

CPU. No. 985

5

FIFTH REPORT
COMMITTEE ON PUBLIC UNDERTAKINGS
(2014-2015)
(SIXTEENTH LOK SABHA)

**UNAUTHORIZED WITHDRAWAL FROM THE ESCROW ACCOUNT HELD IN
A FIDUCIARY CAPACITY ON BEHALF OF THE GOVERNMENT OF INDIA BY
MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED**

[BASED ON PARA NO. 2.5 OF C&AG REPORT NO. 3 OF 2011-12]

AIRPORTS AUTHORITY OF INDIA LTD.

MINISTRY OF CIVIL AVIATION

**(Action taken by the Government on the recommendations contained in the
Thirtieth Report of the Committee on Public Undertakings (Fifteenth Lok
Sabha) on Unauthorized withdrawal from the Escrow Account held in a
fiduciary capacity on behalf of the Government of India by Mumbai
International Airport (P) Limited)**



Presented to Lok Sabha on 28.04.2015

Laid on the table of Rajya Sabha on 28.04.2015

LOK SABHA SECRETARIAT

NEW DELHI

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COMMITTEE ON PUBLIC UNDERTAKINGS
(2014 – 2015)

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INTRODUCTION

I, the Chairperson, Committee on Public Undertakings having been authorized by the Committee to submit the Report on their behalf, present this Fifth Report on action taken by the Government on the Observations / Recommendations contained in the Thirtieth Report of the Committee on Public Undertakings (Fifteenth Lok Sabha) on Airports Authority of India Limited - Unauthorized withdrawal from the escrow account held in a fiduciary capacity on behalf of the Government of India by Mumbai International Airport (P) Limited based on Para No. 2.5 of C&AG Report No. 3 of 2011-12.

2. The Thirtieth Report was presented to Lok Sabha / laid on the Table of Rajya Sabha on 10 February, 2014 and 11 February, 2014 respectively. Replies of the Government to the Observations / Recommendations contained in the Report were received on 12 January 2015. The draft Report was considered and adopted by the Committee at their Sitting held on 24 April 2015. The Minutes of the Sitting are given in Appendix-I.

3. An analysis of the action taken by Government on the Observations / Recommendations contained in the Thirtieth Report is given in Appendix-II.

New Delhi
27 April 2015
7 Vaisakha, 1937(S)

SHANTA KUMAR
Chairperson,
Committee on Public Undertakings.

REPORT

CHAPTER - I

This Report of the Committee deals with the Action Taken by the Government on the Observations / Recommendations contained in the Thirtieth Report of the Committee on Public Undertakings (15th Lok Sabha) on "Airports Authority of India Limited - Unauthorized withdrawal from the escrow account held in fiduciary capacity on behalf of the Government of India by Mumbai International Airports (P) Limited" based on Para 2.5 of C&AG Report No. 3 of 2011-12 which was presented to Lok Sabha and laid on the Table of Rajya Sabha on 10 February 2014.

2. Action taken notes have been received from the Government in respect of all the seven Observations/ Recommendations contained in the Report. These have been categorized as follows:

- (i) Observations/Recommendations that have been accepted by the Government (Chapter-II)
Sl. Nos. 6 (Total 1)
- (ii) Observations/Recommendations which the Committee do not desire to pursue in view of the Government's replies: (Chapter-III)
(NIL)
- (iii) Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration: (Chapter-IV)
Sl. Nos.1, 2 and 5 (Total 3)
- (iv) Observations/Recommendations in respect of which final replies of the Government is still awaited: (Chapter-V)
Sl. No. 3, 4 and 7 (Total 3)

3. The Committee desire that final replies on the Observations / Recommendations to which interim replies have been furnished and also response to their comments in Chapter I of the Report should be furnished to them expeditiously.

4. The Committee will now deal with the action taken by the Government on some of the recommendations in the succeeding paragraphs.

Recommendation Serial No. 1

5. Noting unauthorized withdrawal from the escrow account held in fiduciary capacity on behalf of the Government of India by Mumbai International Airports Limited, the Committee in their Thirtieth Report have observed as follows:

“The Committee note that as per Rule 88 of the Aircraft Rules 1937, the licensee of an airport operator is entitled to collect a levy called Passenger Service Fee (PSF) from the embarking passengers at a rate specified by the Central Government. The licensee is allowed to retain a fixed part of PSF for facilitation. The licensee is also liable to pay a fixed part of this Fee to a security agency designated by the Central Government for providing security at the airport. The Order issued by the Ministry of Civil Aviation on 09 May, 2006 under Rule 88 clearly stipulates that PSF is required to be deposited in an Escrow Account which would be operated by the concerned airport operator in fiduciary capacity and would be utilized for payment to Central Industrial Security Force (CISF) deployed at the Airport. Any balance amount is to be remitted by the airport operator to Airports Authority of India for being utilized for payment to CISF at other airports. As per the said Order, the airport operator was supposed to charge Rs. 200 per passenger as PSF. Out of this, an amount Rs. 70 was to be retained by the airport operator and the remaining Rs. 130 was to be deposited in the Escrow Account for being paid to CISF. The Audit scrutiny has, however, revealed that Mumbai International Airport (P) Limited (MIAL) which operates the Chhatrapati Shivaji Mumbai International Airport (CSI Airport) w.e.f. 3 May, 2006 has met expenses of Rs. 14.21 Cr. relating to consultancy and other professional charges (Rs. 1.87 Cr.) and deployment of private security agencies (Rs. 12.34 Cr.) from the PSF (SC) Escrow Account during the years 2007-08 and 2008-09 in violation of various orders/instructions by the Government of India regarding operation of PSF (SC) Escrow Account. Further, MIAL also purchased an X-ray screening machine costing Rs. 1.01 Cr. in 2008-09 out of PSF (SC) Escrow Account for screening of export cargo. Moreover, the income earned by MIAL by offering the use of this cargo screening machine to airlines and their agents was in violation of rules and regulations not credited to PSF (SC) Account. Audit observed that in view of the Government of India’s orders and clarifications, withdrawal of the entire amount of Rs. 15.22 Cr. from the PSF (SC) Escrow Account by MIAL during the two years 2007-08 and 2008-09 was not only in violation of the Government’s orders prescribing the items on which moneys from PSF (SC) Escrow Account could be spent but also a loss to the Government/AAI since any surplus in the PSF (SC) Escrow Account should be ultimately transferred to the AAI by the Airport operator for being utilised for expenditure on security at other airports”.

6. The Ministry of Civil Aviation in their action taken reply have stated as follows:

- Passenger Service Fee is a Govt. levy which is being collected from each embarking passenger at Rs. 200/-. PSF has two components, viz., PSF (Security Component) of Rs. 130/- and PSF (Facilitation Component) of Rs. 70/-.
- At the time when privatization of airports was going on in the Country, MoCA felt it necessary to define the scope of PSF funds collection and utilization. The order dated 09.05.2006 issued subsequently stipulated that AAI, JVC or a private operator could collect PSF(SC) at their airports. It was further stipulated that for this purpose an escrow account would be opened wherever the airport operator is a JVC or private operator (*not AAI*) and that this account would be operated by the airport operator. Rs. 130/- of the PSF collected per passenger would be deposited in the Escrow account by the airport operators for payments to be made to CISF. In case any amounts remains surplus the same will be transferred to AAI by the airport operator.
- Subsequently, the Airport Operators approached this Ministry with a request to clarify the scope of PSF utilization. In response Ministry vide order dated 20.06.2007, clarified that the security component of PSF is not a regular revenue income of an airport operator. PSF (SC) collected at an airport operated by a JVC/Pvt. Operator will utilize at the airport concerned only to meet the security related expenses of that airport and that AAI will however be considered a single licensee in respect of its airports for this purpose with liberty to pool the PSF(SC) collections from such airports and use the same for meeting the security related expenses at any of its airports.
- Later on, it was found necessary to properly define the scope of collection, utilization and management of Passenger Service Fee (Security Component) funds. Hence, Ministry vide order **dated 19.01.2009** brought out the detailed guidelines in the form of Standard Operating Procedures (SOPs) for PSF (SC) utilization and management. Some of the relevant paras of this order are reproduced below for perusal:
 - i. Para 3 (ii) (b) states that PSF would be utilised to pay for security related expenses to CISF.
 - ii. Para 4.14 states that Annual Accounts should be submitted by the airport operator to the MoCA as well as CAG within 3 months of the close of the financial year.
 - iii. Para 5.1 states that Audit of PSF (SC) accounts shall be conducted by CAG on annual basis or at such periodicity as may be decided by the CAG.

- iv. Para 5.3 states that the audit observations will be forwarded to JVC/Private Operators for comments and comments of JVC/Private Operator would be forwarded by MOCA to C&AG after due vetting.
- v. Para 6.2 states that JVC/Private Operator shall not be entitled to any administrative expenses etc. on account of PSF (SC).

In view of the foregoing paras, it could be seen that owing to absence of specific guidelines in respect of C&AG audit, audit of MIAL could not be carried out for the period 2006 to 2009. CAG carried out its very first audit of MIAL's PSF escrow account in the year 2010 for an accumulated period of 3 years i.e. 2006 to 2009.

- The observations made by the C&AG (in its first audit) were received in the month of June, 2010 by this Ministry. Ministry for the first time came to know about mis-utilization of PSF (SC) funds by MIAL for deployment of private security guards, hiring technical consultancy and purchase of Cargo X-ray security equipment. The audit observations were accordingly taken up with MIAL to furnish its comments over C&AG observations. The replies furnished by MIAL were examined at length. MIAL in response to these observations had stated that the deployment of private security guards was made due to the shortage of CISF manpower. Claims of MIAL were thereafter examined and it became clear that shortage of CISF manpower was never an issue at the airport.

- Meanwhile, Ministry vide order dated 08.01.2010 had clarified the following aspects:

- a) Para 3(v): The permissible expenditure out of PSF (SC) shall not include the expenditure on any other security staff or other administrative setup created/engaged by the airport operator

- b) Para (ii) of Annexure B: if expenditure on screening items including X-ray machines, multi view X-ray machine on inline baggage system is included in the scope of expenditure to be met out of PSF (SC), airport operator shall not be allowed to charge any hiring fees from concerned agencies, viz airlines, cargo etc. for the same. If the airport operator is charging any hiring fees/charges for use of screening equipment from the airlines, cargo agents etc. then the expenditure relating to the installation and use of the screening equipment shall not be included in the scope of the expenditure to be met out of PSF (SC). In any case the cost of entire in-line baggage security system *per se* is not eligible to be debited to the PSF (SC) funds.

In view of these guidelines, MIAL was directed to reverse the entire expenditure on above items back to the PSF (SC) escrow account.

- In view of these guidelines MIAL was directed vide this Ministry's communications dated 19.08.2010, 25.10.2010, 30.11.2010, 09.01.2012, 27.02.2012, 17.05.2012, 18.05.2012, 22.05.2012, 06.06.2012, 14.09.2012, 12.12.2012 & 26.12.2012 to comply with observations of audit and to reverse the ineligible expenditure, which formed part of the project cost, to the PSF (SC) escrow account. Therefore, it can be concluded that Ministry has not remained silent, but took appropriate measures to get the ineligible expenditure reversed to the PSF (SC) escrow account. At the constant monitoring and directions of the Ministry, MIAL reversed funds to the tune of Rs.15.21 Cr. for the period FYs 2006-09, the details of which are given below:-

- i. Private Security Guard expenditure - Rs. 12.34 Cr.
- ii. Technical Consultancy - Rs. 1.87 Cr.
- iii. Cargo X ray screening machine - Rs. 1.00 Cr.

MIAL had vide its letter dated 20.03.2013 addressed to this Ministry had confirmed that they had deposited Rs.15,21,85,097.72 to PSF(SC) account No.004620110000536 on 25.02.2013. It may however be added that the Hon'ble High Court of Delhi is yet to pass its final order in the matter of W.P. No.4242/2012 wherein MIAL has challenged reversal of the aforesaid amount along with its interest component. The entire matter is presently *sub judice*. The interest component is yet to be reversed by MIAL. MOCA is trying get the case heard early.

7. The vetted remarks of the office of C&AG on the reply of the Government are as follows:

1. Mumbai International Airport was handed over to the private operator with effect from 3 May, 2006. The private operator was handling the PSF (SC) funds and government revenue since then. However, Standard Operating Procedure governing the accounts and audit of these funds was issued by MoCA in January, 2009.
2. Though Ministry directed MIAL to get the ineligible expenditure of Rs.15.21 crore along with interest reversed to PSF (SC) in August 2010 itself, MIAL has reversed the fund only in February, 2013. It took almost 3 years for MIAL to act on the directions of Ministry. However the Interest element still remains to be paid by MIAL.

The matter is presently sub-judice.

The amount of Rs.15.21 crore pertains to the period 2007-08 and 2008-09. However, instances of utilization of PSF (SC) funds by MIAL for expenditure

of capital and instructions of MOCA governing utilization of these funds continued beyond 2008-09. Audit has commented in this regard on the accounts of PSF (SC) funds maintained by MIAL for the years 2009-10, 2010-11, 2011-12 and 2012-13 and such comments have been issued to MOCA.

Similarly, instances of incurring of such expenses from PSF (SC) funds by other two private airport operators viz. DIAL and HIAL beyond 2008-09 in deviation of SOP/instructions of MOCA have also been reported to MOCA in the form of comments of C&AG on the PSF (SC) accounts of the respective years maintained by these two private operators.

8. In their response to the above mentioned remarks of the C&AG, the Ministry stated as follows:

"Factual position, hence need no further comments. It is however clarified in this regard that the process of working out modalities of accounting / audit procedure in respect of PSF (SC) funds were started in the year 2006 itself. They were finalized and circulated in January, 2009 after consultation with Ministry of Law and with the approval of the then Minister of Civil Aviation.

As has already been mentioned in the reply of the Ministry, the matter is currently *sub judice*. Further action will be taken in the matter in accordance with directions, if any, of Hon'ble Court.

The observations received from the office of C&AG are duly examined in this Ministry and suitable directions are issued to the airport operators concerned, including MIAL to reverse expenditure wherever they been incurred unauthorisedly. Besides, the order dated 18.02.2014 issued by this Ministry has issued directions to all airport operators, including MIAL, to reverse entire capital expenditure incurred out of PSF (SC) funds since their inception whether on security equipment or on accommodation of CISF to the respective PSF (SC) escrow accounts along with applicable interest which could have been earned in normal course. This order has been challenged by several airport operators, including MIAL, in high courts of their respective zones. In those cases, the Hon'ble High Courts have either stayed the said order or ordered status quo (as in the case of the court case filed by MIAL)."

9. The Committee are appalled to note that despite several communications issued by the Ministry of Civil Aviation (MoCA) between August, 2010 to December, 2012 directing MIAL to get the ineligible expenditure of Rs. 15.21 crore along with interest reversed to PSF (SC), MIAL has reversed the fund that too excluding the interest amount in

February, 2013 that took almost three years for MIAL to comply with the directives of the MoCA, which speaks volume about the ineffective monitoring by the Ministry. Obviously Ministry was merely content with sending communications during the period from August 2010 to December 2012, but in effect remained a mute spectator to the callous and indifferent attitude of MIAL during this period. The Committee desire that a detailed account of reasons for inordinate delay in compliance of MIAL to the Ministry's direction for reversion of the ineligible expenditure of Rs.15.21 crore alongwith interest be furnished to the Committee without any loss of time. Now, when the matter is sub-judice, the Committee desire that all out efforts be made by MoCA to get the legal process expedited and to ensure early recovery of the interest amount.

Recommendation Serial No. 2

10. With regard to administrative Ministry's role in the administration and regulation of the PSF Escrow Account by the airport operator in fiduciary capacity, the Committee in their Report recommended as follows:

"The Committee's examination revealed that while the airport operator is to be squarely blamed for these highly irregular withdrawals through deliberate misinterpretation of the law, rules and regulations and basic facts, from an Escrow Account, which it was operating in fiduciary capacity, the Ministry of Civil Aviation and Airports Authority of India by remaining mute spectators for years together have contributed no less to these irregularities. This, notwithstanding the fact that the administration and regulation of the PSF Escrow Account held by the airport operator in fiduciary capacity is governed by Standard Operating Procedure (SOPs) and other orders issued by the Government on the subject from time to time, and is also subjected to internal audit, none of these checks and balances was made use of by the Government to prevent unauthorized withdrawals from PSF (SC) Account by MIAL. Worse, as per Operation, Management and Development Agreement (OMDA), though AAI is empowered to seek such other report/information in relation to the airport operations it failed to obtain information on unauthorized withdrawal of funds by MIAL and consequently, it did not take any action and let MIAL have a complete and unfettered say in the operation of PSF (SC) Account. In so far as the administrative Ministry's role is concerned, the admission of the Secretary, Civil Aviation during evidence before the Committee "We have made specific provision that this account should be audited by the C&AG and also by the internal audit. We were all the while under the impression that these two audit mechanisms are out in place" speaks volumes about the quality and extent of oversight exercised by the Ministry to ensure that PSF funds were utilized in accordance with the extant practices and SOPs".

11. The Ministry of Civil Aviation in their action taken reply have stated as follows:

" As has been explained in the preceding para of reply, MIAL was regularly given directions through various communications to comply with observations of audit and to reverse the ineligible expenditure which forms the part of the project cost to the PSF (SC) escrow account. Therefore, it can be concluded that Ministry took all necessary measures to comply with audit observations and to recover the illegible expenditure from MIAL.

- It is again clarified at this juncture that at the time of privatization of airports no definitive Standard Operating Procedure for collection, management and utilization of PSF (SC) funds was in place. This could have been a contributing factor for mis-utilization of PSF (SC) funds by airport operators.

- As a corrective measure, this Ministry has brought in suitable amendments in Rule 88 of Aircraft Rules, 1937 on 5th March, 2014 by way of inserting a new Rule "88A", relevant extracts as below, whereby Private/JV Airport Operators are no longer entitled to collect PSF (SC) collections.

"88A. Aviation security fees - (1) The Central Government, or any other authority designated by it in its behalf, may levy and collect aviation security fees on:

- (a) embarking passengers;
- (b) cargo transported out of an airport;
- (c) departing private aircrafts of general aviation;
- (d) chartered aircraft operations; and
- (e) any other dedicated civil aviation operations,

at such rate or rates, as the Central Government may specify from time to time, and different rates may be specified for different categories specified herein, to meet the expenditure on aviation security.

The aviation security fee shall be regulated and utilized in the manner as may be specified by the Central Government".

- This Ministry is in the process of revising/re-drafting Standard Operating Procedure so as to facilitate implementation of the provisions of the newly inserted Rule 88A. This Ministry is proposing therein to designate AAI as a single authority to collect and pool Aviation Security Fee and to settle revenue expenses of Aviation Security Group/APSU

deployed at the airports. Once this SOP comes into effect, revenue expenditure of Aviation Security Group (including CISF) so specified therein, will be met out of security fee.

12. Remarks of the office of the C&AG on the reply of the Government are as follows:

"The Airports were privatized in May, 2006 and PSF account was held by private operator in fiduciary capacity but the Ministry has issued the SOP in January, 2009 based on which C&AG Audit was conducted for three years i.e. from 2006 to 2009 for the first time. Revision to the SOP in line with the revisions of the newly inserted Rule 88A of the Aircraft Rules is still under process in the Ministry."

13. In response to the aforesaid remarks of the C&AG the Ministry have stated as follows:

"Revision of SoP is under active consideration in the Ministry so as to define modalities with respect of collection, utilization. and management of the Fee to be levied in accordance with Rule 88A.. Draft SoP in this regard has been circulated for the purpose of consultation with few central Ministries/ Departments and the stakeholders concerned such as Airport Operators."

14. The Committee are surprised to note that while the Airports were privatized way back in May, 2006 and PSF account was held by private operator in fiduciary capacity, the Ministry issued the SOP which governs the administration and regulation of the PSF Escrow Account only in January 2009, based on which the C&AG conducted audit of the Accounts of MIAL in June, 2010 for three years i.e. from 2006 to 2009 for the first time and only thereafter could find the irregularities. In this entire process, what has been confounding to the Committee is the delay in issuing the SOPs by the Ministry. The Committee are of the considered view that had the Ministry appreciated the urgent need for finalizing and issuing of the SOP in 2006 itself it would have facilitated early audit by C&AG thereby detecting unauthorized withdrawals from PSF (SC) Account by MIAL and thus would have helped prevent irregular payments from the Escrow account. The Committee understand that as a corrective measure, the Ministry have now brought in suitable amendments in Rule 88 of Aircraft Rules, 1937 on 5th March, 2014 by way of inserting a new Rule "88A", whereby Private/JV Airport Operators are no longer entitled to collect PSF (SC) collections and the revision of SoP in line with the provisions of the newly inserted Rule 88A of the Aircraft Rules is under active consideration in the Ministry. While acknowledging that the Ministry have taken a right move albeit belatedly, the Committee trust that draft SoP, which is learnt to have been circulated for the purpose of consultation with some central

Ministries/ Departments and the stakeholders concerned would be finalized within a stipulated timeframe so that the new Rule 88 A may be inserted in the Aircraft Rules, 1937 with due promptitude. The Committee would like to be informed of the outcome in this regard.

Recommendation Serial No. 5

15. On the process of debiting the cost of capital security items in PSF (SC) Escrow Account, the Committee had recommended as follows:

"Audit pointed out that purchase of an X-ray screening machine by MIAL costing Rs. 1.01 Cr in 2008-09 out of PSF (SC) account for screening of export cargo and non-crediting the income earned by MIAL by offering the use of cargo screening machine to airlines and their agents to PSF (SC) Escrow Account was in clear violation of MOCA clarification issued in January 2010. The Civil Aviation Secretary admitted before the Committee that the expenditure should have been capitalized and debited to the project cost itself and not doing so and debiting it to PSF is definitely a violation. To obviate recurrence of such lapses, the Ministry of Civil Aviation have stated that based on the C&AG observation and also considering the OMDA obligations, they are in the process of withdrawing the said permission to meet the cost of capital items (Security) from PSF (SC) funds. The Committee desire that Government should take a final decision in the matter with due promptitude so that process of debiting the cost of capital security items in PSF (SC) Escrow Account is discontinued forthwith. The Committee further desire that the Ministry should inquire into as to how in the first instance the instant instructions which were in the breach of OMDA were issued and share with the Committee the inquiry report and action taken thereon.

16. The Ministry of Civil aviation in their action taken reply on the above recommendation have stated as follows:

"The issue of meeting out the cost of security equipment out of PSF (SC) has been reviewed in this Ministry in the light of relevant provisions of OMDA/SSA & Concession agreement and with the approval of Hon'ble Minister of Civil Aviation Ministry vide its order dated 18.02.2014 has issued directions to all airport operators including MIAL to reverse entire capital expenditure incurred out of PSF (SC) funds since their inception whether on security equipment or on accommodation of CISF to the PSF (SC) escrow account. MIAL has already reversed the amount of Rs. 1.01 Cr during February, 2013."

17. The office of C&AG in their vetted remarks on the reply of the Government stated as follows:

"The amount of Rs, 1.01 crore reversed by MIAL forms part of the amount of Rs.15.21 crore pointed out by the Ministry for reversal in August, 2010. The amount of Rs.1.01 crore was incurred towards cost of procurement of X ray machines by MIAL. The amount of Rs. 15.21 crore does not constitute entire capital expenditure incurred by MIAL from PSF (SC) account in deviation of SOP/instructions governing utilization of PSF(SC) funds. The direction of Ministry of 18.02.2014 are yet to be complied with by MIAL. These directions are silent on reversal of expenditure of revenue nature."

18. The Ministry in their response to the Audit remarks stated as follows:

"The observations received from the office of C&AG are duly examined in this Ministry and suitable directions are issued to the airport operators concerned, including MIAL to reverse expenditure wherever they been incurred unauthorisedly. Necessary steps will also be taken by the Ministry to get the unauthorized revenue expenditure, if any, of airport operators reversed back into the respective Escrow Accounts."

19. The Ministry in their Action Taken reply have stated that MIAL has already reversed the amount of Rs. 1.01 crore during February 2013. They have also stated that the issue of meeting out the cost of security equipment out of PSF(SC) has been reviewed by them and the Ministry vide their order dated 18 February 2014 have issued direction to all airport operators including MIAL to reverse entire capital expenditure incurred out of PSF(SC) funds. However, the Committee find that the above direction of the Ministry is yet to be complied with by MIAL. Moreover, these directions are also silent on reversal of expenditure of revenue nature. The Ministry have now assured to take necessary steps to get the unauthorised revenue expenditure, if any, of airport operators reversed back into the respective Escrow Accounts. In view of the assurance given by the Ministry, the Committee hope that the Ministry will make all out efforts to see that their directions be complied with by all airport operators including MIAL in letter and spirit and ensure that the component of revenue expenditure are credited back to the Escrow Account.

CHAPTER - II

OBSERVATIONS / RECOMMENDATIONS WHICH HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation Serial No. 6

The Committee note that MoCA have also decided to reverse the entire cost of capital security items already debited by the operators including AAI to PSF (SC) Escrow Account. The Cost of Capex being reversed here would be taken in to project cost and will be considered for additional tariff fixation by AERA. The Committee, however, deprecate the marked reluctance of the Ministry about the changes in tariff claims of MIAL for the past period as it would supposedly inconvenience MIAL and lead to accounting complications based on which statutory liabilities like Income Tax, etc. are discharged. They, therefore, strongly recommended that the airport operator should be asked to pay all its liabilities to various government agencies for the entire period of it indulging in unauthorized withdrawals from PSF (SC) Escrow Account.

Reply of the Government

It may be relevant to quote Ministry's order No. AV.13024/03/2011-AS (Pt.I) dated 18.02.2014 vide which all airport operators have been directed to reverse the entire capital expenditure since their takeover together with the interest that would have accrued in normal course had the said amount not been debited against the PSF (SC) escrow account, back to the respective escrow accounts within a period of one month. It has also been made clear in the said order that PSF (SC) funds are meant only for meeting revenue expenditure on deployment of CISF and other security forces at the airports.

As per relevant provisions of OMDA/Concession agreement and State Support agreement airport operators are allowed to book the cost of capital items as project cost and to claim the same in the form of tariff through AERA. It is the liability of an airport operator to do the same.

In order to plug the existing deficiencies, this Ministry has brought in suitable amendments in Rule 88 of Aircraft Rules, 1937 on 5th March, 2014 by way of inserting a new Rule "88A", whereby Private/JV Airport Operators are no longer entitled to collect PSF (SC) collections. Also, a new Standard Operating Procedure is being drafted in regard to implementation of the provisions of Rule 88A wherein it has been proposed/recommended to designate Airports Authority of India as a single authority to collect and settle revenue expenses of Aviation Security Group/APSU so deployed at the airports in the Country. Once this SOP comes in to force, **only** specified expenditure of Aviation Security Group (including CISF) will be met out of security fee.

Remarks of the office of C&AG

The Ministry's order No.AV.13024/03/2011-AS (P11) dated 18.02.2014 (annexure – I) has been noted.

Though Rule 88A was inserted in March, 2014 in Aircraft Rules, 1937 in Aircraft Rules, 1937, the revised SOP to designate Airports Authority of India as a single authority to collect and settle revenue expenses of Aviation security Group IAPSU so deployed at the airports in the Country is awaited from the Ministry (October, 2014),

Evidence given by MOCA to COPU on 6th December, 2012 also refers in this regard.

Final reply of the Government

Insertion of new Rule88A has introduced the concept of collection of Aviation Security Fee (ASF) in place of PSF(SC). This Rule has widened the scope of collection of ASF. Presently, modalities of collection of ASF (including creation of a dedicated Personal Deposit Account (PDA) for pooling in the collections, its utilization and management are being worked out by way of revising the existing SoP for PSF(SC). This Ministry is vigorously pursuing the matter of revision of SoP.

(Ministry of Civil Aviation's O.M. No.AV 13024/65/2011-AS dated 12th January,2015)

CHAPTER - III

**OBSERVATIONS / RECOMMENDATIONS WHICH THE COMMITTEE DO NOT
DESIRE TO PURSUE IN VIEW OF THE GOVERNMENT'S REPLIES**

-NIL-

CHAPTER - IV

OBSERVATIONS / RECOMMENDATIONS IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Recommendation Serial No. 1

The Committee note that as per Rule 88 of the Aircraft Rules 1937, the licensee of an airport operator is entitled to collect a levy called Passenger Service Fee (PSF) from the embarking passengers at a rate specified by the Central Government. The licensee is allowed to retain a fixed part of PSF for facilitation. The licensee is also liable to pay a fixed part of this Fee to a security agency designated by the Central Government for providing security at the airport. The Order issued by the Ministry of Civil Aviation on 09 May, 2006 under Rule 88 clearly stipulates that PSF is required to be deposited in an Escrow Account which would be operated by the concerned airport operator in fiduciary capacity and would be utilized for payment to Central Industrial Security Force (CISF) deployed at the Airport. Any balance amount is to be remitted by the airport operator to Airports Authority of India for being utilized for payment to CISF at other airports. As per the said Order, the airport operator was supposed to charge Rs. 200 per passenger as PSF. Out of this, an amount Rs. 70 was to be retained by the airport operator and the remaining Rs. 130 was to be deposited in the Escrow Account for being paid to CISF. The Audit scrutiny has, however, revealed that Mumbai International Airport Private Limited (MIAL) which operates the Chhatrapati Shivaji Mumbai International Airport (CSA Airport) w.e.f. 3 May, 2006 has met expenses of Rs. 14.21 Cr. relating to consultancy and other professional charges (Rs. 1.87 Cr.) and deployment of private security agencies (Rs. 12.34 Cr.) from the PSF (SC) Escrow Account during the years 2007-08 and 2008-09 in violation various orders/instructions by the Government of India regarding operation of PSF (SC) Escrow Account. Further, MIAL also purchased an X-ray screening machine costing Rs. 1.01 Cr. in 2008-09 out of PSF (SC) Escrow Account for screening of export cargo. Moreover, the income earned by MIAL by offering the use of this cargo screening machine to airlines and their agents was in violation of rules and regulations not credited to PSF (SC) Account. Audit observed that in view of the Government of India's orders and clarifications, withdrawal of the entire amount of Rs. 15.22 Cr. from the PSF (SC) Escrow Account by MIAL during the two years 2007-08 and 2008-09 was not only in violation of the Government's orders prescribing the items on which moneys from PSF (SC) Escrow Account could be spent but also a loss to the Government/AAI since any surplus in the PSF (SC) Escrow Account should be ultimately transferred to the AAI by the Airport operator for being utilised for expenditure on security at other airports".

Reply of the Government

Passenger Service Fee is a Govt. levy which is being collected from each embarking passenger at Rs. 200/-. PSF has two components, viz., PSF (Security Component) of Rs. 130/- and PSF (Facilitation Component) of Rs. 70/-.

- At the time when privatization of airports was going on in the Country, MoCA felt it necessary to define the scope of PSF funds collection and utilization. The order **dated 09.05.2006** issued subsequently stipulated that AAI, JVC or a private operator could collect PSF(SC) at their airports. It was further stipulated that for this purpose an escrow account would be opened wherever the airport operator is a JVC or private operator (*not AAI*) and that this account would be operated by the airport operator. Rs. 130/- of the PSF collected per passenger would be deposited in the Escrow account by the airport operators for payments to be made to CISF. In case any amounts remains surplus the same will be transferred to AAI by the airport operator.
- Subsequently, the Airport Operators approached this Ministry with a request to clarify the scope of PSF utilization. In response Ministry vide order dated 20.06.2007 clarified that the security component of PSF is not a regular revenue income of an airport operator. PSF (SC) collected at an airport operated by a JVC/Pvt. Operator will utilize at the airport concerned only to meet the security related expenses of that airport and that AAI will however be considered a single licensee in respect of its airports for this purpose with liberty to pool the PSF(SC) collections from such airports and use the same for meeting the security related expenses at any of its airports.
- Later on, it was found necessary to properly define the scope of collection, utilization and management of Passenger Service Fee (Security Component) funds. Hence, Ministry vide order **dated 19.01.2009** brought out the detailed guidelines in the form of Standard Operating Procedures (SOPs) for PSF (SC) utilization and management. Some of the relevant paras of this order are reproduced below for perusal:
 - vi. Para 3 (ii) (b) states that PSF would be utilised to pay for security related expenses to CISF.
 - vii. Para 4.14 states that Annual Accounts should be submitted by the airport operator to the MoCA as well as CAG within 3 months of the close of the financial year.
 - viii. Para 5.1 states that Audit of PSF (SC) accounts shall be conducted by CAG on annual basis or at such periodicity as may be decided by the CAG.
 - ix. Para 5.3 states that the audit observations will be forwarded to JVC/Private Operators for comments and comments of JVC/Private Operator would be forwarded by MOCA to C&AG after due vetting.

- x. Para 6.2 states that JVC/Private Operator shall not be entitled to any administrative expenses etc. on account of PSF (SC).

In view of the foregoing paras, it could be seen that owing to absence of specific guidelines in respect of C&AG audit, audit of MIAL could not be carried out for the period 2006 to 2009. CAG carried out its very first audit of MIAL's PSF escrow account in the year 2010 for an accumulated period of 3 years i.e. 2006 to 2009.

- The observations made by the C&AG (in its first audit) were received in the month of **June, 2010** by this Ministry. Ministry for the first time came to know about mis-utilization of PSF (SC) funds by MIAL for deployment of private security guards, hiring technical consultancy and purchase of Cargo X-ray security equipment. The audit observations were accordingly taken up with MIAL to furnish its comments over C&AG observations. The replies furnished by MIAL were examined at length. MIAL in response to these observations had stated that the deployment of private security guards was made due to the shortage of CISF manpower. Claims of MIAL were thereafter examined and it became clear that shortage of CISF manpower was never an issue at the airport.

- Meanwhile, Ministry vide order dated **08.01.2010** had clarified the following aspects:

- - c) Para 3(v): The permissible expenditure out of PSF (SC) shall not include the expenditure on any other security staff or other administrative setup created/engaged by the airport operator

- - d) Para (ii) of Annexure B: if expenditure on screening items including X-ray machines, multi view X-ray machine on inline baggage system is included in the scope of expenditure to be met out of PSF (SC), airport operator shall not be allowed to charge any hiring fees from concerned agencies, viz airlines, cargo etc. for the same. If the airport operator is charging any hiring fees/charges for use of screening equipment from the airlines, cargo agents etc. then the expenditure relating to the installation and use of the screening equipment shall not be included in the scope of the expenditure to be met out of PSF (SC). In any case the cost of entire in-line baggage security system *per se* is not eligible to be debited to the PSF (SC) funds.

In view of these guidelines, MIAL was directed to reverse the entire expenditure on above items back to the PSF (SC) escrow account.

- In view of these guidelines MIAL was directed vide this Ministry's communications dated 19.08.2010, 25.10.2010, 30.11.2010, 09.01.2012, 27.02.2012, 17.05.2012, 18.05.2012, 22.05.2012, 06.06.2012, 14.09.2012, 12.12.2012 & 26.12.2012 to comply with observations of audit and to reverse the ineligible expenditure, which formed part of the project cost, to the PSF (SC)

escrow account. Therefore, it can be concluded that Ministry has not remained silent, but took appropriate measures to get the ineligible expenditure reversed to the PSF (SC) escrow account. At the constant monitoring and directions of the Ministry, MIAL reversed funds to the tune of Rs.15.21 Cr. for the period FYs 2006-09, the details of which are given below:-

- iv. Private Security Guard expenditure - Rs. 12.34 Cr.
- v. Technical Consultancy - Rs. 1.87 Cr.
- vi. Cargo X ray screening machine - Rs. 1.00 Cr.

MIAL had vide its letter dated 20.03.2013 addressed to this Ministry had confirmed that they had deposited Rs.15,21,85,097.72 to PSF(SC) account No.004620110000536 on 25.02.2013. It may however be added that the Hon'ble High Court of Delhi is yet to pass its final order in the matter of W.P. No.4242/2012 wherein MIAL has challenged reversal of the aforesaid amount along with its interest component. The entire matter is presently *sub judice*. The interest component is yet to be reversed by MIAL. MOCA is trying get the case heard early.

Remarks of office of the C&AG

Mumbai International Airport was handed over to the private operator with effect from 3 May, 2006. The private operator was handling the PSF (SC) funds and government revenue since then. However, Standard Operating Procedure governing the accounts and audit of these funds was issued by MoCA in January, 2009.

Though Ministry directed MIAL to get the ineligible expenditure of Rs.15.21 crore along with interest reversed to PSF (SC) in August 2010 itself, MIAL has reversed the fund only in February, 2013. It took almost 3 years for MIAL to act on the directions of Ministry. However the Interest element still remains to be paid by MIAL.

The matter is presently sub-judice.

The amount of Rs.15.21 crore pertains to the period 2007-08 and 2008-09. However, instances of utilization of PSF (SC) funds by MIAL for expenditure of capital and instructions of MOCA governing utilization of these funds continued beyond 2008-09. Audit has commented in this regard on the accounts of PSF (SC) funds maintained by MIAL for the years 2009-10, 2010-11, 2011-12 and 2012-13 and such comments have been issued to MOCA.

Similarly, instances of incurring of such expenses from PSF (SC) funds by other two private airport operators viz. DIAL and HIAL beyond 2008-09 in deviation of SOP/instructions of MOCA have also been reported to MOCA in the

form of comments of C&AG on the PSF (SC) accounts of the respective years maintained by these two private operators.

Final reply of the Government

Factual position, hence need no further comments. It is however clarified in this regard that the process of working out modalities of accounting / audit procedure in respect of PSF (SC) funds were started in the year 2006 itself. They were finalized and circulated in January, 2009 after consultation with Ministry of Law and with the approval of the then Minister of Civil Aviation.

As has already been mentioned in the reply of the Ministry, the matter is currently *sub judice*. Further action will be taken in the matter in accordance with directions, if any, of Hon'ble Court.

The observations received from the office of C&AG are duly examined in this Ministry and suitable directions are issued to the airport operators concerned, including MIAL to reverse expenditure wherever they been incurred unauthorisedly. Besides, the order dated 18.02.2014 issued by this Ministry has directions to all airport operators, including MIAL, to reverse entire capital expenditure incurred out of PSF (SC) funds since their inception whether on security equipment or on accommodation of CISF to the respective PSF (SC) escrow accounts along with applicable interest which could have been earned in normal course. This order has been challenged by several airport operators, including MIAL, in high courts of their respective zones. In those cases, the Hon'ble High Courts have either stayed the said order or ordered status quo (as in the case of the court case filed by MIAL).

(Ministry of Civil Aviation's O.M. No.AV 13024/65/2011-AS dated 12th January,2015)

Comments of the Committee

Please refer to para no 9 of this Report

Recommendation Serial No. 2

The Committee's examination revealed that while the airport operator is to be squarely blamed for these highly irregular withdrawals through deliberate misinterpretation of the law, rules and regulations and basic facts, from an Escrow Account, which it was operating in fiduciary capacity, the Ministry of Civil Aviation and Airports Authority of India by remaining mute spectators for years together have contributed no less to these irregularities. This, notwithstanding the fact that the administration and regulation of the PSF Escrow Account held by the airport operator in fiduciary capacity is governed by Standard Operating Procedure (SOPs) and other orders issued by the Government on the subject from time to time, and is also subjected to internal audit, none of these checks and balances was made use of by the Government to prevent unauthorized

withdrawals from PSF (SC) Account by MIAL. Worse, as per Operation, Management and Development Agreement (OMDA), though AAI is empowered to seek such other report/information in relation to the airport operations it failed to obtain information on unauthorized withdrawal of funds by MIAL and consequently, it did not take any action and let MIAL have a complete and unfettered say in the operation of PSF (SC) Account. In so far as the administrative Ministry's role is concerned, the admission of the Secretary, Civil Aviation during evidence before the Committee "We have made specific provision that this account should be audited by the C&AG and also by the internal audit. We were all the while under the impression that these two audit mechanisms are out in place" speaks volumes about the quality and extent of oversight exercised by the Ministry to ensure that PSF funds were utilized in accordance with the extant practices and SOPs".

Reply of the Government

As has been explained in the preceding para of reply, MIAL was regularly given directions through various communications to comply with observations of audit and to reverse the ineligible expenditure which forms the part of the project cost to the PSF (SC) escrow account. Therefore, it can be concluded that Ministry took all necessary measures to comply with audit observations and to recover the illegible expenditure from MIAL.

- It is again clarified at this juncture that at the time of privatization of airports no definitive Standard Operating Procedure for collection, management and utilization of PSF (SC) funds was in place. This could have been a contributing factor for mis-utilization of PSF (SC) funds by airport operators.
- As a corrective measure, this Ministry has brought in suitable amendments in Rule 88 of Aircraft Rules, 1937 on 5th March, 2014 by way of inserting a new Rule "88A", relevant extracts as below, whereby Private/JV Airport Operators are no longer entitled to collect PSF (SC) collections.

"88A. Aviation security fees - (1) The Central Government, or any other authority designated by it in its behalf, may levy and collect aviation security fees on:

- (a) embarking passengers;
- (b) cargo transported out of an airport;
- (c) departing private aircrafts of general aviation;
- (d) chartered aircraft operations; and
- (e) any other dedicated civil aviation operations,

at such rate or rates, as the Central Government may specify from time to time, and different rates may be specified for different categories specified herein, to meet the expenditure on aviation security. The aviation security fee shall be

regulated and utilized in the manner as may be specified by the Central Government”.

- This Ministry is in the process of revising/re-drafting Standard Operating Procedure so as to facilitate implementation of the provisions of the newly inserted Rule 88A. This Ministry is proposing therein to designate AAI as a single authority to collect and pool Aviation Security Fee and to settle revenue expenses of Aviation Security Group/APSU deployed at the airports. Once this SOP comes into effect, revenue expenditure of Aviation Security Group (including CISF) so specified therein, will be met out of security fee.

Remarks of office of the C&AG

The Airports were privatized in May, 2006 and PSF account was held by private operator in fiduciary capacity but the Ministry has issued the SOP in January, 2009 based on which C&AG Audit was conducted for three years i.e. from 2006 to 2009 for the first time. Revision to the SOP in line with the revisions of the newly inserted Rule 88A of the Aircraft Rules is still under process in the Ministry.

Final reply of the Government

Revision of SoP is under active consideration in the Ministry so as to define modalities with respect of collection, utilization. and management of the Fee to be levied in accordance with Rule 88A.. Draft SoP in this regard has been circulated for the purpose of consultation with few central Ministries/ Departments and the stakeholders concerned such as Airport Operators."

(Ministry of Civil Aviation's O.M. No.AV 13024/65/2011-AS dated 12th January,2015)

Comments of the Committee

Please refer to para no 14 of this Report

Recommendation Serial No. 5

Audit pointed out that purchase of an X-ray screening machine by MIAL costing Rs. 1.01 Cr in 2008-09 out of PSF (SC) account for screening of export cargo and non-crediting the income earned by MIAL by offering the use of cargo screening machine to airlines and their agents to PSF (SC) Escrow Account was in clear violation of MOCA clarification issued in January 2010. The Civil Aviation Secretary admitted before the Committee that the expenditure should have been capitalized and debited to the project cost itself and not doing so and debiting it to PSF is definitely a violation. To obviate recurrence of such lapses, the Ministry of Civil Aviation have stated that based on the C&AG observation and also considering the OMDA obligations, they are in the process of withdrawing the

said permission to meet the cost of capital items (Security) from PSF (SC) funds. The Committee desire that Government should take a final decision in the matter with due promptitude so that process of debiting the cost of capital security items in PSF (SC) Escrow Account is discontinued forthwith. The Committee further desire that the Ministry should inquire into as to how in the first instance the instant instructions which were in the breach of OMDA were issued and share with the Committee the inquire report and action taken thereon.

Reply of the Government

The issue of meeting out the cost of security equipment out of PSF (SC) has been reviewed in this Ministry in the light of relevant provisions of OMDA/SSA & Concession agreement and with the approval of Hon'ble Minister of Civil Aviation Ministry vide its order dated 18.02.2014 has issued directions to all airport operators including MIAL to reverse entire capital expenditure incurred out of PSF (SC) funds since their inception whether on security equipment or on accommodation of CISF to the PSF (SC) escrow account. MIAL has already reversed the amount of Rs. 1.01 Cr during February, 2013.

Remarks of office of the C&AG

The amount of Rs, 1.01 crore reversed by MIAL forms part of the amount of Rs.15.21 crore pointed out by the Ministry for reversal in August, 2010. The amount of Rs.1.01 crore was incurred towards cost of procurement of X ray machines by MIAL. The amount of Rs. 15.21 crore does not constitute entire capital expenditure incurred by MIAL from PSF (SC) account in deviation of SOP/instructions governing utilization of PSF(SC) funds. The direction of Ministry of 18.02.2014 are yet to be complied with by MIAL. These directions are silent on reversal of expenditure of revenue nature.

Final reply of the Government

The observations received from the office of C&AG are duly examined in this Ministry and suitable directions are issued to the airport operators concerned, including MIAL to reverse expenditure wherever they been incurred unauthorisedly. Necessary steps will also be taken by the Ministry to get the unauthorized revenue expenditure, if any, of airport operators reversed back into the respective Escrow Accounts.

(Ministry of Civil Aviation's O.M. No.AV 13024/65/2011-AS dated 12th January,2015)

Comments of the Committee

Please refer to para no 19 of this Report

CHAPTER - V

OBSERVATIONS / RECOMMENDATIONS IN RESPECT OF WHICH FINAL REPLIES OF THE GOVERNMENT ARE STILL AWAITED

Recommendation Serial No. 3

The Committee finds it highly intriguing that though internal audit of PSF (SC) escrow account was conducted in 2009, no significant observations were made by the internal auditors regarding the manner of utilization of money from the account. However, in a subsequent internal audit of PSF (SC) Escrow Account got conducted by MOCA in 2012 i.e. after the C&AG Audit, several irregularities reportedly came to the fore. Mysteriously, the Ministry of Civil Aviation have no information available with them on unauthorized withdrawals of funds out of PSF (SC) Escrow Account. It is also surprising that the matter was never discussed in the Board level meetings. All this while the airport operator has used all sorts of excuses to continue with the unauthorized withdrawals and justify them in contravention of all rules and regulations. To further compound the illegality, it has also brazenly continued to defy the instructions, albeit, very belated of MOCA to reverse the withdrawals from the Escrow Account which it was operating merely in a fiduciary capacity. What is all the more galling is that the Ministry of Civil Aviation, instead of coming down on the errant airport operator with a heavy hand, has given it a long rope by remaining content with advisories which have not been enforced. The testimony of the Principal Witness i.e. the Secretary of the Ministry of Civil Aviation before the Committee where he harped upon the airport operator being in some financial problem and some of its projects being under construction is sufficiently indicative of how the Ministry, rather than ensuring the safety of the public money, have gone ahead with bailing out the airport operator. Unfortunately, the Committee's pointed and repeated queries as to how internal audit/control and oversight mechanisms failed to detect these blatant irregularities did not yield any specific information which is highly condemnable.

Reply of the Government

It is once again submitted that detailed guidelines with regard to utilization of PSF (SC) funds towards CISF accommodation, basic security equipment and vehicles etc. were issued after the conduct of first internal audit (2009). Prior to these, no specific guidelines were in place. In such a circumstance, the first internal audit team could not adjudge the rationality of expenditure incurred by the airport operator. Also, the mechanism of internal audit with its scope was never specified in the circulars issued by this Ministry in the initial years.

- Further, while examining C&AG audit observations in respect of other airport operators including MIAL it was decided by the then Secretary, Ministry of

Civil Aviation to have fresh internal audit specifically for PSF(SC) escrow account of MIAL with other airports. The irregularities observed by the internal audit during 2012 were taken up with MIAL for corrective and remedial action. Directions were also issued to all airport operators, including MIAL, to reverse unauthorized expenditure on private security deployment incurred out of PSF(SC) escrow funds along with the applicable interest. MIAL moved a court case (W.P. No.4242/2012) in the Hon'ble High Court of Delhi seeking stay on the said directions of MOCA towards reversal of illegible expenditure of Rs.15.21 Cr. and the subsequent order dated 22.05.2012 of this Ministry on the subject. The Hon'ble Court was apprised of all facts and figures which resulted in the direction of the Hon'ble Court to MIAL to reverse ineligible expenditure on account of Private Security Guards, Technical Consultancy and Cargo X-ray. As has already been mentioned, the matter is currently sub judice.

The financial problems (of the airport operator) pointed out by Secretary, Ministry of Civil Aviation relate to capital expenditure incurred by MIAL out of PSF (SC) funds. It is assured that there is no reluctance on the part of Ministry to take action towards making recoveries.

In view of the above, it may be construed that the audit mechanism set out by this Ministry has not failed to detect the irregularity on the part of MIAL. Actions/Directions issued by this Ministry are based on the audit findings of C&AG and internal audit. It may also be noted in this regard that the issue relating to meeting cost of security equipment out of PSF (SC) funds has been reviewed in this Ministry in the light of relevant provisions of OMDA/SSA & Concession agreement and with the approval of Hon'ble Minister of Civil Aviation Ministry vide its order dated 18.02.2014 has issued directions to all airport operators including MIAL to reverse entire capital expenditure incurred out of PSF (SC) funds since their inception whether on security equipment or on accommodation of CISF to the PSF (SC) escrow account along with applicable interest which could have been earned in normal course. This order has been challenged by different private/JV airport operators in different high courts, including MIAL.

Remarks of office of the C&AG

C&AG in its audit of PSF (SC) had pointed out irregular expenditure towards deployment of private security and expenditure towards procurement of capital equipment (X-ray baggage screening machines) in subsequent years also (besides 2006-09) but Ministry asked MIAL only for reimbursement of expenditure for the period 2006-09 of Rs.15.21 crore. The matter is currently sub-judice.

Though Ministry has issued directions to private operators to reverse the entire capital expenditure back to PSF account along with interest, the same has been challenged in the court by the airport operators. Matter is now sub-judice.

Ministry's directions are, however, silent on the reversal of the revenue expenditure.

This Ministry has also directed MIAL to reverse the unauthorized expenses on private security agency of Rs.7.07 crore and makeup room baggage loaders of Rs.0.21 Cr., consultancy charges of Rs.4.05 Cr. and salaries to private security and baggage screeners of Rs.3.76 Cr. pertaining to 2009-10. This additional amount of Rs.7.07 Cr. was also referred to during the hearing held on 29.01.2013, wherein the Hon'ble High Court had observed that this aspect would be examined on the next date of hearing. As of now, the matter is *sub judice*, and final orders of the Hon'ble Court are awaited.

The issue of meeting the cost of security equipment out of PSF (SC) funds has been reviewed in this Ministry in the light of relevant provisions of OMDA/SSA & Concession agreement and with the approval of Hon'ble Minister of Civil Aviation Ministry vide its order dated 18.02.2014 has issued directions to all airport operators including MIAL to reverse entire capital expenditure incurred out of PSF (SC) funds since their inception whether on security equipment or on accommodation of CISF to the PSF (SC) escrow account. It has also been made clear in the said order that PSF (SC) funds are meant only for meeting revenue expenditure on deployment of CISF and other security forces at the airports. This order has been challenged by several airport operators, including MIAL, in high courts of their respective zones. The matter is currently *sub judice*.

Final reply of the Government

The observations received from the office of C&AG are duly examined in this Ministry and suitable directions are issued to the airport operators concerned, including MIAL to reverse expenditure wherever they have been incurred unauthorisedly. Necessary steps will also be taken by the Ministry to get the unauthorized revenue expenditure, if any, of airport operators reversed back into the respective Escrow Accounts.

(Ministry of Civil Aviation's O.M. No.AV 13024/65/2011-AS dated 12th January,2015)

Recommendation Serial No. 4

The Committee also notes that MIAL has continued with this patently illegal practice of unauthorized withdrawals in subsequent years as well. An amount of Rs. 7.07 Cr. was withdrawn in 2009-10 for deployment of private security related expenditure out of PSF (SC) and it has also deployed private people for loading/unloading and in-line screening facility inside the airport during the 2010-11 and has incurred an expenditure of Rs.3.17 Cr. on this account.

Reply of the Government

The explanatory notes given in the previous para will hold good. The Hon'ble High Court in its order dated 29.01.2013 in the matter of W.P. No.4242/2012 inter alia ordered that the aspect related to recovery of Rs.7.07 Cr. reflected in the Ministry's letter dated 26.12.2012 would be examined in the next date of hearing. As of now, orders of the Hon'ble Court are still awaited in the matters raised in W.P. No.4242/2012.

Remarks of office of the C&AG

The matter is sub-judice and decision of High Court is still awaited.

Final reply of the Government

Factual position; hence needs no comments.

(Ministry of Civil Aviation's O.M. No.AV 13024/65/2011-AS dated 12th January,2015)

Recommendation Serial No.7

The Committee note that pursuant to the Ministry of Civil Aviation direction issued on 17.05.2012 to all airport operators, including MIAL, for reversal of the ineligible expenditure incurred by the private operator from PSF (SC) funds in the Escrow Account an amount Rs. 15.21 Cr. for the period FYs 2006-09 has been reversed. As regards recovery of penal interest from MIAL, Ministry of Civil Aviation stated that since writ petition has been filed by the MIAL in Delhi high Court for claiming the expenses incurred by the private airport operator on deployment of private security guards to provide adequate security on the city side of the airport, it would be difficult to provide details on this account as the extant matter is sub-judice. From the information placed before the Committee, it is observed that the High Court has not granted a stay on the Writ Petition file by MIAL. They, therefore, find it inexplicable as to why the Ministry of Civil Aviation are reluctant even to work out the interest component on the suspicious plea that the matter is sub-judice. More so, when the Ministry are liable to file all these details in support of their claim while pleading in the said case. The Committee also find it inexplicable as to why the Ministry has not ensured the reversal of all unauthorized withdrawals by the airport operator, post C&AG audit. While expressing their strong disapproval of this inaction by the Ministry, the Committee desire that needful should be done at the earliest along with all out efforts to expedite the legal process".

Reply of the Government

It is humbly submitted that this Ministry has already issued directions (letter dated 18.02.2014) to all the airport operators, including MIAL, to reverse the entire unauthorized capital expenditure incurred out of PSF(SC) Escrow Accounts since inception together with the interest component. Action is underway to calculate the interest and the same will be taken up with MIAL for crediting back to PSF a/c.

Remarks of office of the C&AG

The instructions of 18.2.2014 are silent on reversal of unauthorized expenditure of revenue nature.

Final reply of the Government

It is further submitted that the observations received from the office of C&AG are duly examined in this Ministry and suitable directions are issued to the airport operators concerned, including MIAL to reverse expenditure wherever they been incurred unauthorisedly. Necessary steps will also be taken by the Ministry to get the unauthorized revenue expenditure, if any, of airport operators reversed back into the respective Escrow Accounts.

(Ministry of Civil Aviation's O.M. No.AV 13024/65/2011-AS dated 12th January,2015)

**New Delhi,
27 April 2015**
7 Vaisakha, 1937(S)

SHANTA KUMAR
Chairperson,
Committee on Public Undertakings.

COMMITTEE ON PUBLIC UNDERTAKINGS
(2014-2015)

MINUTES OF THE FOURTEENTH SITTING OF THE COMMITTEE

The Committee sat on Friday, the 24th April 2015 from 1500 hrs to 1530 hrs in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Shanta Kumar - Chairperson

MEMBERS

Lok Sabha

2. Shri Ramesh Bais
3. Shri Dilipkumar Mansukhlal Gandhi
4. Shri Prahlad Patel
5. Shri Ram Sinh Rathwa
6. Shri B. Senguttuvan

Rajya Sabha

7. Shri Majeed Memon
8. Shri Muthukaruppan
9. Shri Rangasayee Ramakrishna

SECRETARIAT

- | | |
|--------------------------|------------------|
| 1. Shri M.C. Sharma | Joint Secretary |
| 2. Shri M.K. Madhusudhan | Director |
| 3. Shri Tirthankar Das | Deputy Secretary |
| 4. Shri G.C. Prasad | Deputy Secretary |

OFFICE OF THE C&AG OF INDIA

Shri P. Sesh Kumar Director General-II (Commercial)

2. At the outset, the Chairperson welcomed the members and representatives of the C&AG to the Sitting of the Committee. The Committee then considered the draft Report on the action taken by the Government on the observations / recommendations contained in the Thirtieth Report of the Committee on Public Undertakings (Fifteenth Lok Sabha) on Airports Authority of India Limited - Unauthorized withdrawal from the escrow account held in fiduciary capacity on behalf of the Government of India by Mumbai International Airports Limited based on Para 2.5 of C&AG Report No. 3 of 2011-12 and adopted the same without any change.

(The representatives of the C&AG then left.)

3. XXXX XXXX XXXX.

4. The Committee also authorized the Chairperson to present the Reports to Parliament on their behalf, after obtaining factual verification.

The Committee then adjourned.

XXXX ***Matter not related to this Report.***

APPENDIX - II

(Vide para 3 of the Introduction)

Analysis of the action taken by Government on the Observations / Recommendations contained in the Thirtieth Report of the Committee on Public Undertakings (Fifteenth Lok Sabha) on Airports Authority of India Limited - Unauthorized withdrawal from the escrow account held in fiduciary capacity on behalf of the Government of India by Mumbai International Airports (P) Limited based on Para 2.5 of C&AG Report No. 3 of 2011-12.

I	Total number of Recommendations	07
II	Recommendations that have been accepted by the Government [vide Recommendations at Sl. No.6] Percentage of total	01 14.2%
III	Recommendation which the Committee do not desire to pursue in view of Government's replies	Nil
IV	Recommendations in respect of which replies of the Government have not been accepted by the Committee [vide Recommendations at Sl. Nos. 1, 2 and 5] Percentage of total	03 42.9%
V	Recommendations in respect of which final replies of Government are still awaited. [vide Recommendations at Sl. Nos. 3, 4 and 7] Percentage of total	03 42.9%