

Executive Summary

Background

Airports Authority of India (AAI) had been the sole air traffic service provider in the country. Unprecedented increase in passenger and cargo traffic led to congestion in airports, particularly airports in metropolitan cities. Government decided to adopt the Public Private Partnership (PPP) mode in modernisation of existing airports as well as development of new airports.

It was decided with the approval of Cabinet (September 2003) that restructuring of Delhi and Mumbai airports would be undertaken through the JV route by formation of two separate companies between AAI and selected JV partners. Following competitive bidding, the JV partners for Mumbai airport were selected in February 2006. Airports Authority of India (AAI), in the capacity of the State promoter, signed an Operation, Management Development Agreement (OMDA) with Mumbai International Airport Private Limited (MIAL), a Joint Venture Company (JVC), for development and modernisation of Chattrapati Shivaji International (CSI) Airport, Mumbai on 04 April 2006. As per this agreement, AAI handed over CSI Airport, Mumbai to MIAL on 03 May 2006 on 'as is where is basis'.

Results of Performance audit of implementation of PPP by AAI in Indira Gandhi International Airport, Delhi were reported in Audit Report No.5 of 2012-13 which was presented in Parliament in August 2012. The present report examines the implementation of PPP project at CSI Airport, Mumbai.

Significant findings in the implementation of PPP at CSI Airport, Mumbai

Design constraint to capacity

The two runways in CSI Airport, Mumbai (runways 09/27 and 14/32) intersect approximately at their mid points because of which simultaneous operation of both runways is not possible. This places a 'design constraint' on the handling capacity of the runways. In the Initial Development Plan submitted by GVK led consortium (JV Partner) at the time of bidding, an additional parallel runway situated south of runway 09/27 was envisaged to increase the runway capacity of the airport. The proposal for the parallel runway was later shelved as it involved large scale relocation of facilities and acquisition of privately owned land rendering such development and its schedule uncertain. With this constraint, the maximum capacity that can be handled at CSI Airport, Mumbai is 40 million passengers per annum (mppa). In contrast, the demand

at the airport is expected to reach 40 mppa by 2015 rising to 80 mppa by 2026. Thus, even after modernisation and up-gradation of CSI Airport, Mumbai, the airport would be unable to meet the demand of passengers. The problem is expected to be compounded with the delay in development of the second airport at Navi Mumbai.

(Para 3.2)

Right of First Refusal

The State Support Agreement (SSA) allows Right of First Refusal (ROFR) to MIAL for a second airport planned within a 150 km radius of the CSI Airport, Mumbai. A competitive bidding process was to be followed in which MIAL could also participate if it so chose. In the event of being unsuccessful in the bidding, MIAL would be allowed to match the most competitive bid (if its bid was within the range of 10 per cent of the most competitive bid) provided MIAL performed satisfactorily without any material default under any project agreement at the time of exercising ROFR. MOCA assured the Public Accounts Committee (PAC) during the examination of Audit Report No. 5 of 2012-13 that the second airport in Mumbai may not be needed till the traffic reaches the saturation point of 40 mppa. Adequate safeguards would need to be provided and ensured so that interests of competitiveness and transparency are not sacrificed especially as the traffic is expected to reach 40 mppa in 2015 itself. This provision should not be allowed to thwart competition and provide MIAL an advantage on the second airport. MIAL has incorporated a subsidiary company, M/s. Navi Mumbai Airport Developers Limited, in 2007.

(Para 3.4)

Concession Period

The proposal for restructuring of Mumbai and Delhi airports seeking adoption of JV route envisaged an initial concession period of 30 years which could be extended by another 30 years subject to mutual agreement and negotiation of terms. However, as per OMDA, MIAL enjoys unilateral right to extend the 30 years' concession period for another 30 years, provided no default had taken place during the 20th to 24th year of the first concession period. Absence of review clause and re-negotiation before extension of concession period appears to virtually allow MIAL the right to operate the airport for a period of 60 years with the terms and conditions frozen in OMDA. It is, thus, essential that a regular and well documented review of performance of MIAL at MOCA is in place to safeguard the interests of Government and to get MIAL to deliver the committed outputs.

(Para 3.5)

Status of Mandatory Capital Projects

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. It needs to be ensured that incentives such as increase in base airport charges are not given when inordinate delays take place in completion of projects.

(Para 3.8)

Status of other capital projects

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. The Independent Engineer had reported progress in only thirteen works which indicated considerable scope for improving the pace of work.

(Para 3.9)

Increase in Project Costs estimates

The original transaction documents (OMDA, SSA) did not mention cost estimate for the project. The initial estimate of the project cost was ₹5,826 crore (2006). These estimates were revised upward by MIAL progressively in 2008, 2010 and finally in 2011 to ₹12,380 crore. The project cost approved by AERA for the period upto March 2014 is ₹11,647.46 crore. As significant expenditures have been shifted to future control periods (beyond 2013-14) by AERA, the project costs are set to increase further.

(Para 4.1)

Gap in funding and Development Fee

As per Article 13.1(a) of OMDA, MIAL shall arrange for financing and / or meeting all financing requirements through suitable debt and equity contributions in order to comply with its obligations including development of the Airport pursuant to the Master Plan and the Major Development Plan. Further, OMDA provided that MIAL may, if its development funding necessitated, procure the listing of shares of MIAL on the Mumbai and/ or the National Stock Exchange(s) at any time. 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.

(Paras 4.3 and 4.4)

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

There were inconsistencies between provisions of OMDA and State Support Agreement (SSA) signed for CSI Airport, Mumbai and the Airports Economic Regulatory Authority (AERA) Act, 2008. These would have long term repercussions on the regulator's role in tariff fixation for CSI Airport, Mumbai. 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. Thus, tariff payable by the passengers will be cross subsidised 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. MOCA may need to critically assess the financial impact of concessions granted by the Government under OMDA and revenue ensured by the Government from MIAL after ground handling and cargo services were categorised as aeronautical services as recommended by PAC in its Report on Implementation of PPP-IGI Airport, Delhi.

(Para 5.2)

Outsourcing domestic and international cargo activities

Cargo revenue comprises mainly domestic and international cargo operations. MIAL had planned to outsource its cargo activities by September, 2012 and had estimated that the cargo revenue would, as a result, register a fall of 40 per cent from the 2011-12 actuals in a span of two years (viz. 2012-13 and 2013-14) on account of the outsourcing. As the cargo revenue subsidises tariff (30 per cent of cargo revenue is taken into account working out airport charges), a fall in cargo revenues would lead to higher tariff and burden on the passengers. Besides, the revenue share of AAI will also reduce substantially with significant reduction estimated in cargo revenues.

(Para 5.4)

Award of concession for operation of Hotel near Terminal 1C to a Group Entity consortium

As per Article 8.3.7 of 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 as above in OMDA. MIAL informed (February 2010) AAI that it had carried out competitive bidding for operation of a hotel in Terminal 1C and a Consortium of M/s. TAJ GVK Hotels & Resorts and Greenridge Hotels & Resorts had emerged successful. The successful bidder and MIAL were to have a revenue sharing arrangement of 4.65 per cent of the gross revenue with a minimum guarantee clause which was agreed to by AAI, though the arrangement would have significant adverse impact on the revenue share of AAI. AAI will receive only 1.79 per cent of the gross revenue earnings in the hotel project (38.7 per cent of the 4.65 per cent revenue share due to MIAL from the hotel concession). As the hotel concession has been awarded to a group entity of MIAL, the upside in revenue may benefit the GVK group even as it is not shared with AAI.

(Para 5.5)

Delay in receipt of Retirement Compensation

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. MOCA's attention is drawn to the recommendation of PAC on a similar issue in Audit Report No. 5 of 2012-13 relating to the implementation of PPP arrangements in Indira Gandhi International Airport, Delhi where PAC have 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 contractual obligations as per OMDA.

(Para 5.7)

Survey of airport land and maintenance of land records

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 raises questions on the quality of land records and documents maintained by AAI. MOCA's attention is drawn to the recommendation of PAC on a similar issue in Audit Report no. 5 of 2012-13 relating to the implementation of PPP arrangements in Indira Gandhi International Airport, Delhi that necessary survey of the land be undertaken and physical markings erected to identify the demised land and carved out assets for future and PAC apprised within six months.

(Para 6.1)

Carved out land transferred to MIAL on the basis of meagre upfront fee

'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, which, however, was the basis for transfer of part of carved out assets to MIAL.

(Para 6.2)

Commercial exploitation of 190.1 acres

Article 2.2.4 of OMDA allows MIAL to utilise ten per cent of the demised premises for provision of non-transfer assets. This is essentially the land available to MIAL for commercial exploitation. Initially (as per RFP and OMDA), the land area available for commercial utilisation was 179.8 acres. With the execution of Supplementary Lease Deed in December 2011, the potential non transfer asset land rose to 190.1 acres and transfer of carved out land resulted in further increasing the eligibility of MIAL for commercial exploitation to 196.67 acres. Though revenues from non-transfer assets would not form a part of the 'Target Revenue' used for determining aeronautical charges in terms of SSA, the same would be a revenue enhancing activity having the potential for reduction of burden in the form of various levies on passengers.

MOCA/AAI need to carefully work out the economics of commercial exploitation of land.

(Para 6.3)

Encroachment

There were no firm estimates of the area under encroachment which kept on increasing over time from 147 acres to 308.96 acres highlighting 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.

(Paras 6.7 and 6.8)

Unauthorised expenditure

SSA stipulated that airlines shall collect Passenger Service Fee (PSF) and distribute the Security Component (SC) to AAI and the Facilitation Component (FC) to MIAL directly. MIAL can revise FC under the provisions of SSA while SC can be revised on the direction of Government. MOCA issued instructions from time to time which mandated that the Airport operators, (instead of AAI) would collect and utilise the SC component of PSF for specified purposes. MIAL unilaterally procured computers, furniture, and fixtures designating them essential to maintenance of security. This resulted in an unwarranted favour amounting to ₹87.97 crore extended to MIAL during 2006-12.

(Paras 7 and 7.1)