper, *inter alia*, envisages to put a ceiling on the capital cost for arriving at the Target Revenue while determination of Aeronautical Tariff at major airports. The proposed approach of AERA is at consultation stage. The Committee have also been informed that there are suitable monitoring mechanism under Section 8.5.8 of OMDA. Both Technical and Financial Auditors had pointed out certain process related issues and made a general comment that it led to increase in Project Cost. However, MOCA stated that they had not ascribed any additional cost, specifically to these items and stated that it is difficult and subjective to assess the impact of the process related issues in quantitative terms. Observation of Technical and Financial Auditors were suitably responded during determination of Development fee and tariff determination by AERA. Such submissions were duly considered by AERA. The Committee while examining DIAE on the same issue had recommended that the PPP model be discussed threadbare so as to formulate transparent rules and credible institutional mechanism after fullest consultation with all the stakeholders. In their action taken note on the recommendation of PAC, MoCA submitted that AERA has a proposal which is at consultation stage. The Committee would like the AERA to finalize their proposal at the earliest and they

may be informed of the latest status in this regard alongwith the comments of MOCA on the plan to cap project cost in future projects.

Airport Development Fee

9. As per OMDA, MIAL was to arrange for financing through suitable debt and equity including listing of its shares on Mumbai/National Stock Exchange. The Committee are surprised to note that instead of finding ways of debt and equity contribution, MOCA allowed MIAL to levy a Development Fee (DF) at CSIA for the purpose of funding or financing the cost of up-gradation, expansion or development of the Airport in contravention of the provisions of OMDA. The Committee appreciate that though OMDA provides for listing options, MOCA opted for levying of development fee to ensure share holding of AAI does not fall below 26%, considering its strategic interest and desire that there is no change in shareholding pattern in violation of OMDA. The Committee also note that DF is determined by AERA under section 13(1)(b) of AERA Act 2008 read with section 22A of AAI Act 1994. However, as per Rules of the Airports Authority of India (Major Airports) Development Fee Rules, 2011, framed by the Government, the money deposited in the Development Fee Receipt Account can be used to pay for the servicing of debt to the lenders raised against Development Fees. Accordingly, in pursuance of these provisions of the Development Fee Rules, 2011, interest on loan raised against DF has been allowed by AERA and included in the quantum of DF to be levied on the passengers. The PAC in their 94th Report (15th LS) had made certain observations on the same issue and Committee would like the MOCA to respond to those observations. They also feel that AERA is competent to fix DF and expect it to determine DF in future keeping in view the revenue interest of the Government of India in PPP projects and also that of the interest of the passengers.

Assessment Of Funding Gap

10. The Committee are perplexed to note that during the process of finalization of levy of DF, AERA and MIAL both arrived at different figures for actual funding gap. This was stated to be due to difference in assessment of estimates of internal accrual. MIAL assumed internal accrual of ₹2,464 crore. The financial

auditor estimated it at ₹4,021 crore after adding depreciation and deferred tax liability to profit after tax. AERA pointed out that accruals estimated by MIAL were based on their tariff expectations which were uncertain. AERA arrived at an internal accrual of ₹1,151.26 crore considering the actual cash balance (as on March 2012) and adding projected depreciation for two years (2012-13 and 2013-14). Audit, therefore, observed that lower estimation of internal accrual resulted in a higher funding gap which in turn led to levy of a larger DF on passengers. MOCA while giving reasons for lower estimation of internal accrual stated that AERA is the authority to determine the DF as per the observation of the Hon'ble Supreme Court. Further, the AERA has determined the DF in respect of Mumbai Airport after considering all the factors and after due diligence of the relevant provisions of AAI Act. AERA has given detailed reasoning for approval of DF in their order. The internal accruals calculation by MIAL and independent auditor was based upon increased tariff sought by MIAL while filing its Multi Year Tariff Proposal (MYTP) to AERA. Since AERA has allowed much lower tariff (164.29%) compared to 881.29% asked by MIAL, projected internal accruals had to be reduced correspondingly and AERA has considered the same while finalizing means of finance after taking into account actual funds that would be available for project funding after netting of funds utilised for operations capex, disallowed project cost and other current assets. The Committee feel that in the absence of a fixed formula/process to assess the 'internal accrual', the difference in assessment of 'internal accrual' between MIAL and MOCA surfaced. The Committee, therefore, desire that Ministry/AERA should evolve a fixed formula/process for assessment of internal accrual so that such difference in calculation is avoided in future.

Revenue Sharing - Aeronautical Tariff In 'Shared Till' Arrangement

11. The State Support Agreement has adopted a 'shared till' model for CSI Airport, Mumbai where only 30 per cent of non-aeronautical revenue is considered while fixing aeronautical tariffs. Other airports (barring IGIA, Delhi) follow a single till model where the entire non-aeronautical revenue is considered. The audit concluded that shared till model has resulted in higher aeronautical

tariff, thereby increasing the burden on passengers in CSI Airport, Mumbai. PAC in its report on DIAL had urged the Government to consider the aspect that shared till actually increased the burden on travelling passengers as aeronautical tariffs were not subsidised by a significant part of non-aeronautical tariff which are low capital and high revenue services, while awarding airport contracts under PPP model in future. The MOCA, however, contended that EGOM in 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, structure of tariff determination was part of bid process where 30% of gross non-aero revenue (other than revenue from Non-Transfer Assets) was to be utilized for cross subsidization of aero charges. Based on these stipulations only, bidders submitted bids and revenue share as high as 38.7% was quoted by GVK led Consortium. In response to recommendation of PAC as contained in their 94th Report (15th LS), MOCA has stated that GOI is in the process of formulation of a policy on Economic Regulation for airport sector keeping in view all aspects. The Committee expects that Government expedites finalization of the proposed policy on Economic Regulation for airport sector before the bids for other airports for privatisation is finalised. They would like to be informed of the status in this regard.

Conflicts between OMDA and AERA Act

12. The Committee note that there are inconsistencies between provisions of OMDA and SSA signed for CSI Airport, Mumbai and the Airports Economic Regulatory Authority (AERA) Act, 2008. The definition of aeronautical and non-aeronautical services differs substantially between OMDA and AERA Act. Ground handling and cargo handling services have been designated as non-aeronautical services in OMDA but are defined as aeronautical services under the AERA Act. As the 'Target Revenue' for fixing airport charges takes into account only 30 per

cent of the revenue generated from non-aeronautical services, the tariff payable by the passengers is cross subsidized only to the extent of 30 per cent by revenues generated from cargo and ground handling services in case of CSI Airport, Mumbai. As cargo and ground handling services constitute a major source of revenue for the airport, the Committee feel that this has provided undue financial advantage to MIAL at the expense of higher tariff imposed on the passengers. PAC in its earlier report on DIAL on the same issue, advised MOCA to critically assess the financial impact of the concessions granted by Government under OMDA and the revenue ensured by the Government from the JV after Ground handling services and Cargo Handling services were categorized as aeronautical services. The MOCA however, defended and stated that the Cargo and Ground Handling Services have always been shown as non-aeronautical services as per the Annual Account Statement of AAI, which was regularly laid in the Parliament. The aeronautical and non-aeronautical services were defined in OMDA based on the legacy followed by AAI for its own airports, whereas provisions in AERA Act were made much later, as per the will of the Parliament. The Ministry further informed that as far as the financial impact of the concession granted by the Central Government, the charges for these services are regulated by AERA under AERA Act, 2008. It is further added that AAI gets its revenue share from the gross revenue of MIAL which includes both aeronautical and non-aeronautical revenues. Therefore, AAI continues to receive its revenue share thereon as per the agreed rates under OMDA, irrespective of treatment of such services as aeronautical or Non-Aeronautical. The Committee, therefore, urge upon the Government to adopt and implement a more practical method which will be suitable for Government as well as passengers while they take decision before entering into future PPP projects in aviation sector.

Outsourcing of Domestic and International Cargo Activities by MIAL

13. The Committee note that MIAL had outsourced its cargo activities which is estimated to reduce cargo revenue by 40 per cent in a span of two years. As the cargo revenue subsidizes tariff (30 per cent of cargo revenue being taken into

account while working out airport tariff), a fall in cargo revenue would lead to higher tariff and hence higher burden on the passengers. Correspondingly, the revenue share of AAI will also reduce substantially, which is a matter of concern for the Committee. Though Ministry has agreed that there would be drop in revenue in the initial period due to outsourcing but pointed out that it would result in better infrastructure and increase in handling capacity. MIAL has concessioned out international cargo facilities for a period of three years to Container Corporation of India Ltd w.e.f. 18 February 2014 at revenue share of 69%. In case of domestic cargo it has also concessioned out to Container Corporation of India Ltd at revenue share of 42% on BOOT basis w.e.f. 1 September 2012. Outsourcing of domestic cargo was necessitated to pass on capital expenditure to concessionaire. Cargo Service Centre India Private Limited (CSC) started Perishable cargo handling w.e.f 16 May 2011 at the higher of Minimum Annual Guarantee and revenue share @ 15%. Concession for a period of five years on BOOT basis after which entire facility will revert to MIAL at Re.1. MIAL has introduced extra revenue stream which was not available in the past. It does not involve any capital expenditure from MIAL. They have also informed that no subsidiary of GVK is involved in handling of cargo activities. The Committee appreciate the efforts of outsourcing cargo activities which will create better infrastructure and enhanced handling capacity. However, the Committee desire the Ministry to ensure that such activities do not result in lower revenue generation which ultimately result in higher tariff at the airport to be borne by the passengers. They also desire MOCA to consistently monitor and review the extent and adequacy of promised improvements in infrastructure and handling capacity compared to the projected reduction in revenue and take suitable ameliorative measures as and when required.

Award of Concession for Operation of Hotel

14. The Committee note that as per OMDA, all developments at the airport shall be as per the existing Master Plan and no development that is not envisaged in the Master Plan would be allowed to be undertaken. However, MIAL took up

construction of a hotel near Terminal 1C in June 2009 though it was not included in the Master Plans, thereby, violating the terms of reference in OMDA. MIAL also outsourced the hotel operations to a group company of GVK (a Consortium of M/s. TAJ GVK Hotels & Resorts and Greenridge Hotels & Resorts), with a very small revenue share (4.65%) to MIAL. This was agreed to by AAI, though the arrangement would have significant adverse impact on the revenue share of AAI with AAI receiving only 1.79 percent of the gross earnings in the hotel project. As the hotel concession had been awarded to a group entity of MIAL, the upside in revenue would benefit the GVK group. The MOCA, however, denied the charges on the ground that MIAL has concessioned out the construction and operation of Hotel near Terminal 1C to a consortium of Taj GVK Hotels & Resorts Ltd and Green Woods Palaces & Resorts Pvt. Ltd., which is a related party, through a process of competitive bidding and in full compliance with the provisions of OMDA and it did not affect revenue share to AAI in any way. They further informed that to ensure arm's length transaction, probity auditor was appointed. Since the entire process was under supervision of probity auditor and transaction being at arm's length, probity auditors certified and confirmed the same. The Committee are dismayed to note that though AAI is represented on the Board of MIAL and ought to have been aware of the initiation of construction of the Hotel in June 2009, they wonder how it could not be included in the Master Plan, 2007. The Committee also find that even the Independent Engineer also failed to report Hotel construction which was in deviation to the then operational Master Plan. The Committee feel that had MOCA been more vigilant and exercise due diligence in an efficient manner while dealing with such agreements the same would have been avoided. The Committee, therefore, would like to caution the Ministry to be more careful in future while dealing with things which involve revenue interest of the Government of India.

Delayed Retirement Compensation

15. The Committee note that as per OMDA, MIAL was liable to pay Retirement Compensation to AAI for unabsorbed number of general employees. The Retirement Compensation was to be based on AAI's latest available Voluntary

Retirement Scheme. AAI allowed MIAL to pay Retirement Compensation as monthly instalments over ten years which according to audit is in violation of specific directives from MOCA which stipulated that MIAL should pay the balance amount immediately. This resulted in undue favour to MIAL and consequent loss of interest (₹71.37 crore) to AAI. However, MOCA defended MIAL on the ground that as per provisions of article 6.1.4 of OMDA, MIAL (JVC) is mandated to pay Retirement compensation of such number of employees who had not opted for the absorption in the JVC within the operation support period. The Retirement Compensation claim has been raised by AAI in accordance with OMDA provisions and as per the VRS scheme of AAI and hence no loss of AAI. Thus, there is no undue favour of MIAL. The Committee in its report on DIAL had concluded that MOCA had erred in safeguarding the interests of employees of AAI and failed to enforce its directives while also recommending that MOCA enforce the contractual obligations as per OMDA. MOCA has assured the Committee that it has ensured that the provisions of OMDA are strictly adhered to and continue to ensure in future also. The Committee hope that MOCA will not only ensure compliance of provisions of OMDA in future PPP but also keep the audit informed of the factual position so that such instances do not occur in future.

Maintenance of Land Records

16. The Committee note that neither OMDA nor the lease deed signed between AAI and MIAL demarcated and defined the specific details of the leased land. Both documents were to have a map of the 'demised premises' which was left blank. This indicates that AAI did not have up-to-date land records. Moreover, the Committee are surprised to note that the area of CSI Airport, Mumbai which was stated to be 1875 acres in the Request for Proposals, increased to 2006 acres on actual survey by MIAL. The difference in areas quoted by AAI and MIAL raises questions on the quality of land records and documents maintained by AAI. MOCA, however, said that no proper land records were available with AAI since the same was not handed over to AAI on its formation. Though AAI has been making efforts to get the land records it has been difficult to acquire being an old

record. The Committee have been informed that survey/markings were not possible as large part of CSIA boundaries are covered with slums and due to on-going litigations and adverse possession of land in some cases. The Committee are distressed to note that in the absence of proper records of the land of CSIA and also given the fact that without conducting any physical survey, public land was transferred to MIAL. The Committee, therefore, recommend that necessary survey of the land be undertaken with the help of State Government and other local agencies and obtain property cards of the remaining land after resolution of the disputes and put all land related papers in safe custody of MOCA/AAI. They also desire that physical markings may also be erected to identify the demised land and carved out assets for future and the Committee may be apprised accordingly.

Carved out land transferred to MIAL on the basis of 'Upfront fee'

17. The Committee note that 'Carved out assets' were primarily intended for the use of AAI as per OMDA and could be transferred to MIAL, if required, for aeronautical purposes with the condition that AAI and MIAL should negotiate the terms and conditions of such transfer. The Committee have been informed that AAI agreed to transfer 48.15 acres out of carved out assets to MIAL against a meager consideration based on upfront fee paid by MIAL without negotiation of terms and conditions as provided in OMDA. The Committee, however, feel that with increase in the extent of demised premises, the quantum of land available to MIAL for commercial exploitation also increases which would be available for 60 (30+30) years. This needs clarification. The Committee, therefore, urge upon the Ministry to find out the total earnings of MIAL and the revenue earned by the Government and MIAL 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 by MOCA.

Commercial Exploitation of Land

18. OMDA allows MIAL to utilize ten percent of 'demised premises' for commercial exploitation. The Committee note that initially the land available for commercial exploitation was 179.8 acres, which increased to 190.1 acres in

December 2011 on account of re-survey of the land and increase in 'demised premises' to 1901.03 acres. Thus, MIAL benefitted by 10.23 acres of additional exploitable land. Further, with the transfer of carved out asset, the land eligibility of MIAL for commercial exploitation increased to 196.67 acres. The revenue from these activities would not be considered for determination of airport charges. The MOCA informed that after survey of land MIAL had intimated that as on 21 Dec. 2011 the total AAI land is 2006.72 acres, carved out land as per OMDA is 76.30 acres, demised land 1901.03 acres and land which can be used by MIAL for commercial exploitation will be 190.10 acres. According to MOCA presently maximum area of land for Commercial exploitation based on 10% cannot exceed 190.11 acres. Land was given to MIAL on as-is-where-is basis and any change in area is mainly due to correction of records. No extra piece of land has been given to MIAL other than demised or carved out assets as per provisions of OMDA and subject to end use restriction. In fact extent of slums has now been estimated to be 308.95 acres against 147 acres indicated in lease deed and 171 acres indicated in State Government Support Agreement. MOCA informed that as per Interim Development Plan by Special Planning Authority (SPA) i.e. MMRDA, the governing authority, 133 acres of land is earmarked for commercial exploitation. Question of commercial exploitation will always be governed by Development Plan approved by SPA. The Committee, find that despite explanation given by MOCA that commercially exploitable land cannot go beyond 190.1 acres, the extent of commercially exploitable land available to MIAL after the removal of encroachment on airport land is not clear. Since the benefit from the 'non-transfer' asset would accrue to MIAL and it will not be considered for determination of airport charges, the same would be a revenue enhancing activity having the potential for reduction of burden in the form of various levies on passengers. The Committee would like the MOCA/AAI to consider this aspect and inform the Committee about the impact, if any, it would have on the earning of AAI and levies on passengers. They would like to urge the MoCA/AAI to carefully work out the economies of commercial exploitation of land from time to time under intimation to the Committee.

Encroachment at CSI Airport, Mumbai and its removal

19. The Committee have been given to understand that two documents signed by AAI in 2006 i.e. Lease deed and State Government Support Agreement (SGSA) indicated two different figures as area under encroachment, which indicated lack of clear understanding of AAI regarding the area that was actually under encroachment. It has been established that at that time, MOCA/AAI has no records to show the exact area of airport land including area under encroachment. Accordingly the area of encroached land increased from 147 acres (approx) as indicated in SGSA to 308.96 acres which only highlight serious deficiencies in land records management. To undertake activities relating to rehabilitation of encroachers and restoration of the Airport land under encroachment in lieu of the right to develop part of the land vacated by encroachers MIAL entered into a State Government Support Agreement (SGSA) with the Government of Maharashtra (GoMh) in 2006. The SGSA empowers MIAL to remove the encroachment from the airport land. For the purpose, Clause 3.1.2 of SGSA stipulates that if MIAL requires the use of any of the land at the airport site, which land is subject to encroachment and hindering the provision of Aeronautical Services and/or to construct, develop and maintain any aeronautical assets at the airport, it shall notify GoMh and AAI of the same and pursuant to receiving the aforesaid notice from Company, GoMh shall undertake its best efforts in providing support to the Company and AAI in clearing the land. GoMh, on 30th September, 2005, appointed Urban Development Department as a nodal agency for airport slum Rehabilitation. Accordingly, Mumbai Metropolitan Region Development Authority (MMRDA) was asked by GoMh to take necessary action for survey of slums for further action. MIAL entered into an agreement on 12th December, 2006, with MMRDA to assist MIAL in various functions relating to slum rehabilitation including appointment of developers to carry out the developments as per Slum Rehabilitation Authority (SRA) Scheme. In order to rehabilitate the slum dwellers to free airport land for airport development purposes, MIAL engaged M/s Housing Development and Infrastructure Limited (HDIL) as a developer through competitive bidding process. A Slum Rehabilitation

Agreement was executed by MIAL with HDIL on 15th October, 2007 and after negotiation it was agreed that only about 23.5% of land being 65 acres will be available to HDIL for commercial development on sub-lease basis, subject to the provisions of OMDA in lieu of *ex-situ* slum rehabilitation. HDIL had to bear all the costs and expenses relating to the entire slum rehabilitation project. This 65 acres of land was subject to HDIL clearing entire 276 acre of airport land and handing over unencumbered possession to MIAL. HDIL had to clear about 158 acres of land and handover to MIAL for operational use. Any sub-lease of land to HDIL was to be in phases only after balance 118 acres of land cleared by HDIL. For each acre of land cleared other than 158 acres, only 0.55 acre of land was to be sub-leased to HDIL i.e. out of 118 acres, 65 acres of land was to be sub-leased to HDIL. As per agreement with M/s HDIL slum rehabilitation was to be implemented within a period of four years in different phases (2007 to 2011). As HDIL could not perform in spite of repeated assurances to do so, MIAL finally issued a Cure Notice to HDIL against which also HDIL could not perform and as a last resort, MIAL terminated the agreement with HDIL on 6th February, 2013. Subsequently, HDIL went for litigation and the matter is sub-judice with Arbitral Tribunal. The Committee feel that since MOCA was aware of said agreement, the papers relating thereto should have been made available to C&AG to ensure transparency. The Committee are perturbed to note that despite award of contract and signing of agreement for slum rehabilitation of slum dwellers on airport land, the work did not progress well and ultimately contract was cancelled. The Committee remain apprehensive that any further delay in the implementation of the rehabilitation plan would further put on hold any developmental work in CSIA, Mumbai. The Committee strongly deprecate that AAI though aware of above agreement, since defunct, feigned ignorance during the evidence and desire appropriate action to ensure that such lapse is not repeated.

20. The Committee, however, are happy to note that MIAL had approached AAI for its approval for *in-situ* rehabilitation of slum dwellers as per policy of State Government or as per any other schemes as may be applicable. AAI has given 'in principle' approval for *in-situ* slum rehabilitation. The Govt. of Maharashtra, on

the recommendation of MOCA is formulating Airport Specific Slum Rehabilitation Scheme for CSIA. This Scheme along with its Development Control Regulations are being finalized by Govt of Maharashtra under Maharashtra Regional and Town Planning Act, 1966 (MRTP, 1966) as part of the statutory process of the State Govt. The Committee hope that slum rehabilitation plan taking utmost care of safety and security of passengers/aircraft and airport infrastructure also, will be formulated and finalised at the earliest in consultation with all stakeholders so that developmental plans at the CSI airport is not further delayed and rehabilitation of slum dwellers on encroached land of airport is done. The Committee, therefore, desire the MOCA/AAI to expedite the matter pertaining to finalisation of slum rehabilitation plan and pursue its implementation with the Government of Maharashtra at the earliest.

NEW DELHI;
26 April, 2016
06 Vaisakha, 1935 (Saka)

PROF. K.V. THOMAS
Chairman,
Public Accounts Committee.

Annexure - I

MINUTES OF THE THIRTEENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2015-16) HELD ON 16TH NOVEMBER, 2015.

The Committee sat on Monday, the 16th November, 2015 from 1130 hrs to 1445 hrs in Room No. G-074, Parliament Library Building, New Delhi.

PRESENT

Prof. K.V. Thomas

Chairperson

Members

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Nishikant Dubey
4. Shri Gajanan Kirtikar
5. Shri Ramesh Pokhriyal "Nishank"
6. Shri Neiphiu Rio
7. Shri Jagardan Singh Sigriwal
8. Dr. Kirit Somaiya
9. Shri Anurag Thakur
10. Dr. P. Venugopal

RAJYA SABHA


11. Shri Vijay Goel
12. Shri Bhubaneswar Kalita
13. Shri Shantaram Naik
14. Shri Sukhendu Sekhar Roy

LOK SABHA SECRETARIAT

1. Shri A.K Singh - Additional Secretary
2. Shri Jayakumar T. - Director
3. Shri A.K. Yadav - Deputy Secretary

REPRESENTATIVES OF THE OFFICE OF THE C&AG OF INDIA

1. Shri P. Mukherjee - Deputy C&AG (Commercial)
2. Shri A.M. Bajaj - Director-General (Commercial)
3. Shri Manish Kumar - Principal Director (PAC)
4. Ms. Parama Seh - Principal Director CA


REPRESENTATIVES OF THE MINISTRY OF CIVIL AVIATION

1. Shri R.N. Choubey - Secretary
2. Ms. Gargi Kaul - Joint Secretary & Financial Advisor
3. Shri Anil Srivastava - Joint Secretary
4. Shri Arun Kumar - Joint Secretary
5. Shri R.K. Shrivastava - Chairman, AAI
6. Shri S. Suresh - Member (Finance), AAI
7. Shri Alok Shekhar - Representative of AERA
8. Shri Sanjay Reddy - Managing Director, MIAL
9. Shri Rajeev Kumar Jain - Chief Executive Officer, MIAL

2. At the outset the Chairperson welcomed the Members and the representatives of the Office of the C&AG of India to the sitting of the Committee. The Chairperson then apprised the Members that the meeting has been convened to take oral evidence of the representatives of the Ministry of Civil Aviation on the subject "**Implementation of Public Private Partnership Project at Chhatrapati Shivaji International Airport, Mumbai**" based on C&AG Report No.15 of 2014.

3. Thereafter, the representatives of the Ministry of Civil Aviation, Airport Authority of India and Mumbai International Airport Limited (MIAL) were called in. The Chairperson welcomed them to the sitting of the Committee convened to take their oral evidence on the above mentioned subject. The Chairperson observed that the most significant issue, the audit pointed out, was that the MIAL virtually has the right to operate the airport for a period of 60 years with the terms and conditions frozen in OMDA. It enjoys unilateral right to extend the concession period of 30 years for another 30 years on the same terms and conditions. The second lacuna pointed out was that the State Government Support Agreement allows MIAL Right of First Refusal (ROFR) on the second airport within 150 km. from CSI Airport. It is found that the implementation of the project was delayed leading to almost 100 per cent increase in the project cost. Further, the Chairperson raised other issues such as transfer of 481.15 acres of land out of carved out assets to MIAL against a consideration based on upfront fee paid by MIAL (Rs.3.52 crores); misutilisation of Passenger Service Fee for purchase of security systems and equipments; non-availability of records of the actual land under possession of the Mumbai Airport; commercial utilisation of land; delay in rehabilitation of families presently residing on the slum on encroached land of Mumbai Airport.

4. The Chairperson also called the attention of representatives of the MOCA regarding pendency of action taken note with regard to the 94th Report of PAC (15TH Lok Sabha) relating to the "Implementation of PPP at IGI Airport, Delhi" relating to Delhi Airport. A number of issues raised in the present report on MIAL are common as raised in the report on DIAL.

5. Thereafter, Secretary of the Ministry and Chairman, AAI gave a power point presentation giving background of the subject and also attended to the queries of the Members on various issues including decision of government to go for PPP model in modernisation of Airports, right of first refusal, long tenure of lease, right of first refusal to MIAL, delay in completion of various projects, increase in cost, imposition of development fee on passengers and rehabilitation of slum dwellers settled on encroached land of Airport. Thereafter, Members also raised various queries related to the subject. The officials of the Ministry responded to some of the queries. However, a number of queries remain unanswered as the replies were not readily available with them. The Chairperson, PAC asked the officials of the Ministry to send the written replies to all the queries raised by the Members during the discussion to the Lok Sabha Secretariat within 15-20 days.

6. The Chairperson also informed the Committee that some Members from Mumbai have suggested that the Committee should visit the Mumbai airport and he will obtain requisite permission from the Hon. Speaker so that a visit to CST Railway Station and CSI Airport Mumbai can be organised after the winter session.

7. The Chairperson thanked the representatives of the Ministry for appearing before the Committee and furnishing updated information on the subject.

A copy of the verbatim proceedings has been kept on record.

The Committee, then, adjourned.