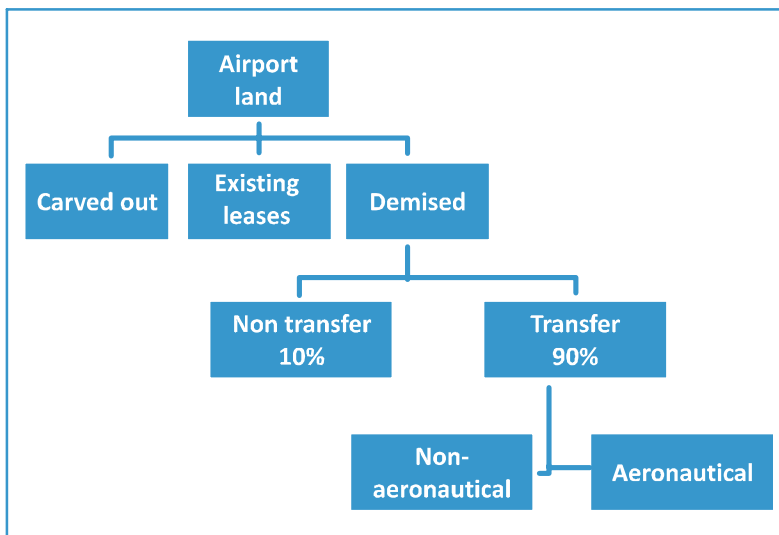


As per Article 2.6.1 of OMDA, AAI had agreed to lease out land in CSI Airport other than the land under existing lease and 'carved out assets' to MIAL for development of Airport. This was designated as 'demised premises'. The lease deed agreement between MIAL and AAI provided (Article 2.1.2) that on expiry or early termination of existing leases of AAI, the underlying land of these leases would form an integral part of demised premises. The 'carved out assets' were retained with AAI and did not form a part of the demised premises. The carved out assets included the Air Traffic Control (ATC) tower, AAI-National Airports Division (NAD) staff colony, leased land to Hotel Leela, retail fuel outlets outside airport operational boundary and the convention centre. It was agreed (Article 2.6.3 of OMDA) that land underlying the carved out assets could be leased to MIAL, if required for aeronautical purposes.

**Chart-11 Airport Land**



Following the agreement with MIAL thus, the airport land comprised 'demised premises' leased to it and 'carved out assets' retained by AAI. MIAL could use the 'demised premises' to create 'transfer assets' as well as 'non-transfer assets'. 'Transfer assets' encompass assets used for both

aeronautical and non-aeronautical purposes which would be transferred back to AAI at the conclusion of the agreement. 'Non-transfer assets' imply land available for commercial exploitation by MIAL for which AAI does not have the obligation (though it has the right) to acquire MIAL's rights, titles and interests at the conclusion of the agreement. Land available for 'non-transfer asset' is limited to 10 per cent of the demised premises according to OMDA.

## 6.1 Survey of airport land and maintenance of land records

OMDA (April 2006) under which 'demised premises' were handed over to MIAL did not define the specific details of the leased land. Schedule 25 of

OMDA was required to have a map of the 'demised premises' which was left blank. Lease deed between AAI and MIAL (April 2006) also did not demarcate the 'demised premises'. Relevant schedule (Schedule 1) of the lease deed was also left blank. OMDA (Schedule 27) only delineated 'carved out assets' as 3,08,747.15 sq.m.(76.3 acres<sup>6</sup>). Thus, the actual area and demarcation of leased premises were not firmly defined before handing over the land to MIAL. Even the extent of 'demised premises' was not mentioned in OMDA or the lease deed.

AAI had indicated in its RFP (2005) that the total area of Mumbai Airport was 1,875 acres. MIAL, in its Master Plan of 2007 attempted a property map of the airport land. The total area of airport land as ascertained by MIAL was 2,001 acres, much higher compared to AAI's figure of 1,875 acres. MIAL indicated the 'carved out assets', existing and expired leases, land in possession of other government agencies, land under dispute and encroached land in the map, separately. Demised premises were indicated as 1,912.9 acres and 'carved out assets' as 88 acres. The very significant difference in the extent of land quoted by AAI and MIAL raises questions on the quality of records and documents maintained by AAI.

AAI had constituted a Committee (11 May 2011) to carry out proper verification of land records for execution of Supplementary Lease Deed. As per the Committee's Report (05 July 2011) the total area, as per Property Register Cards, was 2001.36 acres. It was however noticed that the Supplementary Lease Deed signed by AAI and MIAL in December 2011 recorded the total land vested with AAI (lessor) at CSI Airport, Mumbai as 2006.73 acres. Thus, even after 4-5 years of signing of OMDA and handing over of CSI Airport, Mumbai to MIAL, the total area of the airport land was not firmed up.

The total area of the airport land as it altered progressively from 2006 to 2012 is shown below:

**Table 4: Land holding at CSI Airport, Mumbai**

<b>LAND HOLDING AT CSI AIRPORT</b>			
Status as on 03 May 2006 (After signing OMDA)	Status as per re-survey held in 2006-2007	Status as per the Committee Report (05 July 2011)	Status as on December 2011 (after signing of Supplementary Lease Deed)
1875 acres	2001 acres	2001.36 acres	2006.73 acres

<sup>6</sup> One acre = 4,046.82 sq.metre.

AAI stated (July 2013) that the area of the airport land could be determined only after removal of encroachment.

MOCA replied (November 2013) that OMDA provided only map of the 'demised premises' and 'carved out assets' and that the land was handed over on as-is-where-is basis. While agreeing that no proper land records were available with AAI, MOCA stated that even after carrying out the survey, the land in possession with MIAL might alter as the exchange of land with MIAL was still in progress.

It is pertinent to mention in this regard that PAC in their report on Performance Audit of Implementation of PPP- Indira Gandhi International Airport, Delhi contained in Audit Report No. 5 of 2012-13, on a similar issue relating to Delhi Airport, recommended 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. MOCA and MIAL would be well advised to act on the above recommendation in respect of MIAL and CSI Airport too.

## **6.2 '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 only. MIAL requested MOCA (in 2007) to transfer nearly the entire land under 'Carved Out Assets' for establishing aeronautical services and carrying out expansion/ development of CSI Airport, Mumbai. The matter was considered by AAI (109<sup>th</sup> Board Meeting/ 27 April 2007 and 119<sup>th</sup> Board Meeting/ 07 April 2008) and it was decided to lease out an additional 28.98 acres out of 'carved out assets' (15 acres of National Airport Division (NAD) Colony, 11 acres of Convention Centre and 2.98 acres of Air Traffic Control Tower area). It was also agreed that appropriate payment for the additional lease would be decided separately. Subsequently, it was decided (16 April 2008) that 25 acres of NAD colony and 16 acres of Convention Centre would be leased to MIAL. MIAL also agreed to identify in lieu of the above, a suitable area of 5 acres to be provided to AAI for its future requirements. AAI agreed to transfer 43.98 acres out of 'carved out assets' to MIAL which was approved by AAI Board in its 129<sup>th</sup> Board Meeting of 06 March 2009.

AAI Board decided (March 2009) that the additional carved out land of 43.98 acres would be transferred to MIAL against a consideration based on upfront fee paid by MIAL. An amount of ₹3.52 crore was worked out as consideration for this land on the basis of the upfront fee of ₹150 crore paid by MIAL ( $\frac{₹150 \text{ Crore}}{1875 \text{ acres}} \times 43.98 \text{ acres} = ₹3.52 \text{ crore}$ ). The Supplementary Lease Deed for the additional land was executed on 15 May 2009. Audit noticed that AAI subsequently transferred an additional pocket of land measuring 4.17 acres

on MIAL's request basing its valuation on the upfront fee of ₹150 crore. A supplementary Lease Deed was executed on 15 April 2010 to lease out 4.17 acres of 'F' block in NAD Colony to MIAL on payment of ₹0.33 crore ( $\frac{₹150 \text{ Crore}}{1875 \text{ acres}} \times 4.17 \text{ acres}$ ).

MOCA stated (March 2012) that the upfront fee paid by MIAL to AAI had 'no relation to the extent of land and asset at an airport and it was only a part of the OMDA fee'. Hence, it would not be proper to use upfront fee as the base for calculating price of additional land provided by AAI to MIAL.

Article 2.6.3 of OMDA states that 'with respect to land underlying the carved out assets, the parties further agreed that if, at any time during the term, MIAL requires the said land for providing any aeronautical services or developing and/ or constructing any aeronautical assets, the parties shall come together to negotiate in good faith, the terms and conditions on which AAI shall lease to MIAL and MIAL shall take on lease from AAI, the said land'. Allowing additional leased land to MIAL without negotiation, at the rates based on upfront fee, was, thus, inappropriate.

AAI stated (July 2013) that additional land was leased out for aeronautical use only and not for commercial exploitation. Hence, commercial rate could not be demanded from MIAL. In addition, MOCA stated (November 2013) that income from these assets would offset aeronautical charges benefitting general public.

The reply needs to be viewed against the following facts:

- (i) OMDA enjoined that the terms and conditions for lease of carved out land should be negotiated which was not done. That the land was leased out for aeronautical purposes does not alter this provision.
- (ii) Besides, with the increase in the extent of demised premises, the quantum of land available to MIAL for commercial exploitation also increased which would be available for 30 years with an assurance of continuation for another 30 years.

### 6.3 Commercial exploitation of 190.1 acres

Article 2.2.4 of OMDA allows MIAL to utilise ten per cent (or such different percentage as set forth in the master plan norms of the competent local authority of Mumbai, as the same may change from time to time) of the demised premises for provision of non transfer assets. This is essentially the land available to MIAL for commercial exploitation.

RFP issued by AAI in 2005 indicated the total area of Mumbai Airport as 1875 acres. OMDA signed on 4 April 2006 did not indicate the total area of the

airport but fixed the area of 'carved out assets' as 76.3 acres (schedule 27 of OMDA). Considering the total area as 1875 acres (as mentioned in the RFP), the balance land of 1798.7 acres would be 'demised premises'. Thus, as per the RFP and OMDA, MIAL would be eligible to utilise 179.8 acres (10 per cent of 1798.7 acres) for commercial exploitation. Subsequently, AAI signed a supplementary lease deed with MIAL (December 2011) which placed the area of demised premises (as on 26 April 2006) as 1901.03 acres. This increased the area available to MIAL for commercial exploitation to 190.1 acres. Thus, MIAL would be benefitted through additional commercially exploitable land admeasuring 10.23 acres.

While claiming the exact area of land available for commercial exploitation as 187.5 acres (10 per cent of original demised premises), MOCA stated (November 2013) that MIAL could not utilise even this land for commercial exploitation, due to delay in vacating the encroachment of land.

The reply needs to be viewed against the following:

- (i) RFP of 2005 had placed the total airport area as 1875 acres. OMDA (April 2006) had set aside 76.3 acres as carved out assets, with the balance demised premises of 1798.7 acres. The land available for commercial exploitation is 10 per cent of demised premises and not the total area as per OMDA (Article 2.2.4). Thus, the contention of the MOCA that 187.5 acres of land were initially available for commercial exploitation to MIAL is incorrect.
- (ii) AAI has signed a supplementary lease agreement (December 2011) agreeing to an area of 1901.03 acres for demised premises as on April 2006. This increases the availability of land for commercial exploitation to 190.1 acres as per the provisions of OMDA.
- (iii) AAI had earlier (April 2010) signed another supplementary lease deed restricting the carved out assets to 39.95 acres. As the total area of the airport is 2006 acres (as indicated in the supplementary lease deed signed in December 2011), the demised premises would actually be higher at 1966.76 acres, further increasing the land eligibility of MIAL for commercial exploitation to 196.67 acres.
- (iv) During Exit Conference, the representative of MIAL informed that the local authority (MMRDA) had allowed commercial exploitation of 133 acres at present. MIAL subsequently informed that the quantum of commercial exploitation might increase as and when the encroachment of 204.99 acres was removed and that it was unlikely to cross 190 acres.

Thus, the quantum of land available for commercial exploitation remains undefined. It may not be prudent to overlook the earning potential of even the minimum of 133 acres. Benefit from the earning potential would accrue to MIAL as revenue out of 'non-transfer' asset. Though the same would not be



considered for determination of airport 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.*

#### **6.4 Unwarranted benefit to MIAL on relocation of activities and change in land use**

As mentioned in para 6.2 above, the 'carved out assets' were retained by AAI for its own usage and could be transferred to MIAL only if the latter required it for aeronautical purposes. After the transfer of 48.15 acres of land out of carved out assets on the request of MIAL, the remaining carved out land (39.95 acres) comprised essentially of AAI's NAD staff residential colony. MIAL proposed to relocate the Air India Cabin Catering and Chef-Air Flight Kitchen located in the demised premises to AAI's balance carved out land. AAI/ MOCA agreed to this proposal.

Relocation of these non-aeronautical facilities in carved out land amounts to usage of additional carved out land for non-aeronautical purposes and was a violation of the OMDA provisions which enjoined that 'carved out land' could be used by MIAL only for aeronautical purposes.

MIAL subsequently requested for change in end use of this vacated land for non-aeronautical purpose which was agreed to by MOCA on the condition that MIAL provide an alternate location of identical size for aeronautical purpose. The alternate site was in an encroached area but was accepted by AAI/MOCA.

While accepting that end use was altered for 3 acres, MOCA stated (November 2013) that Air India had long discontinued use of the Air India Cabin Catering and Chef-Air Flight Kitchen facility.

The reply has to be viewed against the facts that

- (i) the intent had been to relocate non-aeronautical activities from the demised premises into the balance portion of 'carved out asset' earmarked for the exclusive use of AAI.
- (ii) there were no provisions in OMDA that allowed change in end use of land. However, land use continued to be altered by AAI at the request of MIAL.
- (iii) The alternate site (3 acre) earmarked by MIAL at Agripada for aeronautical purposes or for transfer to AAI was actually encroached (as seen from the Master Plans of 2007 and 2011). AAI,

however, did not raise any objections in this regard with MIAL. Thus, effectively, the land under non-aeronautical use by MIAL increased while relegating equivalent land for aeronautical functions to encroached areas.

## **6.5 AAI's Traffic Management Centre**

MIAL had been directed to earmark 5 acres of land for AAI's Air Traffic Management Centre while agreeing to lease additional 25 acres NAD land and 16 acres Convention Centre out of carved out land as demised premises. In the Master Plan 2011, MIAL marked the area of 5 acres in the encroached region for AAI. Subsequently, it was decided in the 15<sup>th</sup> OIOC meeting (14 September 2012) that AAI did not have an immediate requirement of land and the same would be made available by MIAL as and when required. The matter was treated as closed for the time being without actual transfer of land to AAI.

The decision taken in the 15<sup>th</sup> OIOC meeting to treat the issue of transfer of 5 acres land to AAI as closed for the time being indicates that AAI was not proactive about its requirement and that MIAL was able to prevail upon OIOC for postponing the provision of land to AAI that would be contingent upon availability post slum rehabilitation.

AAI stated (July 2013) that its Planning Department in coordination with Air Navigation Services Department was in the process of identification of area which MIAL would be asked to handover. MOCA replied that in 15<sup>th</sup> OIOC meeting, AAI requested MIAL to hand over 5 acres immediately; however MIAL stated that they would hand over land only after removal of encroachment.

MIAL confirmed in the Exit Conference that it would provide suitable land to AAI after discussion. MOCA would do well to monitor the developments closely and ensure that the desired outcome is not delayed further.

## **6.6 Land in possession of other government agencies**

Pockets of land in and around CSI Airport had been in the possession of other government agencies. Master Plan 2007 prepared by MIAL lists nine such plots. This includes land in possession of Posts & Telegraph (P&T) Department, Air Force, Indian Navy, Central Public Works Department (CPWD), Yellow Fever Hospital and Indian Meteorological Department (IMD). Some of these plots were outside the boundary of the 'demised premises', as in the case of P&T colony. MIAL, in its Master Plan, pointed out that these plots of land may be required for future use. The status of these plots as seen from the Master Plan 2011 and study of minutes of OIOC was as below:

- Land in possession of P&T Department, Air Force, Navy: The land in possession of Air Force and Navy has been permanently transferred to them as seen from Master Plan 2011. A major portion of the land in possession of P&T Department is outside the demised premises. It was indicated (Master Plan 2007) that this land would be required for development of CSI Airport. However in the Master Plan 2011, it has been deemed to be 'presently not required'.
- IMD premises: It has been decided to relocate these buildings to 'carved out assets'. The cost of construction of the new office is to be borne by MIAL.
- Land in possession of CPWD: Central Public Works Department (CPWD) occupies 17.36 acres of land within the demised premises of the airport. Though the title of the land is with AAI, it has been in the possession of CPWD for historical reasons (CPWD being in charge of maintenance of Mumbai Airport till 1972). As per the Master Plan (2007 and 2011), this land was necessary for developing the air cargo facility at the airport. MIAL entered into an agreement with CPWD (Memorandum of Understanding signed in May 2009) according to which CPWD would vacate the said land in lieu of MIAL constructing offices, residences and godowns for CPWD at identified locations. The cost of construction in this case would also be borne by MIAL .

AAI /MOCA stated (July / November 2013) that any expenditure involved in relocation of various facilities and consequent increase in project cost, if any, has to be considered by AERA at the time of determination of tariff as per the provisions of AERA Act.

The fact remains that land requirement for the airport and intended use of such land has been altered over time as per successive Master Plans of MIAL. AAI/ MOCA did not significantly comment on these plans and allowed such changes to be made. Transfer of possession of identified land pockets (in possession of IMD, CPWD) to MIAL involves significant expenditure which would be loaded to the project cost in subsequent control periods and would, thus, lead to future increases in airport charges and possibly additional burden on passengers.

## 6.7 Encroachment

While Schedule 2 of Lease Deed 2006 (signed on 26 April 2006) indicated the area under encroachment as 147 acres, Schedule 2 of State Government Support Agreement (SGSA) of 2006 (signed a day later on 27 April 2006) the area under encroachment was depicted as 171 acres, approximately. Mention of two different figures as area under encroachment in the two documents signed by AAI on two successive days in 2006 indicated lack of



clear understanding of AAI regarding the area that was actually under encroachment. Incidentally, OMDA did not demarcate the area under encroachment though a map of such area was to be included in Schedule 26 which was left blank. MIAL reported (2<sup>nd</sup> OIOC meeting – 05 January 2007) that the area under encroachments was about 276 acres. Subsequently, in correspondence with the Collector, Mumbai Suburban District, (17 January 2011) AAI stated that the land under encroachment was 308.96 acres. AAI stated (July 2013) that encroachment of land could be ascertained and finalised only after proper removal of encroachment and survey thereafter. While accepting the fact that AAI had no proper land records including encroachment due to its legacy, MOCA stated that survey had been carried out by MIAL and removal of encroachment is getting delayed due to involvement of various complex issues.

This reinforces poor quality of land management at the Airport by AAI already touched upon in paragraph 6.1 of this report.

## **6.8 Removal of encroachment**

MIAL executed a contract with M/s. Housing Development and Infrastructure Limited (HDIL), on 15 October 2007 to undertake activities relating to rehabilitation of encroachers and restoration of airport land under encroachment. HDIL was accordingly granted rights to develop part of the land vacated by encroachers in a phased manner. The encroachment was to be removed within 48 months of commencement date *i.e.* by October 2011 or with a further six months' extension at MIAL's discretion. The contract was subsequently terminated by MIAL as the encroachments were not removed.

AAI stated (July 2013) that the contract with HDIL for removal of slums/ encroachment by MIAL was terminated due to failure of HDIL to execute the work. MOCA also informed (November 2013) that HDIL and MIAL had appointed an arbitrator and arbitration proceedings were in process.

With the termination of the contract and lack of progress in removal of encroachment, development plans at the airport would continue to suffer.