

1.1 Growth of Aviation Sector

Airports Authority of India (AAI) has been the sole air traffic service provider for the air space in the country covering an area of 2.8 million square nautical miles of land mass and the adjoining oceanic area as recognised by International Civil Aviation Organisation. With the opening of Indian airspace to private as well as international operators, air traffic in the country registered a phenomenal growth. The existing airport infrastructure proved to be inadequate to cope with the unprecedented increase in passenger and cargo traffic. It led to congestion at many airports and in particular in metropolitan cities. The country required new airports as also expansion and modernisation of existing ones to efficiently handle passengers, cargo and aircrafts. The Ministry of Civil Aviation (MOCA), in a Conference of Chief Secretaries held on 20 May 2006 projected a requirement of an additional ₹40,454 crore to augment and modernise existing infrastructure and to construct Greenfield airports. The revenue surplus generated by AAI was found to be grossly inadequate (₹812 crore in 2005-06) to meet this requirement and it was decided to adopt the Public Private Partnership (PPP) mode of development.

1.2 Background of the decision of Joint Venture

The Cabinet while approving the restructuring of airports of AAI in January 2000 through long term lease route directed that detailed plans be prepared for development and that each such case for lease should be separately brought up for consideration of the Cabinet Committee on Economic Affairs (CCEA).

Action was accordingly initiated by MOCA to restructure and upgrade Delhi, Mumbai, Chennai and Kolkata airports through the long term leasing route. Financial and Legal consultants were appointed and work regarding 'due diligence' as well as desirable transaction structure was initiated. During this exercise, MOCA felt that the Joint Venture (JV) route had certain advantages over long term leasing route. The matter was again put up for consideration of the Cabinet in December 2002 seeking approval to the proposal of restructuring of Delhi, Mumbai, Chennai and Kolkata airports through Joint Venture (JV) route by formation of separate Joint Venture Company for each of these airports with the respective selected bidder, in which AAI would have five per cent equity. The Cabinet directed MOCA to discuss the proposal further with Ministry of Finance and Ministry of Company Affairs and return to the Cabinet. In July 2003, the Ministry of Finance opined that the proposal should be restricted to Delhi and Mumbai only. Finally in

September 2003, the Cabinet approved the proposal of MOCA that restructuring of Delhi and Mumbai airports may be undertaken through JV route by formation of two separate companies between AAI and selected JV partners. The Cabinet also approved constitution of an Empowered Group of Ministers (EGOM) comprising Minister of Finance, Minister of Law and Justice, Minister of Disinvestment and Minister of State (Independent Charge) of Civil Aviation to decide on the detailed modalities including the design parameters, bid evaluation criteria etc. based on which the Joint Venture partner was to be selected. Subsequent to the formation of the new Government, the Government reconstituted (15 June 2004) the EGOM under the Chairmanship of Defence Minister to take the transaction forward.

In February 2005, EGOM approved the key principles of Request for Proposal (RFP) document along with the draft transaction documents i.e. Operation, Management and Development Agreement (OMDA), State Support Agreement (SSA), Shareholders Agreement (SHA), Lease Deed Agreement, Communication, Navigation and Surveillance/ Air Traffic Management (CNS/ATM) Agreement and State Government Support Agreement (SGSA). Thereafter, AAI initiated the process of selecting Joint Venture partners for executing the modernisation project at both the airports and undertook competitive bidding. The EGOM after evaluation of the technical and financial bids recommended (31 January 2006) the Joint Venture partners. The EGOM's recommendation was approved by the Cabinet on 1 February 2006.

Implementation of PPP in Indira Gandhi International Airport (IGIA), Delhi was examined and a report was placed in Parliament in Audit Report No. 5 of 2012-13 in August 2012. The report was examined by Public Accounts Committee (PAC) of Parliament and the final report of PAC was presented in Parliament on 06 February 2014.

The present report on the implementation of PPP at Chhatrapati Shivaji International (CSI) Airport, Mumbai, has been prepared taking into account the findings in Audit Report No.5 of 2012-13 and the recommendations of PAC thereon, mentioned above, in so far as they are relevant and applicable.

1.3 Formation of Mumbai International Airport Private Limited (MIAL)

M/s. GVK Consortium was selected as the JV partner for CSI Airport, Mumbai. The Consortium comprised three private entities:

GVK Industries Limited;
Airports Company South Africa Limited; and
Bidvest Group Limited.

On 02 March 2006, AAI incorporated a subsidiary Joint Venture Company (JVC) named Mumbai International Airport Private Limited (MIAL). Following signing of the Operation, Management and Development Agreement (OMDA) and Shareholders Agreement (SHA) on 04 April 2006 between AAI and the JV partners, AAI transferred 74 per cent of the equity shares in MIAL to JV partners in accordance with SHA. CSI Airport, Mumbai was handed over to MIAL with effect from 03 May 2006.

In terms of SHA, the issued share capital of MIAL was ₹200 crore which was jointly held by AAI (26 per cent), GVK Airport Holdings Private Limited (37 per cent), Bid Services Division (Mauritius) Limited (27 per cent) and ACSA Global Limited (10 per cent). Subsequently on 18 October 2011, 1,08,00,000 shares (out of 5,40,00,000 shares) of Bid Services Division (Mauritius) Limited were acquired by GVK Airport Holdings Private Limited raising its stake in MIAL to over 50 per cent. The paid up equity capital of MIAL as on 16 April 2012 was ₹1,200 crore held by AAI (26 per cent), GVK Airport Holdings Private Limited (50.5 per cent), Bid Services Division (Mauritius) Limited (13.5 per cent) and ACSA Global Limited (10 per cent).

1.4 Descriptions of the Transaction documents

Consequent upon the decision to hand over CSI Airport, Mumbai to MIAL and before physically handing over the airport to the latter, a number of agreements were signed among the concerned parties. These documents individually and collectively determined the terms and conditions of the handing over including economic benefits accruing to the parties. When these agreements were signed, the regulator, namely Airports Economic Regulatory Authority (AERA) was not in existence. These documents contain provisions relating to areas like tariff fixation for aeronautical services, which later, with the establishment of AERA came under the regulator's domain of decision making.

1.4.1 Operation, Management and Development Agreement (OMDA)

Together with the State Support Agreement (SSA), OMDA is the most important document and forms the soul of PPP in CSI Airport, Mumbai. Signed between AAI and MIAL, OMDA lays down obligations and responsibilities of both the parties, the terms of revenue sharing, duration of the concession, conditions of asset transfers (present and in future), terms and conditions of land transfers, etc. OMDA was signed on 04 April 2006.

1.4.2 State Support Agreement (SSA)

Complementary to the OMDA, the State Support Agreement (SSA) was signed between Government of India (GoI) represented by MOCA and MIAL on 26 April 2006. It lays down the responsibilities and obligations of MOCA

and MIAL in their respective domain and to each other. It lays down in Schedule 1, the principles of tariff fixation for aeronautical services.

1.4.3 State Government Support Agreement (SGSA)

State Government Support Agreement (SGSA) was signed on 27 April 2006 between the Government of Maharashtra and MIAL to provide support services to the project. The agreement provided that the State Government would provide support to MIAL in matters relating to removal of encroachment, procurement of additional land for development of airport, removal of obstruction outside the airport boundary to ensure safe and efficient air traffic movement, improve the surface area access to the airport and to provide all utilities on payment basis to MIAL.

1.4.4 Lease Deed Agreement

The Lease Deed agreement was signed on 26 April 2006 between AAI and MIAL to lease the demised premises on “as is where is basis” on an annual lease rent of ₹100 initially for a period of 30 years extendable for another 30 years by virtue of extension of concession period. The demised premises include all buildings, construction or immovable assets, if any on the premises as described in the agreement with the liberty to MIAL to construct, erect, renovate, alter or otherwise deal with the leased premises.

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

The agreement was signed on 26 April 2006 between AAI and MIAL according to which the former was to provide air traffic services support at the airport as AAI was authorised to provide necessary air traffic services within the country's air-space and at all civil airports.

1.4.6 Shareholders' Agreement (SHA)

Signed on 04 April 2006 by AAI and MIAL and other participants, SHA records the terms and conditions to govern the relationships in their mutual capacity as shareholders of JVC.

1.4.7 Airport Operator Agreement

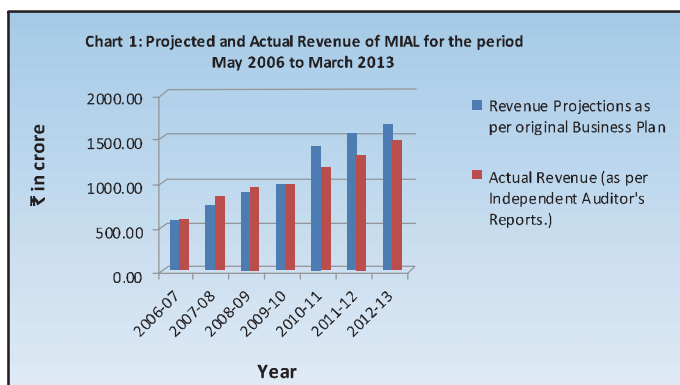
As per Schedule 8 of OMDA, MIAL is required to enter into an Airport Operator Agreement with the Airport Operator (AO) who is a member of the consortium (nominated if more than one AO are in the consortium). The Agreement sets out the role, responsibilities, accountabilities and financial arrangements between the AO and MIAL. Accordingly, an Agreement was signed on 28 April 2006 between MIAL and ACSA Global Ltd. (Airport Operator) to provide airport services.

1.5 Financial and Operational Performance of MIAL

AAI handed over CSI Airport, Mumbai to MIAL on 3 May 2006. MIAL continued the mandatory capital projects initiated by AAI and started other capital projects. Project cost increased from ₹5,826 crore as projected in 2006 to ₹11,647.46 crore in 2012 (as allowed by AERA). International terminal was inaugurated on 10 January 2014. Domestic terminal is understood to be poised to commence operations from August 2014. During the financial year 2012-13, MIAL earned ₹1478.58 crore, of which 38.7 per cent was to be shared with AAI (₹571.94 crore). MIAL, however, shared only ₹566.95 crore after adjusting the bad debts of M/s. Kingfisher airlines.

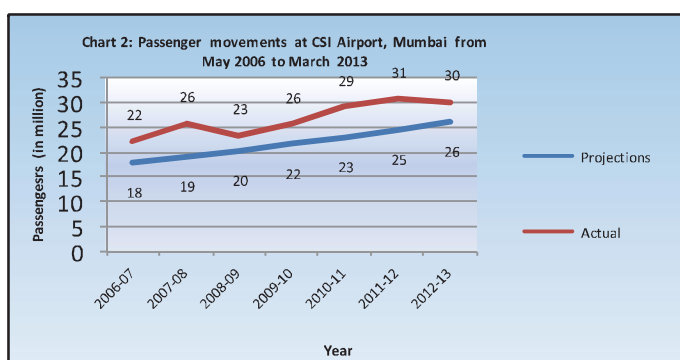
The performance of MIAL from May 2006 to March 2013 is given below:

a) Projected Revenue as per original Business Plan and Actual Revenue



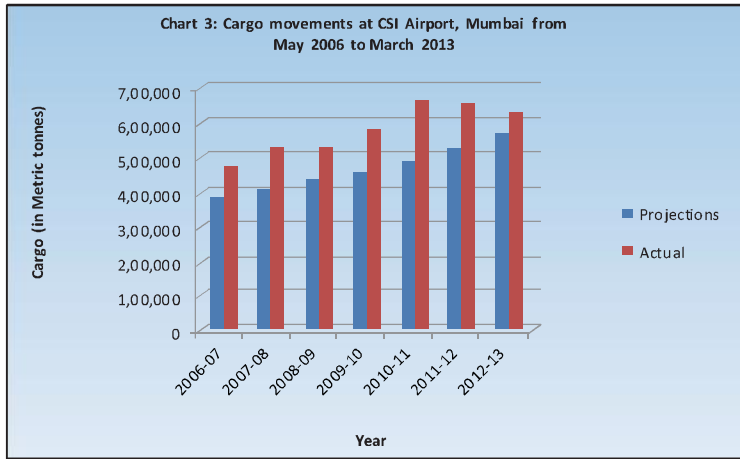
The actual revenue earnings were higher than the revenue projections for the period 2006-07 to 2008-09 but from 2009-10 onwards the actual revenues, though on an increasing trend over previous years, were lower than projections.

b) Passenger movements at CSI Airport, Mumbai



Passenger traffic movement has been consistently higher than projections for all the years from 2006-07 to 2011-12. However, actual passenger traffic decreased in 2012-13.

c) Cargo movements at CSI Airport, Mumbai



The cargo carriage has also been higher than the projections for the period 2006-07 to 2011-12. However, actual cargo carriage showed slight declining trend from 2010-11.

d) Aircraft Traffic movements at CSI Airport, Mumbai



Air traffic movements too increased consistently over the period covered in audit (2006-12) with a marginal decrease in 2008-09 and 2012-13.

The Performance Audit of “Implementation of Public Private Partnership at Indira Gandhi International Airport, Delhi” had been conducted earlier and the findings of the audit have been reported in CAG’s Report No.5 of 2012-13 for Union Government, Ministry of Civil Aviation. The methodology and procedure of re-development of Chhatrapati Shivaji International (CSI) Airport, Mumbai were identical. The present report is a continuation of performance audit efforts in respect of PPP arrangements in Indira Gandhi International Airport, Delhi. This report also takes into account the recommendations of PAC on the Audit Report No.5 of 2012-13 mentioned above, that are contained in their final report presented to Parliament on 06 February 2014

MOCA has, *inter alia*, pointed out (November 2013) that the decision to restructure and modernise Mumbai Airport was a policy decision of the highest body *i.e.* Cabinet. The terms and conditions as well as the modalities of modernisation/restructuring as mentioned in the transaction documents were finalised and approved by EGOM and that there has been no change in the finalised transaction documents. Several issues such as JV route, leasing of land /assets, Concession Period, Right of First Refusal (ROFR) etc. were policy decisions of the Cabinet based on expert inputs in formulation and inter-ministerial consultation. Hence, these policy decisions should not be brought into question at this stage through audit observations.

Audit acknowledges the prerogative of Government to adopt the JV route in modernisation of Mumbai Airport and decide the terms of engagement. Audit exercise is to review implementation of the agreements to assess whether the interests of Government have been adequately protected and whether the arrangement ensured maximum value to Government.