

**Consultation Paper No. 1/2010-11**



**Airports Economic Regulatory Authority of India**

**10% Increase in Aeronautical Charges requested by Mumbai International Airport (MIAL) with effect from 03.05.2009**

**New Delhi: 12<sup>th</sup> April, 2010**

**Rajiv Gandhi Bhawan  
Near Safdarjung Airport  
New Delhi – 110003**

**SUBJECT: 10% INCREASE IN AERONAUTICAL CHARGES REQUESTED BY MUMBAI INTERNATIONAL AIRPORT (MIAL) WITH EFFECT FROM 03.05.2009.**

The Ministry of Civil Aviation vide its letter no. AV.20036/014/2009-AD dated 06.10.2009 (**Annexure-I**), had forwarded the request received from the Mumbai International Airport Limited (MIAL) (letter ref. no. MIAL/PR/96 dated 28.07.2009, **Annexure-II**) for a 10% increase in aeronautical charges at CSI Airport, Mumbai with effect from 03.05.2009 for the Authority's consideration. The aforesaid request was made by MIAL on the grounds that as per Schedule 6 of the State Support Agreement (SSA), entered in to between the Central Government and MIAL, the regulatory authority/Government of India, will set the aeronautical charges from the commencement of the 4<sup>th</sup> year from the effective date, i.e. 03.05.2006 and for every year thereafter subject always to the condition that, at least, nominal increase of 10% of base airport charges will be available to MIAL.

1.2 MIAL has interpreted the above provisions to mean that the Authority/GoI are bound to permit an increase of 10% of the Base Airport Charges after the commencement of the 4<sup>th</sup> year and every year thereafter and, accordingly, approval was solicited to increase the airport charges by 10% w.e.f 03.05.2009.

1.3 MIAL has not otherwise justified its proposal. It is relevant to mention here that MIAL was permitted a 10% increase in airport charges w.e.f. 01.01.2009, by the Ministry, in terms of Clause 1 of the Schedule 6 after completion of two years.

1.4 Pending further examination of the matter, MIAL was advised vide letter no. AERA/20010/MIAL-AC/2009 dated 11.11.2009 (**Annexure-III**) to submit a well justified proposal for the consideration of the Authority in case they propose any increase in the tariff of aeronautical services, on merits. MIAL vide letter ref. no. MIAL/PR/233 dated 15.12.2009(**Annexure-IV**) and letter ref. no. MIAL/PR/309 dated 25.03.2010 (**Annexure-V**) reiterated its earlier position and requested for expeditious permission for 10% increase over the base aeronautical charges.

2.1 The matter has been examined by the Authority.

2.2 In terms of Section 13(1)(a) of the Airports Economic Regulatory Authority of India Act, 2008 (the Act), the Authority is required to determine the tariff for aeronautical services, inter-alia, taking into consideration “(vi) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise.”

2.3 For ease of reference Schedule 6 of the SSA is extracted below:-

*“Aeronautical Charges, for the purposes of this Agreement, shall be determined in the manner as set out hereunder:”*

1. The existing AAI airport charges (as set out in Schedule 8 appended hereto) ("**Base Airport Charges**") will continue for a period of two (2) years from the Effective Date and in the event the JVC duly completes and commissions the Mandatory Capital Projects required to be completed during the first two (2) years from the Effective Date, a nominal increase of ten (10) percent over the Base Airport Charges shall be allowed for the purposes of calculating Aeronautical Charges for the duration of the third (3rd) Year after the Effective Date ("**Incentive**"). It is hereby expressly clarified that in the event JVC does not complete and commission, by the end of the second (2nd) year from the Effective Date, the Mandatory Capital Projects required to be completed and commissioned, the Incentive shall not be available to the JVC for purposes of calculating Aeronautical Charges for the third (3rd) year after the Effective Date.

2. From the commencement of the fourth (4th) year after the Effective Date and for every year thereafter for the remainder of the Term, Economic Regulatory Authority / GOI (as the case may be) will set the Aeronautical Charges in accordance with Clause 3.1.1 read with Schedule 1 appended to this Agreement, subject always to the condition that, at the least, a permitted nominal increase of ten (10) percent of the Base Airport Charges will be available to the JVC for the purposes of calculating Aeronautical Charges in any year after the commencement of the fourth year and for the remainder of the Term.

3. For abundant caution, it is hereby expressly clarified that in the event AAI increases the airport charges (as available on the AAI website [www.airportsindia.org](http://www.airportsindia.org) anytime during the first two (2) years from the Effective Date, such increase shall not be considered for revising calculating the Aeronautical Charges chargeable by the JVC."

2.4.1 Clause 2 of Schedule 6, of the SSA (being relied upon by MIAL in support of the proposal) requires the Authority/GoI to set the aeronautical charges :-

- (i) in accordance with the clause 3.1.1 read with Schedule 1 appended to the SSA; and
- (ii) subject to the condition that, at least, a permitted nominal increase of 10% of the Base Airport Charges will be available to the JVC for the purpose of calculating aeronautical charges in any year after the commencement of the 4<sup>th</sup> year for the remainder of the Term.

2.4.2 The second part of Clause 2 of Schedule 6 provides that, atleast, a permitted nominal increase of 10% of the Base Airport Charges will be available to the JVC for the purposes of calculating Aeronautical charges in any year after the commencement of the fourth year and for the remainder of the Term.

2.4.3 The Airports Authority of India (AAI) airport charges, on the date of the agreement, i.e. 26.04.2006, which are set out in Schedule 8, are treated as 'Base Airport Charges' as evident from Clause 1 of Schedule 6. Further, a nominal increase of 10% over the Base Airport Charges was to be allowed to MIAL in the

event it completed and commissioned the Mandatory Capital Projects (MCPs) required to be completed during the first two years from the effective date.

2.4.4 As indicated in para 2.4.3 above, 'Base Airport Charges' are the charges which were prevalent on 26.04.2006 (as set out in Schedule 8). A nominal increase of 10% has already been permitted by the GoI over the Base Airport Charges in terms of Clause 1 of Schedule 6. Thus, this could be termed as "permitted nominal increase of 10%".

2.4.5 In terms of the second part of Clause 2 of Schedule 6, "a permitted nominal increase of ten (10) percent of Base Airport Charges will be available to the JVC for the purposes of calculating Aeronautical Charges in any year after the commencement of the fourth year". Thus, on a conjoint reading of Clauses 1 & 2, it is evident that as per Clause 1 a nominal increase of 10% is to be permitted on completion of first two years, subject to certain conditions, and as per Clause 2, this permitted nominal increase of 10% will, at the least, be available to the JVC for the purposes of calculating airport charges from fourth year onwards. Expressed differently, in terms of first part of Clause 2, the Authority/GOI are required to set aeronautical charges in accordance with Clause 3.1.1 read with the principles set out in Schedule 1 of SSA from 4<sup>th</sup> year onwards and by virtue of second part the nominal increase of 10% permitted (in terms of Clause 1) is saved.

2.4.6 It is also relevant to notice here that M/s MIAL have requested for an increase of 10% on the Airport Charges, which are prevalent on date. However, the second part of the Clause 2 of Schedule 6 mentions an increase of 10% on the Base Airport Charges. As stated in para 1.2 and 2.4.4 above, this increase of 10% on the Base Airport Charges has already been permitted by the GOI in terms of Clause 1 of Schedule 6.

2.4.7 In any case, if it is accepted that Clause 2 contemplates an year upon year increase of 10% from the commencement of 4<sup>th</sup> year onwards, it would mean that the GOI have agreed to a doubling of Base Airport Charges in about 7 years time irrespective of the actual determination in terms of principles set out in Schedule 1.

2.5 Thus, on a co-joint reading and harmonious construction of the provisions of Schedule 6 of SSA, the following scheme is revealed:-

- (i) The airport charges, as existing on 26.04.2006 (which are set out in Schedule 8) will continue for first two years from the effective date.
- (ii) In the event MIAL fully completes and commissions all the mandated facilities required to be completed during the first two years, it would be allowed a tariff increase of 10% in nominal terms from the beginning of 3<sup>rd</sup> year from the effective date, as an incentive.
- (iii) From the commencement of 4<sup>th</sup> year onwards, tariff will be set by the Authority/GOI as per principles set out in Schedule 1 subject to

the condition that, at the least, the nominal increase of 10% permitted during the third year, as incentive, will, continue to be available to MIAL.

3. Briefly stated, it would appear that there is no warrant in Schedule 6 of SSA for an automatic year on year increase of 10% in airport charges from the commencement of fourth year onwards as contended by MIAL.

4.1 As the concession in form of the subject SSA has been granted by the Central Government, the Authority has also consulted the said Government in the matter.

4.2 The Authority has been advised that in view of the enactment of the Airports Economic Regulatory Authority of India Act, 2008 and specific assignment of powers to the Authority under Section 13(1)(a) of the Act, fixation of airport charges is the function of the Authority. The Authority being a statutory authority needs to consider the other aspects stipulated under the relevant section alongwith the provisions of SSA. Further, there is no warrant in Schedule 6 of the SSA for an automatic increase of 10% in the airport charges prevalent during the third year, upon commencement of the fourth year and every year thereafter.

5. In view of the position discussed above, the Authority proposes to reject the request of MIAL for a 10% increase in aeronautical charges at the CSI airport, Mumbai, with effect from 03.05.2009.

6. The Authority solicits feedback, comments and suggestions from stakeholders on the proposal contained in para 5 above. Comments/submissions may please be furnished to the Authority, **latest by Monday, the 26<sup>th</sup> April, 2010**, at the following address:

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