Mumbai International Airport Ltd vs Airport Economic Regulatory Authority ... on 29 May, 2026

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Reserved on:10.03.2026

Pronounced on: 29.05.2026

AERA APPEAL/2/2025

Mumbai International Airport Ltd. ...Appellant

Versus

1. Airports Economic Regulatory Authority of India;

2. Federation of India Airlines. ...Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE DHIRUBHAI NARANBHAI PATEL (CHAIRPERSON)

HON'BLE DR. SANJEEV BANZAL (MEMBER)

FOR APPELLANT	FOR RESPONDENT(S)
In AERA Appeal No.2/2025	In AERA Appeal No. 2/2025
For MIAL	For AERA (R-1)
Mr. Sajan Poovayya, Senior Advocate	Mr Ritesh Kumar
Ms Amrita Narayan	Mr Dheerendra Singh Bisht
Mr Palash Maheshwari	Ms Shalini Prasad
Mr Raghav Tiwari	Ms. Yashasvini Chandra For R1;
Mr Madhav Sharma	
	For FIA(R-2)
	Mr Buddy Ranganadhan, Sr Adv
	Ms Nishtha Kumar
	Mr Prantar Basu Choudhury
	Mr Shrom Sethi For R2;

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JUDGEMENT

Per Justice D.N. PATEL, Chairperson SUMMARIUM This appeal has been preferred by Mumbai International Airport Limited (MIAL), the operator of Chhatrapati Shivaji Maharaj International Airport, Mumbai (CSMIA), under Section 18(2) of the AERA Act,2008 against Order No. 01/2025-26 dated 07.05.2025 passed by the Airports Economic Regulatory Authority of India (AERA), determining the aeronautical tariff for CSMIA for the Fourth Control Period commencing 01.04.2024 and ending 31.03.2029. The appeal raises multiple issues relating to the regulatory treatment of capital and operating expenditure, allocation of costs between aeronautical and non-aeronautical activities, and the methodology adopted by AERA in determining key parameters forming part of the Aggregate Revenue Requirement (ARR). The Respondents, on the other hand, defends the impugned tariff order by asserting that the determinations have been undertaken in accordance with its statutory mandate under Section 13 of the AERA Act, 2008. It is contended that the AERA, as the sectoral regulator, is empowered to examine the prudence and efficiency of expenditure.

In the present proceedings, this Tribunal is called upon to examine the rival contentions advanced by the parties and to adjudicate upon the issues arising from the impugned tariff determination within the framework of the AERA Act, the governing concession agreements, binding precedents and the applicable principles of regulatory jurisprudence.

ABBREVIATIONS INVOLVED

Abbreviations	Expansion
AAI	Airports Authority of India

AAHL	Adani Airport Holdings Limited
ACI	Airports Council International
ADRM	Airport Development Reference Manual
AERA Act	Airports Economic Regulatory Authority of India Act,
AERA	Airports Economic Regulatory Authority of India
AERAAT	Airport Economic Regulatory Authority Appellate Tribunal
AF	Annual Fee
AIC	Aeronautical Information Circular
AO	Airport Operator
AOC	Airlines Operators Committee
APAO	Association of Private Airport Operators
ARB	Aeronautical Revenue Base
ATC	Air Traffic Control
BAC	Base Airport Charges
BCAS	Bureau of Civil Aviation Security

BIAL	Bangalore International Airport Limited
CAGR	Compound Annual Growth Rate
CMP	Cash Management Process
CNS/ATM	Communication, Navigation and Surveillance and Air Traffic Management Services
CSR	Corporate Social Responsibility
CSMIA	Chhatrapati Shivaji Maharaj International Airport
CWIP	Capital Work in Progress
DE ratio	Debt: Equity ratio
DF	Development Fee
DGCA	Directorate General of Civil Aviation
DIAL	Delhi International Airport Limited
ECB	External Commercial Borrowing
FCP	First Control Period
FDR	Fixed Deposit Receipts
FIA	Federation of Indian Airlines
F&B	Food & Beverage

Forex Losses	Foreign Exchange Losses
FRoR	Fair Rate of Return
FTC	Fuel Throughput Charges
FICCI	Federation of Indian Chambers of Commerce
FY	Financial Year
GA Terminal	General Aviation Terminal
GHIAL	GMR Hyderabad International Airport Limited
HIAL	Hyderabad International Airport Limited
H-RAB	Hypothetical- Regulatory Asset Base
ICAI	The Institute of Chartered Accountants of India
IDC	Interest During Construction
IGIA	Indira Gandhi International Airport
IRS	Indian Register of Shipping
JVC	Joint Venture Company
MAT	Minimum Alternate Tax
MCLR	Marginal Cost of Funds based Lending
MIAL	Mumbai International Airport Limited

MoCA	Ministry of Civil Aviation
MYTP	Multi Year Tariff Proposal
OM	Operation and Maintenance Expenses
OMDA	Operation, Management and Development Agreement
PBT	Profit Before Tax
PCN	Pavement Classification Number

PNGRB Petroleum and Natural Gas Regulatory Board PPP Public Private Partnership PV Present Value R&S Reserves and Surplus RAB Regulatory Asset Base RED Real Estate Deposit RoI Return on Investment RSA Revenue Share Assets RSD Refundable Security Deposit RTL Rupee Term Loan SCP Second Control Period SGSA State Government Support Agreement SPV Special Purpose Vehicle SSA State Support Agreement TAMP Tariff Authority for Major Ports TCP Third Control Period TDSAT Telecom Disputes Settlement and Appellate Tribunal TR Target Revenue WACC Weighted Average Cost of Capital AERA APPEAL NO. 2 OF 2025

1. This appeal has been preferred under Section 18(2) of The Airports Economic Regulatory Authority of India Act, 2008 against the order passed by Respondent- Airports Economic Regulatory Authority of India (hereinafter referred to as AERA) bearing Order No. 1/2025-26 dated 07.05.2025 (for 4th Control Period).

2. That the 4th Control Period is from 01.04.2024 to 31.03.2029. This order has been passed by AERA under the AERA Act. This appeal is in respect of Chhatrapati Shivaji Maharaj International Airport, Mumbai (hereinafter referred to as CSMIA for the sake of brevity).

FACTUAL MATRIX A. In 2004-2005, the Airports Authority of India (AAI) invited tenders from private participants competent to and desirous of operating, maintaining, developing, designing, constructing, upgrading, modernizing, financing and managing the CSMIA, Mumbai.

B. Earlier a consortium led by the GVK Group was awarded the bid for operating, maintaining, developing, designing, constructing, upgrading, modernising, financing and managing the CSMIA, Mumbai.

C. Post selection of the private consortium, a special purpose vehicle, namely Mumbai International Airport Private Limited (MIAL/the Appellant herein), was incorporated on 02.03.2006 with AAI

retaining 26% Equity stake and balance 74% Equity stake being acquired by members of private consortium. Private consortium comprised of GVK Airport Holding Pvt. Ltd., ACSA Global Limited and Bid Services Division (Mauritius) Ltd.

D. The Appellant entered into an Operation, Management and Development Agreement (OMDA) with AAI on 04.04.2006, whereby the AAI granted to the Appellant, the exclusive right and authority during the term to undertake some of the functions of AAI being the functions of operations, maintenance, development, design, construction, upgradation, modernization, finance and management of the CSMIA, Mumbai and to perform services and activities constituting Aeronautical Services and Non-Aeronautical Services (but excluding Reserved activities, defined in OMDA) at the CSMIA. The Appellant took over the operations of CSMIA, Mumbai on 03.05.2006. E. Appellant also entered into the State Support Agreement (hereinafter referred to as "SSA" for the sake of brevity) dated 26.04.2006 with the President of India acting through Ministry of Civil Aviation, Govt. of India (hereinafter referred to as "MoCA" for the sake of brevity) F. Several other agreements in addition to OMDA and SSA were entered into by the appellant such as Lease Deed Agreement, Shareholders' Agreement State Government Support Agreement etc. and are collectively referred to as 'Project Agreements'.

G. MIAL has preferred the present appeal against the order No. 01/2025-26 dated 07.05.2025 titled 'In the matter of Determination of Aeronautical Tariff for Chhatrapati Shivaji Maharaj International Airport, Mumbai (CSMIA) for the Fourth Control Period (01.04.2024-31.03.2029)' [Impugned Order] issued by AERA on the ground that the principles of OMDA, SSA read with AERA Act, 2008 have been disregarded.

ARGUMENTS CANVASSED BY APPELLANT- MIAL

3. Ld. senior counsel appearing for the appellant Mr. Sajan Poovayya has submitted that the impugned order dated 07.05.2025 for the 4th Control Period (01.04.2024 to 31.03.2029) passed by AERA is against the facts, evidence and law. AERA has also violated the settled principles laid down by the judgments of this Tribunal in different AERA Appeals and, therefore, it is submitted that out of the total nineteen issues, thirteen issues are covered by the earlier decisions rendered by this Tribunal in various different AERA appeals.

4. It is submitted by the learned senior counsel appearing for the appellant that the impugned order is contrary to the provisions of AERA Act and other binding principles. Moreover, the impugned order has been passed without proper application of mind. Further, it is submitted that the impugned order has failed to take into account the materials placed on record and there is inconsistency in approach by AERA while passing the impugned order. Similar issues have been decided differently by AERA for different airports and lastly, it is pointed out that there are violations of Principles of Natural Justice in several issues decided by AERA.

5. It is further submitted by the learned senior counsel appearing for the appellant that the impugned order also suffers from multiple legal and factual infirmities warranting interference by this Tribunal. At the threshold, it is contended that the order is inconsistent with the agreed upon

sovereign contractual framework governing the parties i.e. the Operation, Management and Development Agreement (OMDA), and the State Support Agreement (SSA), both of which collectively define the regulatory framework under which the appellant operates.

6. The major issues raised by the learned senior counsel appearing for the appellant are as under:

I. The Respondent No.1/AERA ought not to apply normative benchmarks while approving the costs of Terminal Building and Runway/Taxiways/Apron projects in view of the Hon'ble Tribunal judgment dated 16.04.2025 and evaluate capital expenditures on an actual basis.

II. The Respondent No.1/AERA ought to have allowed actual Cost of Debt of 10.98% for Third Control Period as submitted in MYTP and which is also followed by other regulatory commissions as efficient cost, to be used for the computation of Weighted Average Cost of Capital ("WACC").

III. The Respondent No.1/AERA ought to have allowed the construction of General Aviation Terminal as common asset.

IV. The Respondent No.1/AERA ought not to reduce the Hypothetical Regulatory Asset Base ("HRAB") on account of the demolition of Terminal T1, as such an adjustment reflects an inconsistent approach adopted in the case of the Appellant as compared to DIAL, despite both airports being governed by similar concession agreements i.e., OMDA and SSA.

V. The Respondent No.1/AERA ought not to reduce 1% of the project cost in case of delay in completion of the project and ought to be set aside by the Hon'ble Tribunal to ensure fair and proper adjudication of the issue at hand.

VI. The Respondent No.1 ought to have excluded the Annual Fee payable to AAI from the revenue generated by the Appellant from the Revenue Share Assets for the purpose of calculating the "S" Factor.

VII. The Respondent No.1/AERA ought to have excluded Other Income (such as interest and dividend income) from the revenue generated through Revenue Share Assets, and consequently, from computation of 'S' Factor under the Target Revenue formula.

VIII. The Respondent No.1/AERA ought to have exclude "Revenue from existing assets/demised premises" from the revenue generated through Revenue Share Assets, and consequently, from the computation of the "S" Factor under the Target Revenue formula.

IX. The Respondent No.1/AERA ought to have considered "S"

Factor as a part of the aeronautical revenue for purposes of determining Aeronautical Taxes ("T").

X. The Respondent No.1/AERA ought to have allowed entire corporate legal expenses amounting to INR 5.67 Crores as part of the Corporate Cost Allocation in line with the Concession Agreement and treatment given to similarly placed airports like DIAL.

XI. The Respondent No.1/AERA ought to have allowed soft costs to the extent of 16% of the 'allowable' Capital Expenditure which is based on best practices subject to true-up on an actual incurrence basis.

XII. The Respondent No.1/AERA ought to true-up non-

aeronautical revenues based on actuals, in line with the consistent regulatory practice adopted by the Respondent No.1/AERA in the previous control periods. Further, Respondent No.1/AERA ought not to prescribe a floor or minimum threshold for non-aeronautical revenues.

XIII. The Respondent No.1/AERA ought to have adopted the Cost of Equity of 17.30% proposed by the Appellant, based on the PwC study using the Capital Asset Pricing Model ("CAPM") methodology and based on correct asset beta along with 1% risk premium due to traffic constraints.

XIV. The Respondent No.1/AERA ought to have allowed actual Cost of Debt incurred by the Appellant for computation of WACC, at the time of true-up of Fourth Control Period.

XV. The Respondent No.1/AERA ought to have excluded dividend income from Fuel Farm Operators from the tariff computation.

XVI. The Respondent No.1/AERA ought not to consider any adjustment to the said amounts of tariffs claimed by Appellant under the heads of Depreciation and Return on RAB on account of the Self-Contained Note of the Authorized Investigation Agency as the matter is now pending trial and there is no finality on the said issue as on date.

XVII. The Respondent No.1/AERA ought to have allowed aeronautical bad debts written off on account of defaults by airlines to be considered as part of O&M expenses.

XVIII. The Respondent No.1/AERA ought to have at least allowed aeronautical allocation of 60% for the purpose of determining Digitalization expenses for the Fourth Control Period, subject to appropriate true-up.

XIX. The Respondent No.1/AERA ought to have allowed the legal expenses on an upfront basis in the Fourth Control Period and true-up the same based on actual incurrence at time of tariff determination of Fifth Control Period.

7. It is further submitted by learned senior counsel appearing for the appellant that following issues are settled and resolved by virtue of principles laid down in judgments rendered by this Tribunal in AERA Appeal No.9 of 2016 and AERA Appeal No.2 of 2021 vide judgment dated 06.10.2023 for Second Control Period:

A. Cost of Debt for Third Control Period (Para nos.

313 and 320-322 of MIAL SCP & TCP Judgment dated 06.10.2023 and para no. 466 of GHIAL TCP judgment dated 14.02.2024).

B. Aviation (GA) Terminal considered as Non-

Aeronautical Asset.

C. Adjustment on account of demolition of T1 in HRAB in FY 2029 (Paras 341 and 342 of MIAL SCP & TCP Judgment).

D. Reduction of 1% uncapitalized project cost from the target revenue in case any particular capital project is not completed/capitalized as per approved capitalization schedule in the next control period. (Paras 308, 309 and 310 of MIAL SCP & TCP Judgment and Paras 508, 509, 510, 512 and 519 of GHIAL TCP Judgment dated 14.02.2024).

E. Inclusion of "Annual Fee" in Determination of 'S' Factor (Para 365 of MIAL SCP & TCP Judgment).

F. "Other Income" not to be included in determination of 'S' Factor (Paras 225, 226 and 227 of MIAL SCP & TCP Judgment).

G. Revenue from Existing Assets/Demised Premises (Paras 379 to 381 of MIAL SCP & TCP Judgment) H. Inclusion of 'S' factor in Aeronautical Revenue for computation of 'T' (Paras 398 and 399 of MIAL SCP & TCP Judgment) (Paras 423 and 424 of GHIAL TCP Judgment dated 14.02.2024)

8. It is submitted by the learned senior counsel for the appellant that by virtue of judgment and order dated 11.09.2025 passed by this Tribunal in AERA Appeal No.1 of 2023 and other connected AERA Appeals as well as by virtue of judgment in AERA Appeal No. 1 of 2024 dated 11.09.2025, the following issues have been settled:

A. Corporate Cost Allocation (Paras 271 and 272 of the Judgment dated 11.09.2025 in AERA Appeal No. 01 of 2023 and connected appeals).

B. Soft Cost for the Fourth Control Period (Para 162 of the Judgment dated 11.09.2025 in AERA Appeal No. 01 of 2023 and connected appeals).

C. Non-Aeronautical Revenue (NAR) for the Fourth Control Period (Para 204 of the Judgment dated 11.09.2025 in AERA Appeal No. 01 of 2023 and connected appeals) (Paras 221, 223, 227, 228, 229 and 230 of the Judgment dated 11.09.2025 in AERA Appeal No. 1 of 2024).

D. Cost of Equity for the Fourth Control Period (Para 109 of the Judgment dated 11.09.2025 in AERA Appeal No. 01 of 2023 and connected appeals). E. Cost of Debt for Fourth Control Period (Paras 130 of the Judgment dated 11.09.2025 in AERA Appeal No. 01 of 2023 and connected appeals).

9. On the basis of aforesaid decisions, a similar view may be taken in the present AERA Appeal, as submitted by the learned senior counsel appearing for the appellant.

10. Thus, in the present AERA Appeal, the issues which are required to be adjudicated upon afresh are as under:

A. Adjustment in target revenue on account of return on RAB and depreciation allowed on alleged assets as per the Self-Contained Note (SCN) of Authorized Investigative Agency (AIA) B. Bad Debts C. Aeronautical allocation of digitalization cost computed using multi criteria decision analysis without using objective and scientific approach D. Legal expenses for Fourth Control Period

11. So far as Normative Costing Methodology adopted by AERA in the impugned order is concerned, it is submitted by learned senior counsel that no benchmarks with respect to Capital Expenditure can be provided by the Respondent No.1-AERA. In fact, under the AERA Act, 2008, Respondent No.1-AERA has no power, jurisdiction and authority to review the Capital Expenditure to be incurred. Similarly, AERA has no power to suggest its own cost of Capital Expenditure. Learned Senior Counsel for the appellant has placed reliance upon decision rendered by this Tribunal in AERA Appeal No.6 of 2016 judgment dated 16.04.2025 especially upon para nos.50, 123 and 124 thereof. Therefore, AERA has committed an error while passing the impugned order and no Normative Benchmarks can be applied while approving the Cost of Terminal Building and runway/taxiways and apron projects.

12. So far as the Cost of Debt for Third Control Period is concerned, it is submitted that the Actual cost of debt should have been taken into consideration by AERA. This issue has been decided more than once by this Tribunal in AERA Appeal No.2 of 2021 and AERA Appeal No.9 of 2016 in case of MIAL for Second Control Period and Third Control Period judgment dated 06.10.2023. Counsel has placed reliance upon paragraph nos.313, 320, 321 and 322 of the aforesaid decision and has submitted that AERA ought to have allowed actual cost of debt incurred by the Appellant. Putting a cap upon the cost of debt is unreasonable, more particularly when AERA has in fact allowed actual interest rate for First Control Period and Second Control Period and the same methodology should

have been applied for next Control Periods also because for Third Control Period there is a direction by this Tribunal in the aforesaid decision to apply actual cost of debt. Counsel has also placed reliance upon other decisions rendered by this Tribunal in AERA Appeal No.4 of 2021 judgment dated 14.02.2024 as well as reliance has been placed upon decision rendered by this Tribunal in AERA Appeal No.4 of 2023 judgment dated 13.09.2024. Learned Senior Counsel has also placed reliance upon other decisions to substantiate the arguments under this issue that AERA ought to have allowed actual cost of debt incurred by the appellant while passing the impugned order.

13. Ld. Senior Counsel appearing for the appellant submitted that General Aviation Terminal Building is akin to Passenger Terminal Building and offers similar facilities to the passengers including check-in, security, customs, immigration and reserved area for non-aeronautical activities such as F&B outlets, lounges, etc. and therefore, General Aviation Terminal Building should be considered as common asset like Passenger Terminal Building. Moreover, Respondent No.1 has published a rate-card and the charges mentioned by AERA are classified as aeronautical and the appellant's financial statements also reflects that the facilities served at General Aviation Terminal Building is an aeronautical function. Therefore, an error has been committed by AERA in considering General Aviation Terminal expansion project as non-aeronautical asset for the purposes of tariff determination. Thus, AERA ought to have allowed construction of General Aviation Terminal Building as common asset.

14. It is submitted by learned senior counsel appearing for AERA that AERA cannot reduce the HRAB on account of demolition and reconstruction of Terminal T-1. Learned senior counsel for the appellant has placed reliance upon decisions of this Tribunal in case of MIAL Second Control Period and Third Control Period judgment in AERA Appeal No.2 of 2021 and AERA Appeal No. 9 of 2016 in judgment dated 06.10.2023 especially upon paragraphs 325, 326, 338, 341 and 342. Learned senior counsel has submitted that AERA has failed to consider OMDA and SSA while attempting to review the HRAB. Dissimilar treatment has been given by AERA in case of DIAL and present appellant even when both the airports are governed by similar Concession Agreements i.e. OMDA and SSA. In fact, there is no provision regarding reduction of HRAB, neither in SSA nor in OMDA. This aspect of the matter has not been properly appreciated by AERA while passing the impugned order and hence, it deserves to be quashed and set aside.

15. So far as the 1% penalty on Capex not incurred is concerned, it is submitted that under the provisions of AERA Act, there is no power, jurisdiction and authority with AERA to impose a penalty of 1%. Reliance has been placed in case of MIAL for Second Control Period and Third Control Period decided on 06.10.2023 in AERA Appeal No.2 of 2021 and AERA Appeal No. 9 of 2016 especially on para 308, 309, and 310 thereof.

16. It is submitted that a similar view has been taken by this Tribunal in the case of GMR Hyderabad International Airport Limited for Third Control Period judgment dated 14.02.2024 in AERA Appeal No.4 of 2021. Learned Senior Counsel has placed reliance upon paragraph nos. 508 to 512 and paragraph no.519. Learned Senior Counsel has placed reliance upon AERA Appeal No.1 of 2023 judgment dated 11.09.2025 especially upon paragraph no.288 thereof and submitted that AERA has no power, jurisdiction and authority to impose 1% penalty on Capex not incurred.

17. So far as inclusion of "Annual Fee" in determination of 'S' factor is concerned, it is submitted that this issue has been decided by this Tribunal in case of MIAL Second Control Period and Third Control Period judgment dated 06.10.2023 in AERA Appeal No.2 of 2021 and in AERA Appeal No.9 of 2016. Reliance is placed upon paragraph nos.358, 359 and 365 thereof and has submitted that in view of this decision, Annual Fee payable to Airport Authority of India (AAI) should be excluded from the revenue generated by this appellant from the Revenue Share Assets for the calculation of 'S' factor.

18. So far as inclusion of 'other income' in determination of 'S' factor is concerned, it is submitted that 'other income' including interest and dividend income does not form part of revenue from Revenue Share Assets and, therefore, this amount of 'other income' cannot be included in 'S' factor under the tariff formula. It is submitted that this issue has been decided by this Tribunal in case of MIAL's Second Control Period and Third Control Period judgment dated 06.10.2023 in AERA Appeal No.2 of 2021 and AERA Appeal No. 9 of 2016 especially in paragraph nos. 225,226 and 227 thereof. Similarly, this issue has been decided in judgment dated 21.07.2023 in case of DIAL's Second Control Period and Third Control Period in AERA Appeal No.1 of 2021 and AERA Appeal No. 1 of 2016. Learned Senior Counsel has relied upon paragraph nos. 103 and 105. On the basis of aforesaid decision, it is submitted that 'other income' should be excluded from revenue generated through Revenue Share Assets and consequently 'other income' is also excluded from computation of 'S' factor under the Target Revenue formula (TR).

19. It is submitted that so far as revenue from existing assets/demised premises is concerned, revenue from existing assets does not form part of revenue from Revenue Share Assets and, therefore, it cannot be included in 'S' factor under the tariff formula. Learned Senior Counsel has placed reliance upon the decision of MIAL's Second Control Period and Third Control Period dated 06.10.2023 in AERA Appeal No.2 of 2021 and AERA Appeal No. 9 of 2016. Learned Senior Counsel has placed reliance upon paragraph nos. 372, 373, 378, 379, 380 and 381. On the basis of aforesaid decision, it is submitted that this issue has been decided by this Tribunal and appellant is relying on this decision.

20. Learned Senior Counsel appearing for the appellant submitted that an error has been committed by AERA by not treating 'S' as an element of revenue pertaining to aeronautical services for the purposes of calculation of 'T'. In fact, this issue has been decided by this Tribunal. Learned Senior Counsel has placed reliance upon AERA Appeal No.1 of 2021 and AERA Appeal No. 1 of 2016. Similarly, this Tribunal has also decided in case of GMR Hyderabad International Airport and DIAL that 'S' factor should be considered as a part of Aeronautical Revenue Base while determining Aeronautical Taxes (T).

21. It is submitted by Learned Senior Counsel that AERA has committed a grave error in excluding legal cost from the total corporate cost allocation expense, consisting of allocated costs of legal teams of Adani Enterprises Ltd (AEL). This issue has been decided by this Tribunal in AERA Appeal No.1 of 2023 in judgment dated 11.09.2025 in case of Mangaluru Airport. Learned Senior Counsel has placed reliance on paragraph nos. 271 and 272 and has submitted that there is no reason for AERA for excluding legal expenses as a part of corporate cost allocation nor there is any provision

under OMDA or SSA for such exclusion. Different treatment was given to DIAL while passing tariff order no.20/2024-25 dated 28.03.2025 where no such deduction of legal expenses from corporate cost allocation was done by AERA and, therefore, AERA ought to have adopted consistent approach for MIAL and DIAL since they are governed by a similar Concession Agreement i.e. OMDA and SSA. In case of DIAL in previous Control Periods, these legal costs were allowed without any deduction. The case of MIAL is also similar and similar treatment ought to have been given by AERA.

22. It is further submitted by Learned Senior Counsel appearing for the appellant Mr. Sajan Poovayya that AERA has erred by allowing soft costs at a uniform rate of 8% of total capital expenditure. In fact, AERA ought to have allowed soft costs at the rate of 16% of total capital expenditure for 4th Control Period. Learned Counsel appearing for the appellant has placed reliance upon CPWD norms and has pointed out that AERA has failed to appreciate the guidelines for soft costs as mentioned in CPWD Norms, 2022.

23. Ld. Senior Counsel appearing for the appellant has also placed reliance upon "Airport Capital Investments: A Business Planning and Decision-Making Approach" which is a study conducted by Airport Cooperative Research Programme (ACRP). As per this study report, the soft costs should range between 10% to 30%. Learned Senior Counsel has also placed reliance upon Tariff Order No.27/2023-24 dated 07.12.2023 issued for Goa Airport.

24. In case of Goa Airport at Mopa, AERA approved soft cost (design consultancy, PMC expenses, pre-operative expenses and contingencies etc.) at 13.16% whereas in the present case, AERA has allowed only 8% as soft cost.

25. It is further submitted that AERA ought to have allowed the actual amount of soft cost paid by this appellant while determining tariff for the 4th Control Period.

26. It is submitted that Respondent No.1-AERA has decided to consider True-Up of non-aeronautical revenues only where actuals exceed the projections, as per Consultation Paper published by AERA. AERA has wrongly presumed non- aeronautical revenue as Rs. 12,504.15 Crores. In fact, this figure cannot be presumed by AERA nor there can be any fixation of minimum amount of non-aeronautical revenue.

27. It is further submitted by Learned Senior Counsel for the appellant that appellant has projected non-aeronautical revenue at Rs.11,382 Crores.

28. It is submitted that AERA has no power, jurisdiction and authority to presume anybody's revenue, much less non- aeronautical revenue. Non- aeronautical revenue should be based upon actuals. Counsel has placed reliance upon AA No.1 of 2023 judgment dated 11.09.2025 in case of Mangaluru Airport as well as in AA No.1 of 2024 judgement dated 11.09.2025 in matter of GMR Goa International Airport Limited.

29. It is submitted that AERA ought to have determined the cost of equity at 18.3% instead of 15.13%.

30. Learned Senior Counsel appearing for the appellant has submitted that as per the judgment delivered by this Tribunal in AERA Appeal No.1 of 2023 in judgement dated 11.09.2025 in case of Mangaluru Airport, AERA was directed to consider estimating the cost of equity by using Capital Asset Pricing Model (CAPM). Appellant has placed reliance upon Cost of Equity based upon PricewaterhouseCoopers (PwC) study carried out for Ahmedabad International Airport Limited which was done in March, 2021 and appellant has considered base cost of equity at 17.3% with an additional 1% risk premium for Mumbai Airport and, therefore, Cost of Equity should have been at 18.3% whereas AERA has determined cost of equity at 15.13%.

31. It is submitted that AERA has failed to appreciate the actual cost of debt and has wrongly decided the cost of debt at 10.15% for 4th Control Period. As per several decisions rendered by this Tribunal, AERA ought to have considered the actual cost of debt as proposed by the appellant. Counsel for the appellant has placed reliance upon the decision rendered by this Tribunal in case of MIAL Second Control Period and Third Control Period Judgment in AERA Appeal No.9 of 2016 and AERA Appeal No.2 of 2021 dated 06.10.2023.

32. Similarly, Learned Senior Counsel has also placed reliance upon the case of GMR Hyderabad International Airport Limited Third Control Period judgment dated 14.02.2024 in AERA Appeal No.4 of 2021. Similarly, there are other decisions rendered by this Tribunal and have been relied upon and submitted that present issue of cost of debt has already been decided more than once in several decisions by this Tribunal and it is submitted that AERA ought to have considered actual cost of debt instead of capping the cost of debt at 10.15% for the 4th Control Period.

33. Learned Senior Counsel submitted that AERA has wrongly considered the dividend income from fuel farm joint venture as aeronautical. The income from dividend is neither aeronautical nor non-aeronautical. It is "other income". As per the decisions rendered by this Tribunal in several other appeals that "other income" as for e.g. interest income or dividend income is neither aeronautical nor non- aeronautical and the same is out of the purview of jurisdiction of AERA. Learned Senior Counsel has placed reliance upon decisions including MIAL's Second Control Period and Third Control Period judgment and Third Control Period judgment dated 06.10.2023 in AERA Appeal No.9 of 2016 and AERA Appeal No.2 of 2021. On the basis of this decision, it is submitted that AERA has failed to appreciate the decision rendered by this Tribunal. Dividend income from fuel farm joint ventures is because of financial management by this appellant of their money. The income of dividend is obtained by the appellant not because of any aeronautical or non-aeronautical services rendered by the appellant. Appellant is getting the dividend income because of their investment in fuel farm joint venture. This aspect of the matter has not been properly appreciated by AERA and hence the impugned order deserves to be quashed and set aside.

34. It is further submitted that AERA has recently relied upon "Self-Contained Note" written by authorized Investigating Agency to AERA, whereby Investigating Agency has requested AERA to adjust the amount of Rs.305 Crores from the total amount of tariff. This type of note written by a third-party cannot be relied upon by AERA especially when no such document was provided to the appellant. The letter written by the agency for the predecessor of this appellant cannot be accepted as a gospel truth and, therefore, reduction of amount of Rs.305 Crores is absolutely baseless in the

eyes of law. It is considered as "extraneous consideration", which is also known as Wednesbury's Principle or Wednesbury's unreasonableness. The predecessor of the appellant against whom the investigation was going on, and, there may be some allegations against the predecessor which are yet to be decided by the competent courts and, therefore also, the so- called "self-contained note" cannot be relied upon by the appellant. Tariff determination process is being governed by the principles enunciated under Section 13 of AERA Act, 2008 and not by such type of a letter issued by the Investigating Agency. Hence, the impugned order for 4th Control Period of AERA dated 07.05.2025 deserves to be quashed and set aside.

35. It is further submitted by learned senior counsel for the appellant that the appellant has recognized bad debt of approximately Rs.6 Crores in FY 2021-2022 which is only 4% (approximately) of the total receivables of Rs.160 Crores dues from Air India. The appellant has recovered majority of receivables except for an unreconciled amount of Rs.12 Crores and the outstanding was pending since 2014 and as per final settlement with Air India, the appellant was bearing 50% of the sum which is Rs.6 Crores and this bad debt of Rs.6 Crores ought to have been taken into consideration by AERA while deciding tariff for 4th Control Period. This aspect of the matter has not been properly appreciated by AERA.

36. It is submitted that AERA has wrongly decided to allocate only 30% digitalization cost. In fact, AERA ought to have allowed actual digitalization cost.

37. It is submitted that a huge cost has been incurred by this appellant towards digitalization. Expensive Capex has been planned over the next few years and appellant needs to focus on augmenting airport infrastructure and enhancing passenger handling capacity along with improving overall service quality and hence, the appellant has to undertake these activities with the help of subject matter experts from the relevant fields and, therefore, appellant has incurred annual maintenance towards maintenance and holding of the digital platform. This platform will provide a wide array of services, both aeronautical and non-aeronautical to the passengers.

38. It is submitted that at least 82% of the total expenditure towards digitalization cost which is based upon activity wise manpower allocation of each type of service which should be considered as aeronautical expenses. This aspect of the matter has not been properly appreciated by AERA and AERA has allowed only 30% of total digitalization cost. Counsel has placed reliance upon a multi criteria decision analysis approach.

39. Appellant further submitted that legal expenses actually incurred by this appellant have not been considered by Respondent No.1 while determining tariff for 4th Control Period. AERA ought to have appreciated actual legal expenses on a case-to-case basis. These legal expenses are required to be incurred as legal costs to have positive impact upon smooth operations of airport and for its efficient running, this aspect of the matter has not been properly appreciated by AERA and AERA has wrongly excluded legal expenses from the scope of O&M expenditure and hence, the impugned order passed by AERA for 4th Control Period of AERA dated 07.05.2025 deserves to be quashed and set aside.

40. In view of the aforesaid arguments on different law points based on factual aspects and on the judgments rendered by this Tribunal in different AERA Appeals have not been properly appreciated by AERA while passing the impugned order and hence the impugned order passed by AERA for 4th Control Period of AERA dated 07.05.2025 (01.04.2024 to 31.03.2029) which is at Annexure A-1 deserves to be quashed and set aside.

ARGUMENTS CANVASSED BY R.1 - AERA

41. Ld. Counsel appearing for AERA Mr. Ritesh Kumar submitted that AERA has all the power to follow the normative costing methodology as per Section 13(1)(a) of AERA Act, 2008 to be read with provisions of SSA (Annexure A-5). Learned Counsel appearing for Respondent No.1 has taken this Tribunal to Clause 3.1.1 of SSA to be read with Schedule-I of the SSA and submitted that AERA has the right to assess the efficiency with which the capital expenditure is undertaken. Learned Counsel appearing for Respondent No.1 has also placed reliance upon the decision rendered by Hon'ble the Supreme Court of India reported in (2024) 1 SCC 716. It is also submitted that even the Civil Aviation Authority (CAA) which is the UK's Aviation Regulator routinely applies normative benchmarks while assessing airport CAPEX. In view of these facts, no error has been committed by AERA in following normative costing methodology.

42. Ld. Counsel appearing for AERA - Respondent No.1 submitted that as per impugned tariff order passed by AERA for 4th Control Period, AERA has considered cost of debt at 10.30% for Third Control Period. It is submitted that Respondent No.1 is of the view that it shall allow only efficient borrowing with an aim to not pass-on the inefficiencies in borrowings by the airport operator to the airport users, and therefore, no error has been committed by AERA in restricting or in capping the cost of debt at 10.30%.

43. On the basis of Section 13(1)(a) of the AERA Act, it is submitted by Learned Counsel appearing for AERA - Respondent No.1 that AERA is discharging regulatory functions which is vested with wide discretion and hence, the cost of debt which was prevailing at the relevant time has been allowed by AERA while passing the impugned order and no error has been committed by AERA for capping the cost of debt at 10.30%.

44. So far as General Aviation (GA) Terminal which is considered as non-aeronautical assets by the impugned order is concerned, it is submitted that the said decision is based on OMDA and as per provisions of OMDA, General Aviation services are non- aeronautical services and, therefore, the General Aviation Terminal is considered as a non- aeronautical asset and OMDA is binding on the appellant. Learned Counsel appearing for AERA - Respondent No.1 has placed reliance upon a decision rendered by Hon'ble the Supreme Court of India reported in (2024) 1 SCC 716. It is also submitted that even in the MYTP, "General Aviation Terminal" has been considered as non-aeronautical asset and this appellant has not raised any dispute or objection to the aforesaid provision mentioned in Concession Agreement. Thus, General Aviation Terminal cannot be included in RAB and hence, no error has been committed by AERA in treating General Aviation Terminal as non-aeronautical asset. It is submitted that HRAB can be reduced on account of demolition of Terminal-T1 at Mumbai Airport as a demolished portion of the terminal is admittedly neither an

existing nor a usable aeronautical asset. This aspect of the matter has been properly appreciated by AERA and hence, no error has been committed by AERA in reducing HRAB on account of demolition of Terminal T-1.

45. It is further submitted by Learned Counsel appearing for AERA

- Respondent No.1 that Respondent No.1 has all power, jurisdiction, and authority to readjust (reduce) by 1% of uncapitalized project cost from target revenue in case any particular capital project is not completed as per approved capitalisation schedule in the next Control Period, this adjustment shall take place only during true-up exercise for the 5th Control Period and that too in case of any delay in completion of a project. Learned Counsel appearing for AERA

- Respondent No.1 submitted that Respondent No.1 has placed reliance upon a decision rendered by this Tribunal in AERA Appeal No.8 of 2018 vide judgment dated 16.12.2020. On the basis of the said decision, it is submitted that for delayed projects, AERA has power to impose a penalty of 1%.

46. It is further submitted that no error has been committed by AERA in including annual fee payable to Airport Authority of India (AAI) in determination of 'S' factor. It is submitted that annual fee is basically an amount which is collected by the appellant and, therefore, the said amount should be included by computing factor 'S'. Learned Counsel appearing for AERA

- Respondent No.1 submitted that Respondent No.1 has taken this Tribunal to the formula for calculating the target revenue as provided in Schedule-I of SSA and has submitted that as per SSA (Annexure A-5), 30% of gross revenue generated by the joint venture company-appellant from the "revenue share assets" is nothing but 30% of gross non-aeronautical revenue generated by the appellant.

47. In view of the aforesaid provisions of SSA, it is submitted by Learned Counsel appearing for AERA - Respondent No.1 that annual fee should be included in determination of 'S' factor.

48. It is further submitted that no error has been committed by AERA in including "other income" in determination of 'S' factor. It is submitted that any income earned by or collected by Airport Operator whether it is by way of interest, dividend, etc. will be computed in gross revenue and, therefore, as per the definition of 'S' given in Schedule-I of SSA, 30% of the said gross revenue should be reduced from the target revenue.

> "Other income" is also a revenue received from the services other than aeronautical services and, therefore, no error has been committed by AERA in including the amount of "other income" in determination of 'S' factor. Learned Counsel appearing for AERA - Respondent No.1 submitted that Respondent No.1 has taken this Tribunal through various definitions under OMDA and SSA and also to the formula of Target Revenue mentioned in Schedule-I of SSA and has pointed out that revenue collected by way of "other income"

can always be included while computing 'S' factor.

49. It is submitted by Learned Counsel appearing for AERA -

Respondent No.1 that revenue received by this appellant from existing assets/demised premises should be included in the revenue from non-aeronautical assets and consequently the same is to be included in 'S' factor computation. Looking to the definition of 'S' given in Schedule-I of SSA, the revenue generated from or collected because of existing assets can always be included while calculating 'S' factor. In fact, the reference to "existing assets", "demised premises" etc. are not relevant in view of New National Civil Aviation Policy (NCAP) which provides for determination of tariff at all the airports in future on a hybrid-till basis and, therefore also, the revenue generated from existing assets should be included for computing 'S' factor.

50. It is submitted that no error has been committed by AERA in excluding the legal cost from total corporate cost allocation expense. It is submitted that Corporate Allocation Costs from Adani Enterprises Ltd. (AEL) and from Adani Airport Holdings Ltd. (AAHL), if included in the legal costs, will increase the administration cost. Thus, only those costs which have a direct nexus with aeronautical services are admissible and, therefore, the cost towards support services received from the holding companies viz.- AEL and AAHL cannot be included in the legal costs of the appellant. This aspect of the matter has been properly appreciated by AERA while excluding the legal cost of Rs.5.67 Crores from the total corporate cost allocation expense.

51. It is further submitted by Learned Counsel Mr. Ritesh Kumar appearing on behalf of Respondent No.1 - AERA, that no error has been committed by AERA in allowing soft cost at the rate of 8% of the total expenditure as against 16% claimed by the appellant. It is further submitted by Learned Counsel appearing for Respondent No.1 that CPWD Standard Operative Procedure, 2022, dated 13th July, 2022 is not applicable in the facts of the present case. Soft cost cannot be unreasonably high and, therefore, AERA has allowed 8% of the total expenditure as soft cost because AERA has all power to assess the efficiency with which capital expenditure is undertaken. Counsel appearing on behalf of Respondent No.1 has taken this Tribunal to various provisions of SSA and OMDA and has pointed out that AERA has power to check efficiency of the capital expenditure and hence 8% of the total expenditure is allowed as soft cost instead of the 16% demanded by the appellant.

52. It is further submitted by the Learned Counsel appearing on behalf of Respondent No. 1 - AERA that AERA has all power, jurisdiction and authority to fix minimum non-aeronautical revenue which must be earned by the appellant and this minimum non-aeronautical revenue fixed by AERA is at Rs.12,504.15 Crores.

53. It is submitted by Learned Counsel appearing on behalf of Respondent No.1 - AERA that as per SSA (Annexure A-5), while computing S-factor, the cost in relation to such revenue shall not be included while calculating aeronautical charges. The non- aeronautical revenue is determined on a gross-receipt basis.

54. It is further submitted by Learned Counsel appearing on behalf of Respondent No. 1 - AERA that the cost of equity for 4th Control Period has been fixed at 15.13% as against 18.30% proposed by the appellant. AERA has relied upon the study carried out in the past for several airports, including Mumbai International Airport. The relevant part of the said study is as follows:

> "v. The asset beta of airports in developing countries is consistently higher than the asset beta of airports in developed economies. This can be demonstrated by the data provided in the IIM-B study in which the asset beta for Sydney airport is 0.40 whereas the asset beta for Airports of Thailand is 0.86."

55. On the basis of the report given by IIM Bangalore Study for MIAL (December, 2019), the cost of equity has been fixed at 15.13% and hence, no error has been committed by AERA while passing the impugned order.

56. Counsel for the Respondent has placed reliance upon the decision rendered by Hon'ble the Supreme Court of India in (2024) 1 SCC 716.

57. It is submitted by Respondent No.1 that cost of debt is fixed at 10.15% as against the actual cost of debt proposed by the appellant and AERA has all power to put a cap upon the cost of debt which in the present case is at 10.15%.

58. It is contented that the appellant ought to have obtained the loan at the prevailing market rate. If the loans are obtained at higher cost of debt than what is prevailing in the market cannot be allowed by AERA.

59. Learned Counsel appearing on behalf of Respondent No. 1 -

AERA has taken this Tribunal to MYTP and the impugned order passed by AERA, especially paragraph 7.2.5 to paragraph 7.2.11 of the impugned order and has submitted that no error has been committed by AERA while allowing the cost of debt at 10.15%.

60. It is submitted by Learned Counsel appearing on behalf of Respondent No. 1 - AERA that dividend income obtained by the appellant from Fuel Farm Subsidiary is a revenue from aeronautical services because as per the provisions of OMDA and SSA, Fuel Farm Subsidiary activities is aeronautical in nature and, therefore, dividend income obtained therefrom is aeronautical revenue.

61. It is submitted by Learned Counsel appearing for Respondent No. 1 that AERA has received a letter dated 30th August, 2023 from an Investigating Agency that the predecessor of the present appellant has siphoned away Rs.705 Crores. This note has a self-contained note and on the said basis, target revenue has been reduced while passing the impugned order. In fact, AERA has acted on the basis of self-contained note dated 30th August, 2023 received from Investigating Agency. A charge- sheet has also been filed against the predecessor of the appellant and, therefore, there is a prima facie case and, therefore, no error has been committed by AERA in reducing or adjusting

target revenue by Rs.705 crores.

62. So far as bad debt is concerned, it is submitted by Learned Counsel appearing on behalf of Respondent No.1-AERA that bad debt has arisen from insufficiencies of the appellant and, therefore, the amount of bad debt cannot be included in the O&M cost in the target revenue formula and, therefore, no error has been committed by AERA in excluding the amount of bad debt from O&M expenses.

63. Digitalization cost as proposed by the appellant has rightly been not allowed as operational and maintenance cost for the 4th Control Period because digitalization cost is for aeronautical and non-aeronautical services and, therefore, 30% of the total digitalization cost has been treated as a cost towards aeronautical services, and therefore, AERA has allowed a part of the digitalization cost up to 30% of the aeronautical services.

64. Learned Counsel appearing for Respondent No. 1 stated that AERA has placed reliance upon paragraph no. 9.3.13 to 9.3.21 of the consultation paper published by AERA. Thus, looking to the mixed-use nature of the digital platform, only 30% of the total digitalization cost is allowed as O&M expenses.

65. It is submitted by AERA that Schedule-1 of SSA (Annexure A-5) dated 26th April, 2006 does not include the legal expenses. The legal expenses for engaging an advocate cannot be included in O&M expenses because the same is not towards aeronautical expenses.

66. There is no direct and proximate nexus of legal expenses with aeronautical services and, therefore, no error has been committed by AERA in excluding the legal expenses from calculation of O&M expenses. Allowing legal expenses would defeat the cost discipline.

67. In view of the aforesaid submissions, it is contented by AERA that appeal preferred by this appellant may not be entertained by this Tribunal.

ARGUMENTS CANVASSED BY FEDERATION OF INDIAN AIRLINES (FIA) - RESPONDENT NO.2

68. It is submitted by Mr. Buddy Ranganadhan, Learned Counsel appearing on behalf of Federation of Indian Airlines (FIA), that FIA - Respondent No. 2, is adopting all the arguments advanced by Learned Counsel appearing on behalf of Respondent No. 1-AERA.

69. Nonetheless, specifically, for General Aviation Terminal building, it is submitted by Respondent No. 2 that as per OMDA (Annexure A-4 to the memo of this Appeal), the General Aviation Services is non-aeronautical in nature and, therefore, General Aviation Terminal is a non-aeronautical asset and, therefore, no error has been committed by AERA while passing the impugned order.

70. It is submitted that the General Aviation Terminal building is a dedicated facility at the airport for private, corporate and chartered flights and the General Aviation Terminal building is not used

by every passenger. This aspect of the matter is properly appreciated by AERA.

71. Mr. Buddy Ranganadhan, Learned Counsel appearing on behalf of FIA - Respondent No.2 has also submitted that bad debt cannot be treated as O&M expenses while calculating the target revenue.

72. It is submitted that Bad debt is a non-recovered revenue, and it is suggested by the counsel appearing for Respondent No.2 that non-recovered revenue has an effect on our working capital. The working capital is reduced to the extent of non-recovered revenue and, therefore, working capital is to be enhanced instead of O&M expenses.

73. Learned Counsel appearing on behalf of FIA - Respondent No.2 has placed reliance upon the judgment rendered by this Tribunal in AERA Appeal No.8 of 2018 dated 16th December, 2020 and on the basis of this decision, especially paragraph nos. 109 to 112,

74. It is submitted by Learned Counsel appearing on behalf of FIA - Respondent No.2 that 10% higher working capital should be allowed by AERA only upon the aforesaid two points.

REASONS & ANALYSIS

75. In the present appeal preferred by the Appellant (MIAL), Order No. 1 of 2025-26 dated 07.05.2025 which is an order of determination of Aeronautical Tariff for 4th Control Period (01.04.2024 to 31.03.2029) for Chhatrapati Shivaji Maharaj International Airport (CSMIA, Mumbai) passed by AERA- Respondent No.1 is under challenge mainly on the following grounds amongst others:

> (a) Order has been passed contrary to the provisions of the AERA Act, and other binding principles.
>
> (b) Impugned Order has been passed without proper application of mind;
>
> (c) Impugned Order has failed to take into account the materials placed on record;
>
> (d) Impugned Order adopts an inconsistent approach, as several issues have been dealt with differently; Blatant disregard of the Principles of Natural Justice.

76. After hearing the Ld. Counsels for the parties, this Tribunal has framed following specific issues:

> I. Whether the Respondent No.1/AERA ought not to apply normative benchmarks while approving the costs of Terminal Building and Runway/Taxiways/Apron projects in view of the Hon'ble Tribunal judgment dated 16.04.2025 and evaluate capital expenditures on an actual basis.

II. Whether the Respondent No.1/AERA ought to have allowed actual Cost of Debt of 10.98% for Third Control Period as submitted in MYTP and which is also followed by other regulatory commissions as efficient cost, to be used for the computation of Weighted Average Cost of Capital ("WACC").

III. Whether the Respondent No.1/AERA ought to have allowed the construction of General Aviation Terminal as common asset.

IV. Whether the Respondent No.1/AERA ought not to reduce the Hypothetical Regulatory Asset Base ("HRAB") on account of the demolition of Terminal T1, as such an adjustment reflects an inconsistent approach adopted in the case of the Appellant as compared to DIAL, despite both airports being governed by similar concession agreements i.e., OMDA and SSA.

V. Whether the Respondent No.1/AERA ought not to reduce 1% of the project cost in case of delay in completion of the project and ought to be set aside by the Hon'ble Tribunal to ensure fair and proper adjudication of the issue at hand.

VI. Whether the Respondent No.1 ought to have excluded the Annual Fee payable to AAI from the revenue generated by the Appellant from the Revenue Share Assets for the purpose of calculating the "S" Factor. VII. Whether the Respondent No.1/AERA ought to have excluded Other Income (such as interest and dividend income) from the revenue generated through Revenue Share Assets, and consequently, from computation of 'S' Factor under the Target Revenue formula. VIII. Whether the Respondent No.1/AERA ought to have exclude "Revenue from existing assets/demised premises" from the revenue generated through Revenue Share Assets, and consequently, from the computation of the "S" Factor under the Target Revenue formula.

IX. Whether the Respondent No.1/AERA ought to have considered "S" Factor as a part of the aeronautical revenue for purposes of determining Aeronautical Taxes ("T").

X. Whether the Respondent No.1/AERA ought to have allowed entire corporate legal expenses amounting to INR 5.67 Crores as part of the Corporate Cost Allocation in line with the Concession Agreement and treatment given to similarly placed airports like DIAL. XI. Whether the Respondent No.1/AERA ought to have allowed soft costs to the extent of 16% of the 'allowable' Capital Expenditure which is based on best practices subject to true-up on an actual incurrence basis.

XII. Whether the Respondent No.1/AERA ought to true-up non-aeronautical revenues based on actuals, in line with the consistent regulatory practice adopted by the Respondent No.1/AERA in the previous control periods. Further, Respondent No.1/AERA ought not to prescribe a floor or minimum threshold for non-aeronautical revenues.

XIII. Whether the Respondent No.1/AERA ought to have adopted the Cost of Equity of 17.30% proposed by the Appellant, based on the PwC study using the Capital Asset Pricing Model ("CAPM") methodology and based on correct asset beta along with 1% risk premium due to traffic constraints.

XIV. Whether the Respondent No.1/AERA ought to have allowed actual Cost of Debt incurred by the Appellant for computation of WACC, at the time of true-up of Fourth Control Period.

XV. Whether the Respondent No.1/AERA ought to have excluded dividend income from Fuel Farm Operators from the tariff computation.

XVI. Whether the Respondent No.1/AERA ought not to consider any adjustment to the said amounts of tariffs claimed by Appellant under the heads of Depreciation and Return on RAB on account of the Self-Contained Note of the Authorized Investigation Agency as the matter is now pending trial and there is no finality on the said issue as on date.

XVII. Whether the Respondent No.1/AERA ought to have allowed aeronautical bad debts written off on account of defaults by airlines to be considered as part of O&M expenses.

XVIII. Whether the Respondent No.1/AERA ought to have at least allowed aeronautical allocation of 60% for the purpose of determining Digitalization expenses for the Fourth Control Period, subject to appropriate true-up. XIX. Whether the Respondent No.1/AERA ought to have allowed the legal expenses on an upfront basis in the Fourth Control Period and true-up the same based on actual incurrence at time of tariff determination of Fifth Control Period.

77. It is further submitted by Learned Senior Counsel appearing for the appellant that some of the issues under challenge in the present Appeal stand resolved by virtue of the principles laid down in the order/judgment passed by this Hon'ble Tribunal in AERA Appeal Nos. 09 of 2016 and 02 of 2021 dated 06.10.2023 for the Second Control Period ("SCP") and Third Control Period ("TCP") ("MIAL SCP & TCP Judgment"), as also in AERA Appeal Nos. 01 of 2016 and 01 of 2021 dated 21.07.2023 for the Second Control Period ("SCP") and Third Control Period ("TCP") ("DIAL SCP & TCP Judgment"). It was also submitted that this Tribunal also clarified some of these issues while deliberating on similar contentions in its Judgment and Order of GMR Hyderabad International Airport Ltd. vs. AERA passed in AERA Appeal No. 04 of 2021 dated 14.02.2024 for the Third Control Period ("GHIAL TCP Judgment"). The details of those issues as mentioned by the counsel for the appellant are as under:

> I. Cost of Debt for Third Control Period (Paras 321 and 322 of MIAL SCP & TCP Judgment) (Para 466 of GHIAL TCP Judgment dated 14.02.2024) II. General Aviation (GA) Terminal considered as Non-Aeronautical Asset (Paras 282 and 283 of MIAL SCP & TCP Judgment) III. Adjustment on account of demolition of T1 in HRAB in FY 2029 (Paras 341 and 342 of MIAL SCP & TCP Judgment) IV. Reduction of 1% uncapitalized project cost from the target revenue in case any particular capital project is not completed/capitalized as per approved capitalization schedule in the next control period (Paras 308, 309 and 310 of MIAL SCP & TCP Judgment) (Paras 508, 509, 510, 512 and 519 of GHIAL TCP Judgment dated 14.02.2024) V. Inclusion of "Annual Fee" in Determination of 'S' Factor (Para 365 of MIAL SCP & TCP Judgment) VI. "Other Income" not to be included in determination of 'S' Factor (Paras 225, 226 and 227 of MIAL SCP & TCP Judgment) VII. Revenue From Existing

Assets/Demised Premises (Paras 379 to 381 of MIAL SCP & TCP Judgment) VIII. Inclusion of 'S' factor in Aeronautical Revenue for computation of 'T' (Paras 398 and 399 of MIAL SCP & TCP Judgment) (Paras 423 and 424 of GHIAL TCP Judgment dated 14.02.2024)

78. The following five issues have also been decided by this Tribunal by judgments in different AERA Appeals. it is submitted by Learned Senior Counsel appearing for the appellant that some of the issues under challenge in the present Appeal stand resolved by virtue of the principles laid down in the order/judgment dated 11.09.2025 passed by this Hon'ble Tribunal in AERA Appeal No. 01 of 2023 and connected appeals and judgment dated 11.09.2025 in AERA Appeal No. 01 of 2024 in the matter of GMR Goa International Airport vs. AERA. The issues that are settled by virtue of aforesaid are as follows:

i. Corporate Cost Allocation (Paras 271 and 272 of the Judgment dated 11.09.2025 in AERA Appeal No. 01 of 2023 and connected appeals).

ii. Soft Cost for the Fourth Control Period (Para 162 of the Judgment dated 11.09.2025 in AERA Appeal No. 01 of 2023 and connected appeals).

iii. Non-Aeronautical Revenue (NAR) for the Fourth Control Period (Para 204 of the Judgment dated 11.09.2025 in AERA Appeal No.01 of 2023 and connected appeals) (Paras 221, 223, 227, 228, 229 and 230 of the Judgment dated 11.09.2025 in AERA Appeal No. 1 of 2024).

iv. Cost of Equity for the Fourth Control Period (Para 109 of the Judgment dated 11.09.2025 in AERA Appeal No. 01 of 2023 and connected appeals). v. Cost of Debt for Fourth Control Period (Paras 130 of the Judgment dated 11.09.2025 in AERA Appeal No. 01 of 2023 and connected appeals).

79. In view of the aforesaid decisions in different AERA Appeals, it is submitted by counsel for the appellant that most of the issues in the present appeal have already been decided in previous decisions rendered by this Tribunal and this appellant is relying upon the aforesaid decisions, the following are the issues which require determination afresh in the present appeal:

I. Adjustment in target revenue on account of return on RAB and depreciation allowed on alleged assets as per the Self-Contained Note (SCN) of Authorized Investigative Agency (AIA).

II. Bad Debts III. Aeronautical allocation of digitalization cost computed using multi criteria decision analysis without using objective and scientific approach IV. Legal expenses for Fourth Control Period I. Normative Costing Methodology

80. It is submitted by Learned Senior Counsel appearing for the appellant -MIAL that Respondent No.1-AERA has issued Order No.7 of 2016 dated 06.07.2016 in the matter of Normative Approach to Building Blocks in Economic Regulation of major airports - regarding capital costs.

81. Looking to the impugned order dated 07.05.2025 (Annexure A-1) especially paragraph 1.5.1, it has been observed by AERA that Normative Approach Order is applicable to the appellant as it is a major airport and will be appropriately applied by the Respondent No.1 - AERA in tariff determination process. For ready reference, paragraph 1.5.1 of the impugned order reads as under:

> "1.5.1 Normative approach to Building Blocks in Economic Regulation of Major Airports- Capital Costs Reg.
>
> (i) The Authority issued Order No. 07/2016-17 dated 06th June 2016 in the matter of Normative Approach to Building Blocks in Economic Regulation of Major Airports - Capital Cost Reg.
>
> (ii) Normative Approach Order is applicable to CSMIA as it is a major airport and will be appropriately applied by the Authority in tariff determination process."

82. It has been held by this Tribunal that no benchmarks with respect to capital expenditure can be provided by the respondent, the cost of passenger terminal and associated works depends upon varieties of factors. This issue has already been argued out and has been decided by this Tribunal in the aforesaid decision between MIAL Vs. AERA in AERA Appeal No.6 of 2016 dated 16.04.2025 in paragraph nos. 50, 123 (xi, xiii, xiv) and 124 as under:

> "50. AERA has no power, jurisdiction and authority to review the "capital expenditure to be incurred".

AERA has no power to suggest its own cost of capital expenditure. Similarly, AERA is not empowered to determine the specifications of materials which have to be used while undertaking the capital work. AERA cannot review the capital expenditure to be incurred.

123. It is also stated by Learned Senior Counsel for AERA that the impugned order (Annexure A-1) enhances the transparency and it also encourages the economic efficiency and it ensures that only efficient capital cost would be considered for determination of the aeronautical tariff. Hence, the impugned order is legal and valid. This contention is not accepted by this Tribunal for the following facts and reasons:

> (xi) Looking to the impugned order which is dated 6.6.2016, normative value of the cost has been fixed which is impermissible because the concept of the cost is a floating one. Cost changes by the passage of time. The cost of project depends on a variety of factors like passenger traffic, investment commitments, project scope, design standards, passenger traffic projections, geographical constraints, regulatory requirements, financial structures, maintenance, cost of upgradation of modernizing,

cost of labor, cost of raw materials, cost of transportation.

(xiii) AERA by way of Impugned Order seeks to pre-

emptively 'estimate' the costs that may be incurred based on estimated prices and disregards the actual cost arrived at through market discovery which is contrary to its mandate under Section 13(1)(a)(i) to determine tariff for the Aeronautical services taking into consideration the capital expenditure 'incurred' i.e. actually spent.

(xiv) If impugned order is held as a valid one and if the cost of runway has to be revaluated by AERA and subsequently allowed to be reduced, it will have a disastrous effect because with a lower cost, lower quality of runway will be given. This is not permissible especially for the construction at the airport because every construction at the airport has a definite specification and sometimes as per international standards (i.e. for runway etc.). If the international standards are to be maintained, then the cost arrived at after due process of bidding which is known as "market discovered price" ought to have been allowed by AERA because it is a "cost incurred" as per Section 13(1)(a)(i) of AERA Act, 2008. At no cost, the project cost can be reduced by AERA which has a direct bearing upon the operational efficiency of the airport and, therefore, Section 13(1)(a) of AERA Act, 2008 has used the words "the Capital Expenditure incurred". Thus, by virtue of the impugned order (Annexure A-1), AERA cannot provide benchmark of capital expenditure.

124. In view of the aforesaid facts, reasons and judicial pronouncements, we hereby, quash and set aside the impugned order No.7/2016-17 dated 6.6.2016 (Annexure A-1). All the aforesaid AERA Appeals are hereby allowed."

83. Moreover, it has been held by this Tribunal in Mangaluru International Airport Limited Vs. AERA in AERA Appeal No.1 of 2023 judgment dated 11.09.2025 in paragraph 209 as under:

> "209. AERA should have followed the earlier decisions pronounced by this Hon'ble Tribunal in more than one AERA Appeals especially when no stay has been granted by Hon'ble the Supreme Court of India. Merely because Appeal is pending, no stay could have been presumed by AERA otherwise it will tantamount to a situation that 'though stay has not been granted by Hon'ble the Supreme Court of India, AERA has granted stay on their own upon the decision of TDSAT'. This approach of AERA is against several decisions rendered by Hon'ble the Supreme Court of India in which it has been held that trial courts/tribunals/authorities cannot presume stay when the same has not been granted by Hon'ble the Supreme Court of India."

84. Looking to the facts of the present case, it appears that Airport Operator - Appellant-MIAL is required to prepare master plan as well as major development plan for major aeronautical projects, these plans are subsequently examined by Airport Authority of India (AAI) as well as Ministry of Civil Aviation (MoCA).

85. It ought to be kept in mind by AERA that the appellant has to follow the bidding process as per OMDA (Annexures A-4) and SSA (Annexure A-5 to the memo of the appeal). Thus, Airport Operator i.e. the Appellant undertakes a development project and the cost of project will be as per the requirements of the development project which is approved. The cost of project will be finalized at the touchstone of competitive bidding process. Competitive bidding process brings on surface is a price driven by market forces which is also known as "market driven prices".

86. Once the process of giving contract is followed by the appellant as per OMDA and SSA and through competitive bidding process and once the market driven price is arrived at, for a particular development project, a separate contract is always entered into by the Airport Operator with a successful bidder. This contract is binding and AERA cannot alter this binding contract between Airport Operator and successful bidder.

87. It must be borne in the mind that the cost of project which is being paid by Airport Operator to the successful bidder is by the way of bank entries and, therefore also, AERA cannot reduce the cost of project otherwise it will tantamount to change in terms of contract between Airport Operator and a successful bidder. If this type of change is permitted at the behest of AERA then there will be a breach of contract.

88. Thus, a thing which cannot be done directly, can never be done indirectly meaning thereby to, AERA cannot alter the terms of contract especially the cost/consideration for a particular project which is arrived at through "market discovered price" (bidding process). AERA cannot alter the price or cost of the project under the guise of efficient cost or "economic efficiency" or "maintaining more transparency". AERA cannot rewrite the contract.

89. In view of the aforesaid reasons and looking to the provisions of OMDA (Annex A-4) and SSA (Annexure A-5) and also the decision rendered by this Tribunal in AERA Appeal No.6 of 2016 dated 16.04.2025, we hereby hold that observations in paragraph 1.5.1 of the impugned order dated 07.05.2025 for 4th Control Period for MIAL is quashed and set aside.

90. The observations in impugned order in paragraph 1.5.1 is also in violation of provisions of the AERA Act especially of Section 13 (1)(a)(i). We hereby direct AERA to allow the actual cost incurred by the appellant for passenger terminal building and associated works.

II. Cost of Debt for Third Control Period

91. Having heard the counsel for both the sides and looking to the facts and circumstances of the case and the impugned order, it appears that AERA has decided to consider the cost of debt at 10.30% for Third Control Period whereas actual cost of debt incurred by the appellant is 10.98% as submitted by the appellant in MYTP, for computation of FRoR.

92. At the outset, it is necessary to reiterate that the determination of tariff under Section 13(1)(a) of the AERA Act, 2008, though regulatory in nature, is not unbridled. The discretion vested in AERA is structured and guided by statutory considerations, inter alia, capital expenditure incurred, economic

and viable operation, and efficiency of service.

93. The expression "to determine tariff" cannot be read as conferring a licence to disregard actual & commercially incurred costs and substitute the same with normative assumptions.

94. This issue has already been decided by this Tribunal in MIAL Vs. AERA in AERA Appeal Nos. 9 of 2016 and 2 of 2021. Both these appeals were decided by common judgment and order dated 06.10.2023. It has been held by this Tribunal that the actual cost of borrowing should be considered by AERA- Respondent No.1. It has been held in paragraph 313, 320, 321, 322 as under:

> "313. This contention of respondent no.1 is not accepted by this Tribunal mainly for the reason that there cannot be a fixed cost of debt for the entire 3rd Control Period of five years which is from 2019- 2024. The cost of debt which is actually incurred by the appellant should have been considered by AERA. The cost of debt depends upon marginal cost of funds based lending rate and the time period within which the loan is to be repaid. Inflation is one of the most important factor for determination of market forces for further determination of MCLR rates. Moreover, 9 the spread for the time within which loan is to be repaid depends upon the credit profile of the entity.
>
> 320. In view of this, actual cost of debt shall be allowed by AERA for 3rd Control Period especially looking to the provisions of Section 13(1)(a)(i) of the AERA Act, 2008. For the ready reference, Section 13(1) of AERA Act, 2008 reads as under: - 13. Functions of Authority. - (1) The Authority shall perform the following functions in respect of major airports, namely: - (a) to determine the tariff for the aeronautical services taking into consideration- (i) the capital expenditure incurred and timely investment in improvement of airport facilities; (ii) the service provided, its quality and other relevant factors; (iii) the cost for improving efficiency; (iv) economic and viable operation of major airports;
>
> (v) revenue received from services other than the aeronautical services; (vi) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise; (vii) any other factor which may be relevant for the purposes of this Act: Provided that different tariff structures may be determined for different airports having regard to all or any of the above considerations specified at sub-clauses (i) to (vii);
>
> (b) to determine the amount of the development fees in respect of major airports; (c) to determine the amount of the passengers service fee levied under rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934 (22 of 1934); (d) to monitor the set performance standards relating to quality, continuity and reliability of service as may be specified by the Central Government or any authority authorized by it in this behalf; (e) to call for such information as may be necessary to determine the tariff under clause (a); (f) to perform such other functions relating to tariff, as may be

> entrusted to it by the Central Government or as may be necessary to carry out the provisions of this Act.

(Emphasis Supplied).

321. In view of the aforesaid provision, AERA ought to have allowed actual cost of debt incurred by the appellant especially looking to the fact that debt availed by this appellant is from reputed lenders. Putting a cap upon cost of debt is uncalled for, as AERA has in fact, allowed actual interest rate for First Control Period and Second Control Period and therefore the same methodology should be applied for Third Control Period as well. We therefore direct AERA to consider actual cost of debt and necessary true up shall be done accordingly. Further, this action of AERA is also in violation of provisions of AERA Act, 2008 especially Sec. 13 thereof because the expenditure incurred ought to be allowed to be recovered as per formula of Target Revenue given in SSA.

322. Thus, Issue No. XVIII is answered in negative i.e. the decision of AERA to cap the Cost of Debt at 10.30% while examining the Fair Rate of Return (FRoR) is incorrect, improper and not justified."

95. Similarly, it has been held by this Tribunal in AERA Appeal No. 4 of 2021 between GMR Hyderabad International Airport Limited Vs. AERA judgment dated 14.02.2024 that AERA must consider actual cost of debt incurred by the Airport Operator. Paragraph 466 of the said judgment reads as under:

> "466. In view of this judgment, AERA must consider Cost of Debt actually incurred by the airport operator. These aspects of the matter have not been properly appreciated by AERA while passing the impugned order especially in the correction of Cost of Debt especially in FY 2018 and has wrongly considered the cost of Debt at 7.94% instead of 9.28%. We, therefore, direct AERA to consider 9.28 for Cost of Debt for FY 2018 as stated in table number 40 of the impugned order."

96. It has been held by this Tribunal in AERA Appeal No.4 of 2023 between MIAL vs. AERA judgment dated 13.09.2024 in paragraph nos. 112 and 113 as under:

> "112. The aforesaid aspects of the matter have not been properly appreciated by AERA and, therefore, we, hereby, quash and set aside the decision of AERA in capping the rate of interest at 11.25% p.a. as the cost of loan upon securitization of DF amount. Consequently, we hereby quash and set aside the calculation of total amount to be levied as DF along with interest thereupon as mentioned by AERA. We, therefore, quash and set aside the Order No.9 of 2023-2024 dated 14.06.2023 (Annexure A-1 to the memo of this appeal). We, hereby, direct AERA-Respondent No.1 that "actual rate of interest" upon DF securitization shall be calculated for the purpose of allowing levy of development fee by the Airport Operator."

97. It has been held by this Tribunal in Mangaluru International Airport Limited Vs. AERA in AERA Appeal No.1 of 2023 judgment dated 11.09.2025 in paragraph 130 as under:

> "130. In view of the aforesaid facts, reasons and judicial pronouncements, we hereby quash and set aside the decision of AERA whereby AERA has considered CoD at 9% p.a. for computation of Fair Rate of Return (FroR). We hereby hold that, looking to the facts of the present case, simply because the appellant has availed debt from its one of the shareholders, the same cannot by itself disallow the appellant to claim actual Cost of Debt. This is more so when the entity from which the appellant has availed debt has in turn, availed debt from reputed lenders. Thus, AERA ought to have allowed actual Cost of Debt incurred by the appellant. Putting a cap upon Cost of Debt is uncalled for and unwarranted. We therefore direct AERA to allow actual Cost of Debt incurred by the appellant and necessary True Up shall be given for previous Control Periods accordingly."

98. It has been held by this Tribunal in GMR Goa International Airport Vs. AERA in AERA Appeal No.1 of 2024 judgment dated 11.09.2025 in paragraph 123, 126, 139 and 140 as under:

> "123. In the facts of the present case, this appellant has secured debt from Axis Bank led consortium of banks at the rate of A- MCLR+ 2% which is revised annually. The said Concession Letter is at Annexure A-8 to the memo of the present appeal. As per this, appellant has secured the debt with 10.45% of the CoD whereas AERA has disregarded the actual CoD and has calculated FRoR considering 9% of the CoD. This is in violation of Section 13(1)(a)(i) of the AERA Act, 2008. As per this section, AERA is required to determine the tariff in accordance with actual capital expenditure incurred.
>
> 126. Thus, the sanction letter issued by Axis Bank led consortium of banks at the rate of A-MCLR+2% of Lending Rate which is dated 18.09.2024 (Annexure A 8). Since MCLR of Axis Bank range between 8.95% to 9.3%, the appellant could not have procured CoD at 9% as claimed by AERA. In fact, the CoD as per Annexure A-8 is A-MCLR+2% which is an admitted and actual CoD.
>
> 139. In view of the aforesaid facts, reasons, and judicial pronouncements, we, hereby quash and set aside the decision of AERA to normatively cap the Cost of Debt at 9% for the First Control Period and to compute FRoR/ARR on that basis.
>
> 140. We hereby direct AERA to consider the actual weighted average cost of debt at 10.45%, subject to true-up on an actual basis in the next control period, and to carry out all consequential recalculations of FRoR, ARR (including "T"), and the tariff card."

99. It is pertinent to denote that the Cost of Debt is a combined function of benchmark lending rates, credit spread, tenure of borrowing, and the risk profile of the borrowing entity. These variables are neither static nor within the unilateral control of the airport operator. The Inflationary trends, monetary policy adjustments, and sectoral stress, particularly during extraordinary events such as the COVID-19 pandemic, materially impact borrowing costs and any attempt to freeze the

Cost of Debt at a predetermined normative level necessarily ignores these realities and leads to distortion in tariff determination.

100. Furthermore, the statutory mandate under Section 13(1)(a)(iv) of the AERA Act requires the Authority to ensure economic and viable operation of major airports and viability necessarily entails recovery of prudently incurred costs. Thus, Denial of actual Cost of Debt, which is a fundamental component of the Fair Rate of Return, directly undermines the financial viability of the airport operator.

101. We are unpersuaded by the Respondent's characterization of post-July 2021 borrowings as inefficient commercial choices. The bridge-to-bond facility availed during the pandemic reflected market realities, wherein the Appellant was tagged as a 'RFA' (Restructured Facilities Account) with default rating, rendering it ineligible for fresh borrowings from traditional lenders. The One-Time Restructuring offered by existing lenders would have further deteriorated the capital structure.

102. For this urgency, a sponsor support was obtained from the Adani Group enabling bridge debt from Standard Chartered Bank and subsequent ECB refinancing was availed at market- discovered rates, which reflects the commercial and financial management necessitated by the circumstances. The assertions by Respondent that these were merely " commercial decisions" post-ownership change disregards the causative link between pandemic-induced distress and the borrowing structure.

103. Further, the below mentioned table demonstrates that even if the Appellant considers the lowest MCLR rate during the entire Control Period i.e. 7% as considered by AERA, and applies a Credit Spread of 482 basis points corresponding to a "BBB"- rating (notwithstanding the Appellant's actual rating of "D"), the resulting Cost of Debt would amount to 11.82%. Calculation of cost of debt as per the Authority methodology Particulars Rate MCLR rate (A) 7.00% Spread (B) 4.82% Cost of Debt (A+B) 11.82%

104. The Cost of Debt arises from binding contractual arrangements entered into between the Appellant and its lenders and such obligations are legally enforceable and must be serviced irrespective of tariff determination. AERA cannot ignore liabilities that exist in law and substitute them with hypothetical or notional constructs that bear no nexus to the actual financial position of MIAL.

105. The stated framework under the AERA Act requires tariff determination to ensure economic and viable operations of the CSMIA while balancing consumer interest. A cost-reflective tariff necessarily includes the actual financing costs incurred by MIAL, provided such costs are prudently incurred. Any exclusion of actual Cost of Debt would distort tariff determination and undermine the financial viability of MIAL.

106. It is a settled principle of regulatory jurisprudence that once an expenditure is found to be prudently incurred, it is not open to AERA to disallow the same on the basis of artificial or normative considerations. The correct test is whether the borrowing was necessary and undertaken

on reasonable commercial terms and not whether it conforms to a pre- determined benchmark.

107. In our view, ignoring the actual Cost of Debt and substituting it with a notional rate introduces arbitrariness into the tariff determination process, as it lacks any rational nexus with the expenditure actually incurred. Such an approach would be contrary to the principles of reasonableness and of non- arbitrariness that govern regulatory decision-making.

108. It is a fundamental principle that capital employed for the creation of infrastructure necessarily carries a cost. When such capital is funded through debt, the interest thereon must be serviced at the rate at which it has been contracted. Any deviation from this principle would result in a mismatch between the cost incurred and the cost allowed. The regulatory framework is not intended to render the Appellant financially inviable. Non-recognition of actual Cost of Debt incurred by the Appellant would impair the ability of the Appellant to service its obligations, adversely affect its credit-worthiness and ultimately undermine the stability of the CSMIA.

109. Further, infrastructure sectors such as airports are dependent on long-term financing and regulatory uncertainty in the recovery of financing costs would act as a disincentive to investment. The denial of actual Cost of Debt to the Appellant would therefore be contrary to the objective of promoting infrastructure development.

110. There can be no doubt that the interest rates are reflective of prevailing economic conditions and the tine value of money. A static normative rate cannot be adequately captured in the dynamic nature of financial markets, whereas, actual Cost of Debt represents the economic cost incurred by MIAL.

111. At the same time, consumer interest is adequately safeguarded through the mechanism of prudence review, whereby only those costs which are found to be reasonable and justified are allowed. AERA is neither expected nor entitled to punish the Appellant by applying artificial Cost of Debt without any basis, much less substance. No such powers are vested with AERA under the AERA Act and/or the Concession document either. There is therefore no justification for a blanket substitution of actual Cost of Debt with normative assumptions.

112. In view of the above, it is held that the Cost of Debt for the Third Control Period, being a real and unavoidable financial obligation, is liable to be allowed on an actual basis, subject to prudence check and any deviation from this principle would render the tariff determination arbitrary and unsustainable.

113. It cannot be said that the appellant was negligent in obtaining the debt or they were negligent in incurring the cost of debt. Looking to the static need of the appellant and keeping in mind the situations in relevant years, it cannot be said that the appellant was inefficient in getting the debt. The cost of debt depends upon two primary factors:

i. Benchmark rates and;

ii. Credit spread, which is dependent on business risks as perceived by the lenders. Higher the perceived risk leads to higher credit spread. The overall cost of debt increases in proportion to the risk profile of the borrowing entity.

AERA has completely ignored the second factor of credit spread which was significantly increased in the wake of the financial stress induced by COVID-19 and because of this, deterioration in credit rating of the appellant, which was a result of the default on the part of the Appellant, the cost of debt has been increased.

114. In view of above facts and circumstances, AERA's decision to put a cap upon cost of debt at 10.30% is absolutely arbitrary in nature and hence the same is quashed and set aside. We hereby direct AERA to allow actual cost of debt incurred by this appellant as true- up in 4th Control Period.

III. General Aviation (GA) Terminal considered as non-aeronautical asset by AERA

115. Looking to the facts of the present case, it appears that AERA has in their tariff order for the Third Control Period, also treated General Aviation Terminal Building as non-aeronautical asset and it has been decided by this Tribunal in AERA Appeal No.9 of 2016 and AERA Appeal No.2 of 2021 in judgment dated 06.10.2023 in case of MIAL Vs. AERA in paragraph nos. 279-282 as follows:

> "279. It is submitted by Learned Senior Advocate appearing on behalf of the respondent that General Aviation Asset shall be treated as nonaeronautical asset by AERA. The general aviation asset is basically meant for private aircrafts as per Part-I of Schedule-6 of OMDA. General aviation services is a non-aeronautical service and, therefore, AERA has submitted that there will be no change in asset allocation ratio in general aviation.
>
> 280. In fact, general aviation is meant for private aircrafts but they are also using runways which is purely aeronautical asset and other purely aeronautical assets and, therefore, in fact general aviation assets should be treated as "common assets". Passengers of private planes are also using aeronautical assets before reaching and using their private planes or aircrafts and, therefore, general aviation assets ought to have been treated as common assets. The landing and parking charges for the private aircrafts are considered as aeronautical in nature. Even in terminal area there are certain portions for non-aeronautical activities.
>
> 281. Learned Senior Advocate appearing on behalf of the appellant submitted that general aviation terminal assets have been classified in Fixed Assets Register (FAR) as common assets by respondent no.1 in calculation of weighted average aeronautical area of all terminals (T-1, T-2 and GA).
>
> 282. Moreover, this ratio has been applied by AERA on common assets of airport for calculation of their aeronautical cost, but, while doing asset classification, AERA has treated general aviation assets as non-aeronautical. This is the inconsistent approach

> of AERA. We, therefore, direct AERA to treat general aviation asset as common asset because private aircrafts are using runways, their parking place is also utilized by these private aircrafts which are all aeronautical assets. Thus, necessary asset allocation ratio will be calculated by AERA in 4th Control Period on actual basis."

116. In view of the aforesaid decision, it has been held by this Tribunal that General Aviation is meant for private aircrafts, but, they are also using runways which are purely aeronautical assets and other aeronautical assets. General Aviation Terminal Building is akin to Passenger Terminal Building (PTB) and it offers similar facilities to the Passengers, including-

i. Check-in,
ii. Security;
iii. Customs;
iv. Immigration and;
v. Reserved AERA for non-aeronautical activities like F&B outlets, lounges, etc.

117. Thus, GATB ought to have been considered by AERA as a common asset like PTB.

118. There is a remarkable difference between the terms "General Aviation Services" and "General Aviation Terminal". Both the terms cannot be used interchangeably. As per Schedule-VI of OMDA (Annexure A-4), "General Aviation Services" have been characterized as non-aeronautical services. AERA has wrongly considered "General Aviation Services" and "General Aviation Terminal" as interchangeable terms. Both the aforesaid terms are different.

> "General Aviation Terminal Building (GATB)" is akin to "Passenger Terminal Building (PTB)" and it offers similar facilities to passengers which are being offered at PTB.

119. Moreover, General Aviation Terminal Assets have been classified in a Fixed Asset Register (FAR) as common assets by Respondent No.1 for calculation of weighted average aeronautical area of all Terminals (T-1, T-2 and GA).

120. Thus, in the conspectus of the above it is apparent that the fundamental fallacy in the respondent no.1's decision lies in conflating the service with the asset. The OMDA, in Schedule 6, classifies "General Aviation Services" as non aeronautical services.

121. However, as noted above that the General Aviation Terminal is not itself a "service"; it is a physical asset that facilitates the delivery of both aeronautical and non aeronautical activities. The private aircraft that use this terminal are subject to landing, parking, and route navigation facility charges, all of which are undisputedly aeronautical in nature.

122. The passengers travelling through this terminal undergo security screening, customs and immigration checks, which are regulatory functions integrally connected with the operation of the airport.

123. Now to treat the terminal building as entirely non aeronautical would ignore the reality that it houses critical aeronautical functions and serves as the interface between the airside and the landside for a category of flights that are themselves recognised as aeronautical operations.

124. Furthermore, it is an admitted fact that GA passengers contribute a significantly higher quantum of aeronautical revenue per capita i.e. approximately INR 10,526 as against INR 284 from scheduled passengers. This disproportionate contribution to the airport's aeronautical pool actually serves to alleviate the tariff burden on the common passenger through the cross-subsidy mechanism of the Hybrid Till.

125. In view of these facts and circumstances, we hold that "General Aviation Terminal Building (GATB)" is a common asset. We, therefore, quash and set aside the decision of AERA to treat General Aviation Asset as non- aeronautical asset and we hereby direct AERA to treat General Aviation Asset as common asset.

126. AERA ought to have followed the decision of this Tribunal which has been given in AERA Appeal No.9 of 2016 and AERA Appeal No.2 of 2021 in judgment dated 06.10.2023 because the impugned order was passed on 07.05.2025.

IV. Adjustment on account of demolition of Terminal-1 building in HRAB in FY 2029

127. This issue has already been decided by this Tribunal in judgment dated 06.10.2023 in AERA Appeal No.9 of 2016 and AERA Appeal No.2 of 2021 between MIAL Vs. AERA. It has been observed in para 325, 326, 338 and 341, 342 as under:

> "325. This contention of the counsel for respondent no.1 is not accepted by this Tribunal mainly for the reason that as per the provisions of SSA, RBo is the opening RAB. When a return of WACC and depreciation is to be allowed on RBo, it implies that HRAB has also taken colour of RAB, meaning thereby to that any treatment that is meted out to RAB has to be extended to HRAB. Therefore, if in case demolition of any asset is out of the existing initial assets of the airport (from HRAB), the same has to be allowed as enabling cost of construction of the new asset.
>
> 326. Moreover, as per OMDA and SSA, once the HRAB is fixed, it cannot be reviewed meaning thereby to, on the basis of existing constructions, the airport operator took charge of the airport, RB has been calculated as RBo and it is known as a Hypothetical RAB. HRAB should be given the same treatment as of RAB under SSA and OMDA and, therefore, once the said amount is fixed (HRAB), the same cannot be reduced even in case of demolition.
>
> 338. As per OMDA, the construction work related to T-2 building had to be undertaken by this appellant and it was mandatory capital project and, therefore, construction of new T-2 building has resulted in demolition of the old T-2 building and, therefore, the value of the old T-2 building would be considered as enabling cost

> for the construction of new T-2 building. Thus, there will be a reduction of the value of old T-2 building and it would be considered as enabling cost for the construction of new T-2 building, thus, there will be a reduction of the value of old T-2 building and there will be addition of the very same value in the cost of new T 2 building and hence RAB will be the same.
>
> 341. We, therefore, quash and set aside the decision of AERA of reducing the HRAB written down value in respect of old T-2 building which is demolished.
>
> 342. Thus, Issue No. XIX is answered in negative i.e. the decision of AERA to reduce Hypothetical Regulatory Asset Base (HRAB) in respect of written down value attributable to old T-2 demolished is incorrect, improper and not justified."

128. AERA should have appreciated the fact that when HRAB was computed by R1-AERA, no reference was made to the value of any asset, either book value or market value. Computation of HRAB was based upon revenue and expenses. Thus, discarding any asset does not trigger reduction of HRAB. Thus, once HRAB is calculated, it cannot be reduced even if any existing Terminal Building is being demolished. The reduction of HRAB is not permissible. Neither there are any provisions in SSA (Annexure A-5) for such a type of reduction of HRAB nor there are any provisions in OMDA (Annexure A-4) for reduction from HRAB.

129. AERA has failed to consider OMDA and SSA in their attempt to review the value of HRAB. SSA does not restrict the computation of HRAB to the actual existence of assets. As per provisions of SSA, RBo is opening RAB. When return at WACC and depreciation is to be allowed on RBo, it implies that HRAB has also taken the colour of RAB and whatever treatment is meted to RAB has to be extended to HRAB.

130. It is important to take note of the fact that in the case of DIAL, as part of the phase 3A expansion, it demolished the old Terminal T-1A and constructed new Terminal T-1 with enhanced capacity of 40 million passengers in 2024. During the tariff determination exercise for the Fourth Control Period, Respondent No. 1/AERA did not propose any reduction in HRAB on account of demolition of old Terminal T-1.

131. AERA is giving different treatment to the present appellant than what is given to DIAL, this type of zig-zag approach of AERA is hereby deprecated because both MIAL as well as DIAL are governed by similar Concession Agreements viz.- OMDA (Annexure A-4) and SSA (Annexure A-5). AERA should have adopted a similar and consistent approach for tariff determination for DIAL and MIAL on similar issues.

132. It is also necessary to address the contention of the Respondent that non reduction of HRAB would confer a double benefit upon the Appellant by permitting return on both demolished and newly constructed assets. This submission overlooks the principle of enabling cost, which has been expressly recognised by this Tribunal. Where demolition of an existing asset is necessitated for construction of a new mandatory capital asset, the value of the demolished asset is subsumed as an

enabling cost of the new asset, thereby maintaining equilibrium in the asset base. The regulatory framework does not envisage a punitive reduction of base merely because infrastructure is modernised or upgraded.

133. When HRAB was originally computed, no reference was made to the book value or market value of any individual asset. It was arrived at on the basis of revenue and expenses for FY 2008-09 as per the formula prescribed in the SSA. The figure is therefore sacrosanct and not open to revision merely on the ground that a particular physical structure has since been demolished. Neither the OMDA nor the SSA contains any provision authorising a mid-stream reduction in HRAB on account of demolition and the Respondent's attempt to import such a power through the backdoor of "regulatory discipline"

is impermissible.

134. Thus, following from above it is apparent that the HRAB does not represent the sum of individually valued asset components. It represents the total opening regulatory base of the entire airport, computed on a revenue-and-cost basis and Terminal 1 had no assigned value within the HRAB.

135. Hence, the demolition of that terminal does not reduce the revenue-generating and cost-bearing capacity of the airport in any manner that can be isolated from the HRAB formula.

136. There is an additional factual ground that reinforces the conclusion. As the appellant has pointed out, Terminal T1B was constructed in the 1960s and Terminal T1A was built in 1992. According to the respondent Authority's own regulatory framework governing the useful life of airport assets, both structures had already outlived their prescribed useful life well before the commencement of the Fourth Control Period. Their written-down value in the regulatory books had consequently reached zero.

137. However, the Authority now proposes to reduce the HRAB by the written-down value of Terminal 1. If that written-down value was already zero, the proposed adjustment yields no reduction in the HRAB whatsoever, rendering the exercise an empty formality. Conversely, if the Authority contends that the written-down value is a positive number, it must explain how that positive value was derived from an HRAB computation that was never disaggregated into individual asset values. No such explanation has been offered. This inconsistency further demonstrates that the proposed reduction lacks any sound legal, factual or arithmetic basis.

138. As regards to the appellant's conditional acceptance of the adjustment during the consultative process, it is well settled that a party may challenge the correctness of a legal position even if it had previously indicated conditional acceptance, especially when such acceptance is expressly made subject to the outcome of judicial proceedings.

139. The appellant's comment, reproduced in the respondents' submissions, explicitly states that the adjustment was sought to be made "subject to the final outcome of the Supreme Court order on the

similar matter for T2". The matter pertaining to Terminal 2 is now pending before the Hon'ble Supreme Court. The appellant cannot be estopped from agitating the same issue before this Tribunal merely because it had, in the course of the consultative process, indicated a conditional acceptance while preserving its rights.

140. We, therefore, quash and set aside the decision of AERA of reducing HRAB written down value in respect of the Old Terminal-1 Building which is demolished and we hereby reiterate that the value of HRAB cannot be reduced once it is fixed, even in case of demolition.

V. 1% Penalty on Capex not incurred

141. Looking to facts of the present case and impugned order passed by AERA dated 07.05.2025 (Annexure A-1), AERA has decided to consider the provision for adjustment to the extent of 1% of the project cost while determining ARR in case of delay in capitalization of the project beyond the stipulated dates. The observations to this effect have been made in paragraph 6.10.15 of the impugned order.

142. This issue has already been decided in MIAL vs AERA in AERA Appeal No.9 of 2016 and AERA Appeal No.2 of 2021 dated 06.10.2023 in paragraphs 308, 309 and 310 thereof which reads as under:

> "308. Moreover, in absence of any provision for penalty under OMDA or SSA or AERA Act, 2008, no such penalty can be imposed, otherwise highly discriminatory position will prevail because today 1% of project cost penalty is imposed and subsequently it may be increased to 1.5%. If 1% penalty is allowed then 1.5% penalty would also have to be allowed then in forth coming years, as there are unguided powers, the penalty might be 3% also and, thereafter it can be 5% or more also. There will be no end to penalty in absence of any provision under OMDA, SSA and AERA Act, 2008. It ought to be kept in mind that unguided and uncontrolled power always leads to discrimination. In case of one airport operator penalty imposed will be 1% and in case of another airport operator it can be 2% because there is no law, there is no contract, there is no provision and there are no guidelines. The balance has already been created under OMDA and SSA in the methodology of true up in next control period and as stated hereinabove, as per the said methodology, excess amount recovered shall be trued up with carrying cost in next control period. Therefore, in the aforesaid example, if Rs.83 Crores has been recovered, the true up amount in the next control period, if the project is not commenced or completed within the time bound schedule, would be at Rs.121 Crores which is in fact more than sufficient revenue clawed back from the airport operator and perhaps for this very reason no powers have been given to AERA for imposing penalty. Hence, we hereby quash and set aside the decision of AERA of carrying out 1% of readjustment to project cost and applicable carrying cost in the target revenue at the time of determination of tariff for next control period.

309. Here in the facts of the present case, AERA has failed to appreciate the prevailing pandemic situation of COVID-19 and its aftermath. Curfew type situation or lockdown type situation was prevailing. Labourers were not available and hence, there is bound to be delay in execution of the project work. Such a big factor ought to have been appreciated by AERA. The genuine difficulty of airport operator ought to have been appreciated.

310. Thus, Issue No. XVII is answered in negative i.e. the decision of AERA of carrying out 1% re- adjustment to Project Cost and applicable carrying cost in the Target Revenue at the time of determination of Tariff for 4th Control Period is incorrect, improper and not justified."

143. A similar issue had also been decided in the case of GMR Hyderabad International Airport Limited Vs. AERA in AERA Appeal No.4 of 2021 judgment dated 14.02.2024, paragraphs 508, 509, 510, 512, and 519 thereof reads as under:

"508. AERA has penalized for delay in execution of projects, the airport operator - Appellant which is equal to reduction of 1% of the total cost of project from ARR.

509. Much has been argued out by the counsels for both the sides on this issue, it has also been submitted by Learned Senior Counsel for the Appellant that the issue of imposition of penalty has already been decided by this Tribunal by a detailed judgment and order dated 06.10.2023 in AERA Appeal No.2 of 2021 and AERA Appeal No.9 of 2016, in a discussion in Issue No. XVII of that Judgement.

510. Looking to the facts and circumstances of the present case and also keeping in mind the AERA Act, 2008 and Concession Agreement under dated 20.12.2024 (Annexure-A3 to the memo of this appeal) there is no provision under the AERA Act, 2008 nor in there is any provision in the Concession Agreement which contemplates the levy of penalty much less levy of penalty 1% there is no provision in the AERA Act nor in the Concession Agreement which contemplates the levy of any penalty and as such the levy of 1% penalty on delayed execution is beyond the power of AERA.

512. Imposition of the penalty by 1% is absolutely arbitrary in nature because today AERA has imposed 1% and tomorrow it could be 1.5% and thereafter it can be 2%, so on and so forth. The penalty has to be prescribed under law. Penalty cannot be imposed at the whims and caprice of the authority. ...

519. Therefore, by trueing up the cost of incomplete project, much higher amount is going to be deducted, therefore, again second time penalty cannot be imposed by 1%. Hence, we hereby quash and set aside of carrying out 1% of readjustment to project cost and applicable carrying cost in ARR."

144. Similarly, in case of Mangaluru International Airport Vs. AERA in AERA Appeal No.1 of 2023 and in other connected appeals, it has been decided by this Tribunal vide judgment dated 11.09.2025 that AERA has no power, jurisdiction and authority to re-adjust the ARR of the Airport Operator or re- adjust/reduce 1% of uncapitalized project cost from ARR/Target Revenue during true-up exercise of next Control Period, if any particular project is not capitalized as per CAPEX schedule approved in the tariff order, paragraph 288 of the aforesaid judgment reads as under:

> "288. In view of the aforesaid facts, reasons and judicial pronouncements, AERA has no power, jurisdiction and authority to readjust in the ARR of the Airport Operator or readjust/reduce 1% of un-capitalised project cost from ARR/Target Revenue during True-Up exercise of next Control Period, if any particular project is not capitalised as per CAPEX schedule, approved in the tariff order. We, therefore, quash and set aside this decision of AERA in the impugned order."

145. If AERA's decision to impose a penalty of 1% is allowed especially when there is no such provision of imposition of penalty in SSA and OMDA nor in AERA Act, 2008, in that eventuality, AERA may impose a 1.5%, 2% or 2.5% penalty and so on. Imposition and levy of penalty requires existence of special provisions and such powers cannot be presumed by AERA. Penalty has to be prescribed under the law. Penalty cannot be based upon fanciful ideas of the Authority.

146. There is already a provision under OMDA and SSA of truing-

up in next Control Period, this aspect of the matter has been explained in detail with example in paragraph 308 of the judgment dated 06.10.2023 in AERA Appeal No.9 of 2016 and AERA Appeal No.2 of 2021 in case of MIAL Vs. AERA.

147. There cannot be a double penalty for the incomplete projects because while truing-up in next Control Period, a sizable amount shall be deducted for incomplete projects, therefore, there cannot be a penalty of 1% again for the very same purpose of incompletion. This aspect has been explained in detail with example in paragraph 308 of the judgment dated 06.10.2023 in AERA Appeal No.9 of 2016 and AERA Appeal No.2 of 2021 in case of MIAL Vs. AERA.

148. The respondent no.1 AERA's reliance on Section 13(1)(f) and Section 14(4) of the AERA Act, 2008 to justify the reduction is entirely misplaced. Section 13(1)(f) empowers the Authority to perform such other functions relating to tariff as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of the Act. Section 14(4) empowers the Authority to issue directions to service providers for the purposes of monitoring performance standards.

149. Neither of these provisions, nor any other provision of the AERA Act, confers upon the Authority the power to impose a reduction or penalty of the nature contemplated in the impugned tariff order. The power to determine tariff under Section 13(1)(a) is to be exercised by taking into consideration the factors enumerated in that provision. It does not include an ancillary power to impose what is, in substance and effect, a financial penalty for delay, especially when the concession agreement itself does not provide for any such penalty and when the true-up mechanism already

addresses the consequences of delay.

150. There is a further and more fundamental infirmity in the Authority's approach. As has been repeatedly observed by this Tribunal, the true-up mechanism under the OMDA and the SSA already addresses the consequences of delay. If a project is not capitalized within the approved schedule, the associated capital expenditure is not included in the regulatory asset base for that period, and any amounts recovered in anticipation are trued-up with carrying cost in the next control period.

151. This mechanism ensures that the airport operator does not retain any benefit that is not justified by actual capital deployment. To impose a further reduction of 1% of the project cost is to impose a second consequence for the same delay, which is not contemplated by the contractual framework and is not authorised by statute. It is, in effect, a double penalty, and it is well settled that penalties cannot be imposed by implication or by an expansive reading of regulatory powers.

152. Furthermore, the respondent no.1's reliance on the decision of this Tribunal in AERA Appeal No. 8 of 2018 (BIAL matter) is equally unavailing. That decision, rendered on 16-12-2020, must be read in the context of the facts and submissions of that case. In that matter, the Authority had agreed to treat the capitalization year for Terminal II Phase 1 as 2020-21 on the basis of the airport operator's own assurance that the project would be completed by March 2021. The penalty was proposed as a measure to ensure that the operator did not derive an undue advantage from its own promise and this Tribunal in that case, while noting the stand of the Authority, did not lay down a general principle that such a reduction is permissible under the AERA Act in all circumstances.

153. More importantly, the subsequent decisions of this Tribunal in MIAL v. AERA (06-10-2023), GHIAL v. AERA (14-02-2024) and Mangaluru International Airport v. AERA (11-09-2025) have all held, after a detailed examination of the OMDA, the SSA, and the AERA Act, that the Authority has no power to impose such a reduction and hence the law on this issue has been settled by these later decisions of this Tribunal.

154. Thus, we hereby quash and set aside the decision of AERA to consider the provision of adjustment to the extent of 1% of the project cost while determining ARR in case of delay in capitalization of project beyond the stipulated dates. AERA has no power, jurisdiction and authority to re-adjust the ARR of the Airport Operator- Appellant or reduce 1% of un-capitalized project cost from ARR/Target Revenue in the next Control Period, if any particular project is not capitalized as per CAPEX schedule approved in the tariff order.

VI. Inclusion of "Annual Fee" in determination of "S" factor

155. By the impugned order dated 07.05.2025 (Annexure A-1), AERA has decided to include Annual Fee payable to Airport Authority of India from the revenue pertaining to Revenue Share Assets while determining 'S' factor for the purpose of cross-subsidization while calculating Target Revenue. In fact, this is not permissible, this issue has already been decided by this Tribunal in AERA Appeal No.9 of 2016 and AERA Appeal No.2 of 2021 in MIAL Vs. AERA for Second Control Period and Third Control Period vide judgment dated 06.10.2023, it has been observed in paragraphs 358, 359,

365 of the aforesaid decision which reads as under:

> "358. We do not agree with the aforesaid contentions of the respondent. Annual Fee payable to Airport Authority of India (AAI) is not a cost, because the cost is an amount paid to acquire the revenue. Cost is that amount which the entrepreneur pays for procuring the revenue. The cost is an expenditure incurred by any company or firm to produce the goods or services for sale. The cost is an amount that is incurred to earn that revenue prior to such revenue is being earned. In the facts of the above case, if the aforesaid concept is applied, Annual Fee accrues to AAI after "Revenue" (as defined under OMDA) has been earned by MIAL. This aspect of the matter has not been properly appreciated by AERA and hence the decision of AERA of inclusion of Annual Fee in determination of "S"-factor is hereby quashed and set aside.
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> 359. Moreover, the cost is such an amount which has to be incurred first and thereafter the revenue can be incurred, but, here in the facts of the present case, and looking to the provisions of OMDA & SSA, "Annual" Fee is not a prerequisite for earning Revenue. In fact, here Revenue is to be calculated first and thereafter 38.70% of revenue is to be calculated as Annual Fee. Thus, Annual Fee is not a cost at all for the purpose of calculation of "S" factor. Further, Clause 3.1.1 of SSA provides "GOI's intention is to establish an independent Airport Economic Regulatory Authority (the "Economic Regulatory Authority"), which will be responsible for certain aspects of regulation (including regulation of Aeronautical Charges) of certain airports in India. GOI agrees to use reasonable efforts to have the Economic Regulatory Authority established and operating within two years from the Effective Date. GOI further confirms that subject to applicable law, it shall make reasonable endeavours to procure that the Economic Regulatory shall regulate and set/re-set Aeronautical Charges, in accordance with the broad principles set out in Schedule 1 appended hereto. Provided however, the Upfront Fee and the Annual Fee paid/payable by the JVC to AAI under the OMDA shall not be included as part of costs for provision of Aeronautical Services and no pass-through would be available in relation to the same", means Annual Fee is not a cost of provision of Aeronautical Service, similarly by applying the same principle, Annual Fee on revenue from Revenue Share Assets also, is not a cost of provision of Non-Aeronautical Services or aeronautical related services arising at the Airport.
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> ...
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> 365. In light of the aforesaid facts and circumstances, we hereby quash and set aside the decision of AERA to the extent it includes the Annual Fee in gross revenue generated by JVC from the Revenue Share Assets for calculation of "S" factor and 18 we thereby hold that Annual Fee payable to AAI should be excluded from the revenue generated by JVC from the Revenue Share Assets for the calculation of "S" factor. And consequently, true-

up has to be given for the earlier Control Periods also."

156. In fact, the issue involved in present AERA Appeal has been discussed in detail in the aforesaid decision along-with definitions of Annual Fee, etc. from paragraphs 347 to 365 thereof, the same reasons which have been mentioned from paragraph 347 to 365 are also applicable in the facts of the present case and for the very same reasons, we hereby quash and set aside the decision of AERA to the extent it includes the Annual Fee in gross revenue generated by Joint Venture Company (JVC) from the Revenue Share Assets for calculation of 'S' factor. We hereby hold that Annual Fee payable to Airport Authority of India should be excluded from the revenue generated by JVC from Revenue Share Asset for the calculation of 'S' factor.

157. This issue was also decided in the case of DIAL Vs. AERA for Second Control Period and Third Control Period in AERA Appeal No.1 of 2016 and AERA Appeal No.1 of 2021 judgment dated 21.07.2023, it has been observed in paragraphs 123 and 124 as under:

> "123... c. Annual Fee is not a cost. Cost refers to the amount of payment made, to acquire any goods or services or revenue to be generated therefrom. Cost in relation to a particular revenue is the cost incurred, to earn that revenue and is incurred before such revenue can be earned. In the facts of the present case, "Annual Fee" accrues to AAI after the revenue as defined under OMDA has been earned by DIAL. In view of this, the amount of Annual Fee should be excluded from the gross revenue generated by JVC from the Revenue Share Assets;
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> ...
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> 124. We therefore, quash and set aside the decision of AERA to the extent it includes the Annual Fee in gross revenue generated by JVC from the Revenue Share Assets for calculation of "S" factor and we thereby hold that Annual Fee payable to AAI should be excluded from the revenue generated by JVC from the Revenue Share Assets for the calculation of "S" factor. And consequently, true-up has to be given for the earlier Control Periods also."

158. It is rightly contended by Learned Senior Counsel Mr. Sajan Poovayya appearing on behalf of the appellant that the definition of "Revenue" under OMDA is solely for the purpose of computation of Annual Fee, which the Appellant does not deduct from its revenues. The exclusion of Annual Fee from the revenue derived from Revenue Share Assets for determination of the S-Factor does not, in any manner, reduce the quantum of entitlement of AAI toward Annual Fee.

159. We are in full agreement with the aforesaid argument canvassed by the Learned Senior Counsel for the appellant.

160. It has been held by Hon'ble the Supreme Court of India in the case DIAL Vs. AERA in Civil Appeal No.8378 of 2018 in judgment dated 11.07.2022 in paragraphs 116 and 117 as under:

> "116. The first part of the proviso is clear in its terms that upfront fee and the Annual Fee paid/payable by the Airport Operators to AAI under the OMDA shall not be included as part of costs for provision of Aeronautical Services. There is no doubt a second part to it which states that "no pass-through would be available in relation to the same". It is the latter part which is sought to be emphasised in the decision-making process of the AERA. This is because if the first part is implemented there will be an element of pass-through. However, if we were to accept the view of the AERA, it would be in a sense amount to nullifying the first part of the proviso. No construction should be given to a contract where the first part itself is nullified by a reading of the latter part. This clause is more general in its terms. Pass-through would not be permitted in normal circumstances as per the clause. However, insofar as the tax element is concerned, there appears to be an exception because of the manner in which the 'T' in the formula itself has been derived. Qua the Annual Fee, the SSA does not contemplate a subtraction from the expenses. There is also no direct extraction from other stakeholders qua the annual fee and thus there is no pass-through. This would also be harmonious construction of the clauses of the contract so that one part of it does not do violence to the other.
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> 117. Thus, the aforesaid is the only aspect on which we are inclined to interfere with the impugned orders and find merit in the contention of the Airport Operators that the Annual Fee paid by them should not be deducted from expenses pertaining to aeronautical services before calculating the 'T' element in the formula."

161. In view of the aforesaid decision, "pass-through of a cost"

> necessarily means that such cost is recovered from the users as part of the aeronautical tariff unless there is a direct extraction from the shareholders, it cannot be said that there is a "pass-through". There is no claim of appellant that Annual Fee should be allowed as "pass-through".

162. The fundamental flaw in the respondent no.1's reasoning in the impugned order lies in its failure to appreciate that the Annual Fee is not a cost in the sense in which that term is used in the tariff determination framework. As this Tribunal has consistently held, a cost is an expenditure incurred to earn revenue, and it is incurred prior to the revenue being earned. In the case of the Annual Fee, the fee accrues to AAI only after the revenue has been earned by the airport operator. The Annual Fee is not a prerequisite for earning revenue; rather, it is a share of the revenue that is paid out after the revenue has been received.

163. The definition of 'Revenue' in the OMDA, which forms the basis for computing the Annual Fee obligation at 38.70% of revenue, is a definition created for a specific and limited purpose within the OMDA namely, to determine what the JVC owes to AAI by way of Annual Fee. It is not a definition that was imported into Schedule 1 of the SSA for the purpose of defining 'gross revenue from Revenue Share Assets' in the target revenue formula.

164. The Annual Fee, which is a contractual obligation to share revenue with AAI, is not a service rendered by any asset belonging to the class of Revenue Share Assets. It is a downstream consequence of revenue generation, not a component of the revenue itself. Thus, to say that the Annual Fee is part of the 'gross revenue generated from Revenue Share Assets' is to confuse the revenue that the assets generate with the obligations that arise from that revenue being generated.

165. Thus, in the conspectus of the above the inclusion of Annual Fee in the computation of the 'S' factor results in an artificial inflation of the revenue base and distorts the cross subsidisation mechanism envisaged under the State Support Agreement. It amounts to rewriting the contractual formula under the guise of literal interpretation and introduces a component which the parties consciously excluded from the regulatory framework.

166. In view of the aforesaid decisions, Respondent No.1- AERA is hereby directed to exclude the Annual Fee payable to Airport Authority of India from the revenue generated by the appellant from the Revenue Share Assets for the purpose of calculating the 'S' factor in Target Revenue formula and we hereby quash and set aside the decision of AERA to include Annual Fee payable to Airport Authority of India from the revenue pertaining to Revenue Share Assets while determining 'S' factor for the purpose of cross-subsidization while calculating Target Revenue.

VII. Inclusion of "Other Income" in determination of "S" factor

167. "Other Income" like income arises out of interest and dividend income does not form part of revenue from Revenue Share Assets. Revenue Share Assets have been defined and, therefore, looking to the definition of Revenue Share Assets defined in SSA (Annexure A-5) and looking to the said definition, income arising out of interest or dividend cannot be treated as revenue from Revenue Share Assets.

168. Moreover, "Other Income" like interest income, dividend income, and dividend upon delayed payments is included in Schedule VI of OMDA (Annexure A-4) and hence, this type of addition by AERA as part of revenue from Revenue Share Assets is beyond bargain i.e. beyond the terms of the contract. Moreover, "Other Income" is not relatable to rendition of any services by MIAL, much less AERA, aeronautical or non- aeronautical.

169. There is inconsistency in the approach of AERA because previously "Other Income", especially from dividend, interest income, interest upon delayed payments obtained by the appellant, was not collected or was not added or was not treated as revenue from Revenue Share Assets. This was a position during Second Control Period FY 2009-2014. In the First Control Period FY 2014-2019, AERA treated "Other Income" as part of revenue from Revenue Share Assets except dividend income and in 3rd Control Period in the FY 2019-2024, even dividend is included in the "Other Income" as part of revenue from Revenue Share Assets. It ought to have been kept in mind by AERA that "Revenue Share Assets" is a defined term as per Schedule-1 of SSA (Annexure A-5).

> "Other Income" does not form part of revenue arising out of Revenue Share Assets.
> "Other Income" has no causal connection with any services rendered by the

appellant.

170. In fact, such type of income to the appellant is because of Cash Management Process ("CMP"). There is no legal base to treat income as part of revenue from Revenue Shares Assets (for inclusion of cross-subsidization for calculation of S-factor).

171. It is the responsibility of AERA to maintain consistency in their approach. During First Control Period, "other income" of the appellant was not treated as part of revenue from "Revenue Share Assets" and no reasons have been given by AERA for departure from the principles adopted in First Control Period and thus, there is a violation of Section 13(4) of AERA Act, 2008. Unjustifiably inconsistent interpretations of the rules of the game are more problematic, in so far as they create severe uncertainty and unpredictability in the making of investments and for national regulatory choice. AERA cannot take different views in different Control Periods. Certainty of regulatory philosophy is key to create a predictable environment for clarity to all the stakeholders. If different approaches are adopted for different Control Periods, it will lead to uncertainty which will ultimately lead to unwarranted litigation. As a result, it will be the end consumer who would be at sufferance. We are of the opinion that such unnecessary and unwarranted litigation needs to be curbed which can only happen when the regulator (AERA) strictly maintains consistency in its approach.

172. Learned Counsel for the Respondent No.1 AERA, has submitted at length that "Other Income" encompassing interest, dividend, and interest on delayed payments, constitutes a derivative of cash flow management integral to airport operations, warranting its inclusion within 'revenue from Revenue Share Assets' for 'S' factor computation. This contention cannot be sustained for the following determinative reasons:

I. Firstly, "Other Income" of the nature indicated lacks any statutory or contractual foundation for aggregation with revenue from Revenue Share Assets and such passive accruals as interest or dividends do not qualify thereunder, rendering their inclusion legally baseless.

II. Secondly, Other Income does not emanate from non-

aeronautical services enumerated in Schedule 6 (Parts I & II) of OMDA, nor from aeronautical-related services.

III. Thirdly, the Respondent's attempt to include "other income" in the 'S' factor proceeds on a fundamental misconception of the regulatory bargain. The hybrid till model, as embodied in the SSA, permits cross-

subsidization only from revenue generated from specified assets i.e. Revenue Share Assets. This is the bargain struck between the concessionaire and the government. To extend cross-subsidization to income streams that have no nexus with these assets is to unilaterally alter the terms of the bargain.

IV. Fourthly, there is a patent inconsistency in the Respondent's approach across control periods that remains wholly unexplained. During the First Control Period (FY 2009-2014), "other income" was not treated as part of revenue from Revenue Share Assets.

In the Second Control Period (FY 2014-2019), AERA treated "other income" as part of revenue from Revenue Share Assets, but made an exception for dividend income. In the Third Control Period (FY 2019-2024), even dividend income was brought within the fold of "other income" and included in the 'S' factor. No reasons have been furnished for these successive departures from the approach adopted in the First Control Period.

V. Fifthly, "Other income" is neither ascribable to nor engendered by the provision of any service by the Appellant-MIAL, but emanates from ancillary fiscal transactions detached from core airport activities VI. Sixthly, the tariff determination mechanism already incorporates the adjustment of under-recovery and over-recovery through the true-up process across control periods, together with the addition of carrying cost or time value of money. Where such financial adjustments are already taken into account within the regulatory framework, the inclusion of financial receipts such as interest or dividend income within the revenue base risks resulting in double consideration of the same financial effects.

VII. Seventhly, the concession agreements constitute a carefully negotiated contractual framework that allocates specific rights and obligations between the parties. Once the parties have contractually defined the scope of Revenue Share Assets, it is not open to the regulator to expand that definition by incorporating revenue streams that the parties themselves did not contemplate.

VIII. Eighthly, as Section 13(4) of the AERA Act mandates transparency in the exercise of the Authority's functions.

Unjustified inconsistency in regulatory treatment creates uncertainty, undermines investor confidence, and is antithetical to the rule of law. AERA cannot take different views in different Control Periods without cogent justification. Certainty of regulatory philosophy is key to creating a predictable environment for all stakeholders.

If different approaches are adopted for different Control Periods, it will lead to uncertainty, unwarranted litigation, and ultimately, the end consumer will suffer.

173. The aforesaid aspect of the matter has not been properly appreciated by AERA while passing the impugned order. We, therefore, quash and set aside the decision of AERA to consider "Other Income" as revenue pertaining to Revenue Shares Assets while determination of S-factor for the purpose of cross-subsidization while calculating target revenue.

174. The reasons given in paragraph 192 to 226 in judgment delivered by this Tribunal in AERA Appeal No. 2 of 2021 with AERA Appeal No.9 of 2016 in case of MIAL Vs. AERA & Ors., judgment dated 6th October, 2023 are applicable in the facts of the present case also and, therefore, all these reasons are adopted in the present matter also for deciding the issue of "Other Income".

175. For the ready reference, paragraph 225, 226 and 227 of the judgment delivered by this Tribunal in AERA Appeal No.2 of 2021 and AERA Appeal No.9 of 2016 dated 6th October, 2023 reads as under:

> "225. Learned senior counsel for the respondent has further argued that "other income" is a function of cash management earned through airport operations and, therefore, other income must be included in the revenue as it is generated from revenue share assets and has placed reliance upon paragraph number 57 of this Tribunal's judgment dated 23rd April, 2018 in AERA Appeal No. 06 of 2012 and contended that dividend income needs to be included as part of "S" factor even if services are provided through its servants and agents. This contention is not accepted by this Tribunal mainly for the reason that because in the case of Bangalore International Airport Ltd. (BIAL), the concession Page 145 of 253 does not provide for a specific tariff calculation methodology which is mentioned in case of MIAL-the present Appellant in Schedule 1 of SSA where "S" factor is limited to the revenue from Revenue Share Assets. Moreover, looking to the definition of Revenue Share Assets, given in Schedule-1 of SSA (ANNEXURE A-3 (Colly), the said term is a pre-defined terminology and it does not encompass within its sphere, the interest income and dividend income.
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> 226. In light of the aforesaid, "other income" cannot be a part of revenue, from revenue share assets and consequently, in calculation of "S" factor in target revenue formula which is TR= RB x WACC + OM + D + T - S. To the aforesaid extent, the impugned orders which are under challenge in both the aforesaid AERA Appeals which are at ANNEXURE A-1 in both the aforesaid AERA appeals are hereby quashed and set aside.
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> 227. Thus, in view of the aforesaid facts and reasons, Issue No. VII is answered in negative i.e. "Other income" cannot be treated as a part of revenue from Revenue Share Assets."

176. Thus, in the facts and circumstances and legal position as discussed above, we hereby hold that "Other Income" cannot be treated as part of revenue from Revenue Share Assets and hence, it cannot be considered in determination of S-factor while calculating target revenue.

VIII. Revenue from existing assets/demised premises

177. Looking to the impugned order passed by AERA dated 7th May, 2025 for 4th Control Period (1st April, 2024 to 31st March, 2029) which is at ANNEXURE A-1, AERA has decided to include

revenue from existing assets/demised premises in the S-factor computation under target revenue formula, especially paragraph 10.2.13 of the impugned order.

178. This issue has already been decided by this Tribunal in case of MIAL Vs. AERA & Ors. in AERA Appeal No.2 of 2021 and AERA Appeal No.9 of 2016, judgment dated 6th October, 2023, and it has been held that revenue from existing assets does not form part of revenue from Revenue Share Assets, and, therefore, it cannot be included while calculating X-factor in the tariff formula. Paragraphs 372, 373, 378, 379, 380, 381 of the aforesaid decision reads as under:

> "372. In light of the definitions stated above, it is submitted by counsel appearing for respondent nos. 1 and 3 that revenue earned by this appellant from existing assets/demised premises should be treated as "Revenue Share Assets" and 30% of the gross revenue generated by this JVC-Appellant will be calculated towards the calculation of "S" factor. This contention is not accepted by this Tribunal because looking to the definition of "Revenue Share Assets", as stated hereinabove it shall mean a Non-
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> Aeronautical Assets and the assets required for provision of aeronautical related services arising at the Airport and not considered in revenues from Non-
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> Aeronautical Assets. Looking to the definition of Non-
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> Aeronautical Assets, all the assets required or necessary for the performance of Non-Aeronautical Assets at the Airport as listed in Part-I of Schedule -
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> 6 of OMDA as located at the Airport irrespective of whether they are owned by JVC or any third party to the extent such assets are located within or form part of any terminal building or are conjoined to any other Aeronautical assets, asset including in Paragraph (i) above , and such assets are incapable of independent access and independent existence or are prominently Page 235 of 253 serving/catering any terminal complex/categorically complex and shall specifically include all the additional land (other than demised premises), property and structures thereupon acquired or leased during the Term in relation to such non-aeronautical assets.
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> 373. Non-Aeronautical Services are the services which are listed in Part- I and Part-II of Schedule - 6 of OMDA.
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> In view of the aforesaid definition of Revenue Share Assets, Non-Aeronautical Assets and Non-
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> Aeronautical Services, it is explicitly clear that Non-
>
> Aeronautical Revenue accruing from exiting premises/ demised premises could not be considered as part of revenue from "Revenue Share Assets" and consequently it

> cannot be used for cross subsidization. Looking to the definition of "Third Party" as per lease agreement it appears that Third Party means an entity other than party to the leased agreement meaning thereby to Third Party means a party which is neither the AAI nor the MIAL. The word "entity" has also been defined as per OMDA means any Person, Body Corporation, Trust, Partnership Firm or other Association of persons/individuals whether registered or not. Upon conjoint reading of the definition of "Entity" (from OMDA), of "Third Party" (as per Lease agreement) and definition of "Revenue Share Assets", it is explicitly clear that the "Third Party" as mentioned in Assets" cannot include AAI. Meaning thereby to, any asset which is owned by AAI and is leased to MIAL, but, not categorised as "Aeronautical Assets" or "Non-Aeronautical Assets", cannot be considered as "Non-Aeronautical Assets". As a resultant effect, the revenue accrued from such asset cannot be considered towards calculation of "S factor" or it cannot be considered for cross subsidization.

378. AERA has erred in dismissing the appellant's contention regarding revenue from the existing assets should be excluded from the calculation of "S- factor" for 3rd Control Period and consequent true up merely on the ground that the MIAL has not raised this issue in the previous Control Periods. This reasoning of AERA is erroneous mainly for the reason that the issue which is raised by this appellant involves interpretation of the complex agreements like OMDA, SSA, Lease Agreement etc. which are first of its kind. Failure of appellant to raise this issue was not deliberate. As stated hereinabove there is no need to maintain consistency by the appellant in wrong interpretation of the terms of the contract. Correct interpretation of the contracts involves in the present proceedings in both the aforesaid AERA Appeals can always Page 239 of 253 be done even if such issues could not be raised in earlier control periods. No estoppel is created thereby.

379. We, therefore, quash and set aside the decision of AERA bearing No. 64/2020-21 dated 27.02.2021 (for 3rd Control Period) of inclusion of revenue from existing assets/demised premised in the calculation of "S"-factor.

380. In light of the aforesaid facts and circumstances, we hereby hold that looking to the provisions of OMDA to be read with the provisions of SSA and of the definitions as stated in this point, we hereby hold that revenue accrued from the existing assets/demised premises by the appellant cannot be considered as part of revenue from "Revenue Share Assets" for the calculation of "S" factor and consequently, true up has to be given for the earlier Control Periods also.

381. Thus, in view of the aforesaid facts and reasons, Issue No. XXII is answered in negative. As stated hereinabove, we hold that revenue accrued from the existing assets/demised premises cannot be considered as a part of revenue from "Revenue Share Assets".

179. All the reasons given in paragraph 372 to 380 of the aforesaid decision are applicable in the facts of the present case also, and for very same reasons, we hereby quash and set aside the decision of AERA of inclusion of revenue from existing assets/demised premises in calculation of S-factor and we hereby hold that the revenue accruing from existing assets /demised premises cannot be considered as a part of revenue from Revenue Share Assets.

IX. INCLUSION OF 'S' FACTOR IN AERONAUTICAL REVENUE FOR COMPUTATION OF 'T'

180. Having examined the impugned order and the submissions advanced by the learned senior counsel appearing for the parties, the principal controversy which arises for consideration under the present issue is whether the amount represented by the "S-factor", which constitutes 30% of the gross revenue generated from Revenue Share Assets, is required to be treated as forming part of the aeronautical revenue base for the purpose of computation of "T", namely the amount equal to corporate taxes on earnings pertaining to aeronautical services, in the Target Revenue formula prescribed under the State Support Agreement (SSA).

181. At the outset, it is necessary to bear in mind the structure of the Target Revenue formula contained in Schedule-1 of the SSA, which reads as follows:

$$Tri = Rbi \times WACCi + Omi + Di + Ti \square Si$$

182. The Target Revenue so determined represents the total permissible revenue recoverable by the airport operator through aeronautical charges. In the said formula, "S" represents 30% of the gross revenue generated by the Joint Venture Company (JVC) from Revenue Share Assets, which effectively operates as a cross-subsidy from non- aeronautical revenues towards aeronautical services.

183. When the Target Revenue is computed under the aforesaid formula, the effect of the "S-factor" is that a portion of the non-aeronautical revenue generated from Revenue Share Assets is notionally utilised to reduce the quantum of aeronautical charges recoverable from users. Thus, the cross-subsidy embodied in the "S-factor" directly impacts the determination of the permissible aeronautical revenue.

184. In the impugned order, AERA has proceeded on the basis that the component represented by the "S-factor" ought not to be treated as forming part of the aeronautical revenue base for the purpose of computing "T".

185. We are unable to accept the aforesaid reasoning of AERA.

The Target Revenue formula itself demonstrates that the "S- factor" forms an integral component of the aeronautical revenue determination mechanism. The formula determines the permissible aeronautical revenue only after accounting for cross-subsidy from non-aeronautical revenues through the deduction represented by "S".

186. Once the cross-subsidy amount represented by the "S-

factor" is embedded within the Target Revenue determination process, the said component inevitably assumes the character of aeronautical revenue for regulatory purposes. In other words, the computation of aeronautical revenue under the SSA framework necessarily incorporates the economic effect of the S-factor.

187. The definition of "T" under the SSA refers to an amount equal to corporate taxes on earnings pertaining to aeronautical services. The expression employed in the agreement is not the amount of tax actually paid, but an amount equal to corporate taxes computed on earnings pertaining to aeronautical services. Consequently, the computation of "T" forms part of the regulatory building-block methodology used for determination of aeronautical tariffs. Section 13(1)(a)(vi) of the AERA Act mandates the Authority to take into consideration "the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise."

188. If the S-factor is treated as part of the aeronautical revenue computation mechanism while determining the Target Revenue, it logically follows that the tax component "T", which represents corporate taxes on earnings pertaining to aeronautical services, must also be computed by taking into account the full aeronautical revenue base as determined under the agreed formula. Section 13(1)(a)(iv) of the AERA Act requires the Authority to consider the "economic and viable operation of major airports."

189. AERA has proceeded on the assumption that unless the airport operator actually incurs income tax liability during the relevant control period, the component of "T" ought not to be recognised in the tariff determination. This approach is inconsistent with the plain language of the SSA which mandates computation of an amount equal to corporate taxes irrespective of whether the tax is actually payable or paid in that period.

190. The computation of Target Revenue under the regulatory formula and the actual payment of income tax under the Income Tax Act operate in entirely different domains. The former is a tariff-determination exercise undertaken for regulatory purposes, whereas the latter concerns statutory tax liability under fiscal legislation.

191. Consequently, the interpretation adopted by AERA, whereby "T" is equated with corporate taxes actually paid by the airport operator, amounts to rewriting both the definition of "T" and the Target Revenue formula contained in the SSA and such modification of the contractual regulatory framework is beyond the scope of AERA's authority under the AERA Act.

192. This Tribunal in similar matter between GMR Hyderabad International Airport Vs. AERA in AERA Appeal No. 4 of 2021 judgment dated 14th February, 2024 has held in paragraph 423 and 424 as under:

> "423. The aforesaid facts of the matter have not been properly appreciated by AERA, and therefore, the decision of AERA not to consider 30% of Non-
>
> Aeronautical Revenue (NAR) as part of Aeronautical Revenue Base for computation of aeronautical taxes is incorrect, improper and unjustified.
>
> 424. We, hereby direct AERA to consider (i) the calculation of "T" on 30% of Non-Aeronautical Revenue because it partakes the character of Aeronautical Revenue in calculation of ARR as per the aforesaid formula, (ii) the aeronautical taxable

income computed as per the normal provisions of the Income Tax Act, 1961."

193. It has been held by this Tribunal in case of DIAL Vs. AERA for 2nd Control Period and 3rd Control Period judgment dated 21st July, 2023 in paragraph numbers 140, 141, 145 as under:

> "140. AERA's contention that including S- Factor in calculation of Tax will result in an artificial tax benefit and overstate aeronautical tax is also misconceived and misleading. S factor has been considered in aeronautical Profit & Loss to arrive at Aeronautical Profit Before Tax (PBT) and the allocation of actual tax paid by DIAL is in the ratio of Aeronautical and Non-Aeronautical PBT and thus will not result in creation of artificial tax. Further, inclusion of S Factor in Tax and consequent consideration of S Factor as aeronautical revenue will provide true aeronautical profit and accurate base to calculate 'T'.
>
> 141. AERA's observation regarding reduction in the level of cross subsidy is also misconceived in as much as the nonaeronautical revenue cross subsidizes aeronautical revenue and the tax is only resultant on the profit earned and thus, the cross subsidy is nothing but a part of recovery of eligible aeronautical revenue only and thus has to be considered while drawing aeronautical Profit & Loss." ...
>
> 145. ...This definition cannot be amended nor the formula can be amended by AERA. AERA has presumed that T is equal to amount of corporate taxes paid by the appellant. This definition cannot be amended nor the formula can be amended by AERA. AERA has presumed that T=corporate taxes paid by the Appellant. This addition of the words, neither in the definition nor the formula is permissible because it is an agreement between the appellant and the Government of India. We, therefore, quash and set aside observations of AERA for 2nd Control Period as well as for 3rd Control Period, so far as they are related to exclusion of "S" factor as part of aeronautical base, while determining aeronautical taxes (i.e. T). We, hereby hold to include "S"-factor as part of aeronautical revenue base while determining aeronautical taxes (i.e. T), for 2nd as well as 3rd Control Period. Thus, in view of the aforesaid facts and reasons, Issue No. IV is answered in affirmative. "S-factor" should be considered as a part of Aeronautical Revenue Base while determining Aeronautical taxes (i.e. T), and consequently true up has to be given for the earlier control periods also."

194. We hereby adopt all the reasons which are given in paragraph number 382 to 389 given in judgment dated 6th October, 2023 in AERA Appeal No.2 of 2021 between MIAL Vs. AERA and Ors. which are reproduced hereinbelow:

> "382. As per the combined reading of OMDA and SSA to be read with the Provisions of AERA Act, the aeronautical charges are to be determined by AERA. Target Revenue is a methodology for calculating the aeronautical charges in the shared till inflation - X price cap model. The very purpose of AERA has been mentioned in

Clause 3.1.1 and Clause 3.1.2 of SSA (ANNEXURE A-4). The formula for the target revenue (TR) as per Schedule-1 to the SSA is as under:

TRi = RBi x WACCi + OMi + Di + Ti - Si This target revenue is an amount which can be collected by the JVC Appellant-MIAL where "S" is equal to 30% of gross revenue generated by JVC from the Revenue Share Assets. "Revenue Share Assets" shall mean (a) non aeronautical assets; and b... non-aeronautical assets have not been defined in SSA and, therefore, the definition of non- aeronautical assets has to be read from OMDA which is at ANNEXURE A-3.

Non-Aeronautical assets mean all assets required or necessary for the performance of non-aeronautical services at the Airport as listed in Part I of Schedule-

6..... and all the assets required or necessary for the performance of non-aeronautical services at the Airport as listed in Part II of Schedule-6 hereof as located at the Airport.

383. In light of the aforementioned definition of Revenue Share Assets to be read with definition of non-

aeronautical assets for the calculation of "S-factor" it is 30% of gross revenue generated by JVC from revenue share assets. This will be the component of "S-factor" which is also referred by the counsel for the appellant as well as respondents as the amount for cross-subsidization. Meaning thereby to, in calculation of target revenue (TR), there will be deduction from the total amount which is equal to 30% of the revenue collection from the non-

aeronautical services.

384. In light of the provisions of AERA Act, OMDA and SSA, only aeronautical charges are being controlled whereas non-aeronautical charges for non- aeronautical services and the tariff for non-aeronautical services is not controlled by AERA. Tariff for non-aeronautical charges and for non-

aeronautical services can be fixed by the JVC- Appellant MIAL.

385. Upon reading the formula of target revenue, it further appears that while calculating the target revenue by AERA, they are deducting 30% of gross revenue generated from non-aeronautical services. Now the question here is the calculation of amount of tax.

386. The learned senior counsel for the appellant submitted that on the amount of 30% of gross revenue generated by JVC from non-aeronautical services, the tax ought to be calculated which is being denied by AERA in both the aforesaid AERA Appeals.

387. In light of the impugned order in the present appeal passed by AERA, it appears that AERA has calculated tax on the amount = RB x WACC + OM + D, out of:

> TRi = RBi x WACCi + OMi + Di + Ti - Si Thus, upon the aforesaid encircled amount, the AERA has permitted the addition of amount equal to tax, whereas, this appellant's contention is that the amount of tax upon "S" should also be calculated.

388. We fully agree with the contention of this appellant mainly for the reason that: a. The basic function of AERA under the AERA Act to be read with SSA and OMDA is to control and guide and determine the tariff for aeronautical services. Non-aeronautical services, non-aeronautical charges and non- aeronautical tariffs like tariff of the hotel, rent of the shops, entry fee for the visitors at CSMIA, Mumbai, vehicle parking charges etc. which are referred in Schedule-6 appended with OMDA is in the control of the JVC. b. Looking to the formula of target revenue TRi = RBi x WACCi + OMi + Di + Ti

- Si, it is to be kept in mind that by addition of various components as stated hereinabove in the formula what is arrived at is the target revenue for aeronautical services. c. Once the amount of "S-factor" which is 30% of the gross revenue generated from Revenue Share Asset becomes part and parcel of the target revenue, it also having a color of aeronautical revenue and, therefore, tax- T ought to be calculated even upon amount equal to "S" factor.

389. In light of the impugned order for 3rd Control Period (F.Y 2019- 2024) which is at ANNEXURE A-1, it has been observed in paragraph 2.5.7 and 2.5.8 by AERA that in pursuance of the order passed by this Tribunal for Mumbai International Airport Ltd. (MIAL) dated 15th November, 2018 in AERA Appeal No. 04 of 2013, the matter was remanded upon the issue of "S-factor" for being considered as a part of aeronautical revenue and it has been decided by AERA that the amount equal to "S-factor" is not aeronautical revenue base for computation of aeronautical taxes for 1st Control Period. As per paragraph 8.5.1 of the Impugned Order for 3rd Control Period (ANNEXURE A-1), it has been decided by AERA that since "S-factor" does not find place in aeronautical services earning pertaining to Aeronautical Services should not include "S-factor"

> and addition of tax in target revenue upon an amount of S factor would result in undeserved enrichment to the airport operator effectively reducing the cross-subsidy benefit.

390. We do not agree with the aforesaid reasons by AERA mainly for the reason that because the target revenue as per the aforesaid formula is determined, based on aeronautical building block post cross subsidy of 30% revenue from Revenue Share Assets and, therefore, out of total target revenue, 30% has been recovered from the revenue generated by JVC from Revenue Share Assets. In view of this formula of Target Revenue, it is abundantly clear that in a recovery of Target Revenue for aeronautical services, "S-factor" is one of the mechanism of calculation in the formula of TR thus, the amount of "S-factor" partakes the character of aeronautical revenue and, therefore, once the part of aeronautical revenue has been recovered from 30% of revenue from evenue Share Assets, the effect of "S-factor" should also be given in "T" (i.e. corporate tax pertaining to aeronautical services)."

195. The aforesaid reasons given in paragraphs 382 to 390 of the judgment of this tribunal are applicable in the facts of the present case and for the said reasons also we hereby quash and set aside the decision of AERA in so far as it is decided by AERA that amount equal to S-factor is excluded for the purpose of calculation of "T" and accordingly, the findings recorded by AERA in the impugned tariff in this regard cannot be sustained in law and are liable to be set aside.

196. We hereby direct AERA to include S-factor as part of aeronautical revenue base while determining aeronautical taxes (T) in the target revenue formula. X. Corporate Cost Allocation - Legal expenses

197. AERA has decided to exclude legal cost of Rs.5.67 Crores from total corporate cost allocation expense. AERA has decided to exclude expenses comprising of allocated cost of legal teams of Adani Enterprises Limited (AEL) for Rs.1.99 Crores and for Adani Airports Holding Limited (AAHL) Rs.3.58 Crores.

198. This issue has already been decided by this Tribunal in AERA Appeal No.1 of 2023 and other connected AERA Appeals, judgment dated 11th September, 2025. This Tribunal has quashed and set aside the decision of AERA of partly allowing expenses towards in-house legal team of the appellant and has directed AERA to include corporate cost under the operating expenses on actual basis. Paragraph 271 and 272 of the aforesaid decision reads as under:

> "271. It ought to be kept in mind by AERA that the Cost of legal department employees cannot be treated as Legal Services, as there is a restriction on advocates from taking up other employments.
>
> Meaning thereby to, an advocate can either be a counselor an employee. In-House legal department employees cannot provide legal services of arguing a case in court of law. They can merely check the legal side of the documents for better understanding of the management who are not qualified in law.
>
> 272. In view of the aforesaid facts, reasons and judicial pronouncement, we hereby quash and set aside the decision of AERA of partly allowing expenses towards the in-house legal team of the appellant.
>
> We, hereby direct AERA to include Corporate Cost under the Operating Expenses on actual basis.
>
> Necessary True-up shall also be given in next Control Period. Hence, AERA is directed to allow the cost of legal employees under the Corporate Allocation Cost."

199. It is a fundamental principle of administrative and regulatory law that a statutory regulator must act with consistency and provide a level playing field to similarly situated entities. The Appellant has demonstrated, through a reference to Tariff Order No. 20/2024-25 and Consultation Paper No. 15/2020-21 for Delhi International Airport Limited (DIAL), which is at Annexure-A-1

Page 310, Vol. 2 to the memo of this appeal, that AERA has consistently allowed corporate cost allocation for legal services without such deductions for DIAL, which is a similarly situated entity operating under similar OMDA and SSA framework.

200. Moreover, MIAL and DIAL are governed by substantially similar concession frameworks (OMDA and SSA). In the absence of any distinguishing factor or a rational nexus for differential treatment, the Authority cannot adopt a "pick and choose" policy. Regulatory certainty is a virtue that ensures stakeholders can predict the admissibility of expenditures; arbitrary deviations undermine the very "economic and viable operation" that the Authority is mandated to protect under Section 13(1)(a)(iv) of the AERA Act.

201. Further schedule 5 of OMDA, at Annexure A-4 Page 767 to the memo of these appeals, lists Aeronautical Services at Serial No. 11 as follows:

> "11. any other services deemed to be necessary for the safe and efficient operation of the Airport."

202. The definition of 'OM' in Schedule 1 of the SSA, at Annexure A-5 to the memo of this appeal, is a functional open-ended definition, which incorporates 'efficient operation and maintenance cost pertaining to Aeronautical Services.' It requires application of a functional test to each cost category; it does not require express statutory or contractual authorisation for each specific cost head.

203. The Legal costs of the corporate company's legal function is proportionately allocated to MIAL, if it satisfies both limbs of the functional test:

> (a) When they are 'efficient', where the centralised corporate model is demonstrably more efficient than an equivalent decentralised structure; and
>
> (b) When they 'pertain to' aeronautical services, if the legal function manages the Appellant's obligations under the OMDA and SSA.

204. The Respondent No. 1's contention that legal expenses lack nexus with aeronautical services is untenable. The functions performed by corporate legal personnel, are akin to strategic advice on regulatory compliance, coordination of litigation affecting airport operations, formulation of policies governing airport management and internal audit of statutory compliance have direct and proximate nexus with the Appellant's ability to provide aeronautical services efficiently and in accordance with law. That these services are performed at a corporate location rather than at the airport site is irrelevant in an era of centralized corporate functions.

205. AERA has acted in an inconsistent and arbitrary manner in disallowing the legal corporate costs to the Appellant, particularly when, the Consultation Paper no. 15/2020-21 pertaining to DIAL, similar corporate cost allocation was allowed without any deductions on account of legal expenses. The failure of AERA to maintain consistency in its regulatory approach, without providing any cogent justifications for such deviation, renders the impugned decision discriminatory and

violative of settled principles of regulatory certainty.

206. It is a well-established principle that the consistency in decision-making is an essential facet of regulatory fairness and deviation from an established approach must be supported by sound reasoning. In absence of any distinguishing factors between the case of DIAL and the present Appellant, the differential treatment meted out my AERA is arbitrary and unsustainable in law.

207. AERA has failed to appreciate that the Corporate Legal Department performs functions analogous to those carried out by in-house legal personnel of the Appellant. This centralised corporate legal structure enables the Appellant to maintain a lean and efficient legal team at the airport level, while relying on the expertise and resources of the Corporate Legal Department for a substantial portion of legal work, including litigation, advisory, regulatory compliance and contract management.

208. The disallowance of such costs fails to recognise the operational and economic efficiency achieved through this structure. If the Appellant is denied reimbursement of expenses incurred towards the Corporate Legal Department it would be compelled to duplicate such functions at the airport level by hiring additional personnel thereby leading to an unnecessary increase in overall costs, which is contrary to the very objective of efficient tariff regulation.

209. The Appellant had placed on record detailed submissions explaining the distinct roles, responsibilities and functions of legal personnel at both the airport level and corporate level. These submissions clearly demonstrate that there is no duplication or redundancy, but, rather a complimentary division of functions designed to ensure efficiency and specialisation. However, AERA has failed to appreciate these submissions in any meaningful manner and has instead proceeded to disallow the costs on mere assumptions of overlap without any substantive analysis or evidence.

210. It ought to be noted that such an approach is contrary to principles of reasoned decision-making, as AERA is obliged to consider the material placed before it and provide clear and cogent reasons for rejecting the same. The absence of such reasoning renders the decision, arbitrary and hence is liable to be set aside.

211. In the OMDA, there is no provision that restricts the inclusion of legal expenses as part of such allocation. In the absence of any contractual prohibition, the disallowance of legal corporate costs is contrary to the contractual framework governing the relationship between the parties.

212. In view of the above, it is held that disallowance of corporate legal cost is arbitrary, unsupported by reasoning, inconsistent with past regulatory practice and contrary to both the contractual framework in principles of effective cost allocation. Accordingly, AERA ought to allow the entire corporate cost allocation, including legal expenses as claimed by the Appellant.

213. Furthermore, the Respondent No. 1 reliance on "recent concession agreements entered by AAI" to justify exclusion of legal expenses is legally untenable. The Appellant's rights and obligations are

governed by the OMDA and SSA executed in 2006, which contain no exclusion for legal expenses.

214. In the backdrop of the above, we believe that AERA was not entitled to disallow the entire corporate legal cost allocation without engaging with the Appellant's evidence on the roles and responsibilities of the corporate legal team, without examining the allocation methodology, and without identifying any specific error in the Appellant's figures.

215. In view of the aforesaid facts and reasons, we hereby direct AERA to include corporate cost under the operating expenses on actual basis.

XI. Soft Cost for 4th Control Period

216. The Cost claimed towards technical services, project management consultancy (PMC), preliminary expenses and pre-operative contingencies, statutory provisions, labour cess, site projections and preparations, insurance, etc., which is conjointly known as soft cost.

217. AERA has decided to allow soft cost at a uniform rate of 8% of total capital expenditure as against 16% claimed by the appellant for 4th Control Period.

218. As per Central Public Works Department (CPWD), Norms, 2022 (Annexure A-23), dated 13th July, 2022, various costs are to be considered while preparing preliminary estimates and include the following components:

I. Planning Consultancy 4% and Project Management Consultancy 5%".

II. Other Technical Services like Preliminary Sketches, Detailed Drawings, Preliminary Estimates, Structural Design, Execution, Audit & Account etc. is ranging between 7% to 24% depending upon size of the project.

III. Contingency cost is 3%.
IV. ESI & EPF ranging between 0.85% to 4.2%.

219. Thus, considering CPWD Norms, 2022 soft cost would range between 15% to 20%.

220. It has also been pointed out by Learned Senior Advocate Mr. Sajan Poovayya on behalf of the appellant that Airports Comparative Research Programme, a study which is conducted by Transport Research Board sponsored by (US Government Federal Aviation Administration), the soft cost is ranging between 10% to 30% even in developed countries.

221. Therefore, AERA ought to have provided for true-up of all the soft costs based on actual incurrence as per calculation as per Section 13(1)(a)(i) of AERA Act, 2008.

> 222. AERA has failed to appreciate that as per the Tariff Order No.27/2023-24 dated 7th December, 2023 issued for MOPA, Goa Airport, AERA had approved soft cost, design consultancy, PMC expenses, pre-operative expenses and contingencies at 13% to 16%. AERA ought to have maintained consistency in their approach.
>
> 223. AERA has sought to distinguish the allocation of Goa Airport at Mopa on the ground that MOPA is a greenfield airport.

We do not accept that this distinction is a ground for departing from the principle of actual-cost-based allowance. The greenfield /brownfield distinction may affect the quantum of soft costs ultimately incurred at the verification and true-up stage. It does not justify an a priori blanket cap.

224. It must be kept in mind that a brownfield airport undergoing simultaneous major CAPEX across terminal construction, runway expansion, airside works, and technology upgrades will incur significant soft costs including PMC, design consultancy, pre- operative expenses, independent engineer fees, and statutory expenses, all of which are legitimate operational expenditures.

225. Moreover, looking to our previous decision in AERA Appeal No.1 of 2023 and other connected appeals, judgment dated 11th September, 2025, which reads as under:

> "162. In view of the aforesaid facts and reasons, we hereby quash and set aside the decision of AERA in the impugned order (Annexure A-1) so far as it relates to Soft Cost and we hereby direct AERA to allow actual Soft Cost incurred by the Appellant. Putting an artificial cap upon Soft Cost is not contemplated under the applicable laws. Therefore, AERA shall allow actual Soft Cost incurred by the appellant and necessary true up shall be given for the previous control periods accordingly."

226. We see no reason to deviate from our precedent. The Authority's function is to "scrutinize the efficiency" of expenditure, not to impose arbitrary ceilings that may force an operator to compromise on the quality of technical supervision or project management. An efficient airport requires high-quality "soft" infrastructure planning to ensure the "hard" infrastructure is delivered safely and effectively.

227. The respondent No.1 has also contended that the appellant's proposal of a flat 16% soft cost on total capital expenditure is inherently illogical because soft costs do not scale proportionately with capital outlay. There is merit in the observation that a uniform percentage across all projects may not reflect the actual effort required for each category of work. However, the solution to this concern is not to impose a different uniform percentage cap of 8%, but to allow soft costs on the basis of actual incurrence, with a true-up mechanism.

228. The true-up mechanism is precisely designed to address the risk of over-estimation. If the appellant ultimately incurs soft costs lower than the estimated amount, the excess will be trued up in the next control period, with carrying cost, and no burden will be placed on the users. Conversely,

if the appellant incurs higher soft costs than the capped amount, the artificial cap would prevent the recovery of legitimate expenditure

229. The Soft Cost claimed by the Appellant deserves to be allowed, as the issue is no longer res integra in view of judgment dated 11-09- 2025 delivered by this tribunal in AA no. 1 of 2023 and in connected appeals, wherein it has been expressly held that AERA shall allow the actual Soft Cost incurred by the Airport Operator and that introducing an artificial cap on Soft Cost is not contemplated under the applicable law. Once this Tribunal has already laid down that actual Soft Cost is to be allowed and necessary true-up is to be granted accordingly, AERA could not have mechanically imposed a uniform cap of 8% of the total capital expenditure in derogation of the binding findings of this Tribunal.

230. The decision of AERA to restrict the Soft Cost to 8% is arbitrary and unsupported by any cogent material, particularly when the material placed on record by the Appellant demonstrates that the Soft Cost claimed is based on recognised norms, industry practice and rational estimation.

231. AERA has failed to appreciate that under the CPWD Norms, 2022, the various components ordinarily forming part of Soft Cost, including:

i. planning consultancy,

ii. project management consultancy,

iii. technical services,

iv. contingencies and,

v. statutory employee-related costs,

232. Further, the above cumulatively indicate that Soft Costs would reasonably range between 15% to 20% of the project cost. In such circumstances, the Appellant's claim of 16% cannot be said to be unreasonably excessive or abnormal. On the contrary, it is well within the range contemplated by the established domestic norms.

233. AERA has further failed to consider internationally accepted benchmarks placed on record by the Appellant. The study titled as "Airport Capital Improvements: A Business Planning and Decision-Making Approach" conducted by the Airport Co- operative Research Program under the Transport Research Board, sponsored by the Federal Aviation Administration of the United States Government, clearly states that Soft Costs typically range between 10% to 30% of the total project cost and include:

> i. Design fees, ii. Permitting fees, iii. Utilities, iv. Inspection-related expenses, v. Land acquisition-related expenses, vi. Procurement costs, vii. Project administration and management costs.

234. This study is a reputable and industry-recognised source dealing specifically with airport infrastructure projects and it clearly shows that the Soft Cost claimed by the Appellant falls within the normal and accepted range for such projects.

235. The impugned approach of AERA is inconsistent with its own recent regulatory practice. In Tariff order no. 27/2023-24 dated 07-12- 2023 issued in respect of Manohar International Airport, Goa, AERA itself approved Soft Cost components such as:

> i. Design consultancy, ii. PMC expenses, iii. Pre-operative expenses, and iv. Contingencies ranging from 13% to 16%.

236. The approval of such Soft Cost percentages in the case of another airport project demonstrates that AERA has itself recognised that Soft Costs at such levels are reasonable ad permissible in airport infrastructure projects. In absence of any intelligible differentia or project-specific reasons justifying a departure, AERA could not have adopted a drastically lower figure at 8% for the Appellant. Such inconsistent treatment offends the principle of regulatory certainty and renders the impugned decision arbitrary.

237. It is also important to note that the Appellant has not sought allowance of any inflated or hypothetical figure, but, has based its claims on rational estimates derived from accepted practice, technical norms, and comparable airport orders. The proper regulatory course in such cases is to allow the Soft Cost as reasonable estimated for tariff purposes, subject to true-up on the basis of actual incurrence. Such an approach adequately protects consumer interest, while at the same time ensuring that the Airport Operator is not denied recovery of legitimate project-related expenditure at the projection stage.

238. In these circumstances, we hereby allow the Soft Cost claimed by the Appellant as the same is supported by the binding judgment of this Tribunal, and is also consistent with CPWD Norms and is also falling within the internationally recognised benchmarks for the airport projects and is also in line with AERA's own treatment of comparable airport projects such as Goa airport.

239. In view of the aforesaid facts and reasons, the restrictions of Soft Cost to 8% as imposed by AERA is hereby quashed and set aside. We hereby hold that Appellant is entitled to allowance of Soft Cost as claimed by the Appellant, subject to true-up on the actual incurrence basis.

240. We hereby quash and set aside the decision of AERA in so far as it relates to Soft Cost, and we hereby direct AERA to allow Soft Cost incurred by the appellant. Putting artificial cap upon Soft Cost is not contemplated under the applicable laws and therefore, AERA shall allow actual Soft Cost incurred by the appellant.

XII. Fixation of minimum amount of non-aeronautical revenue for 4th Control Period

241. Looking to the impugned tariff order passed by AERA dated 7th May, 2025 for 4th Control Period (01.04.2024 to 31.03.2029) which is at Annexure A-1, AERA had decided to consider

non-aeronautical revenue at Rs.12,504.15 Crores (as against Rs.11,382.29 Crores projected by the Appellant). It has also been decided by AERA that true-up shall be given for the non-aeronautical revenue in the next Control Period (2029-2034) only if the actual non- aeronautical revenue exceeds Rs.12,504.15 Crores. AERA has decided in the impugned order (Annexure A-1) that non-aeronautical revenue shall be minimum of Rs.12,504.15 Crores. This fixation of minimum amount of non- aeronautical revenue is under challenge.

242. It ought to have been kept in mind by AERA that AERA has no power, jurisdiction and authority to fix minimum non- aeronautical revenue at Rs.12,504.15 Crores and AERA cannot decide to set-off only if the actual non-aeronautical revenue exceeds Rs.12,504.15 Crores. The revenue cannot be presumed by AERA. Revenue should be considered on actual basis, whether it is aeronautical or non-aeronautical, and therefore, even if the non-aeronautical revenue is lesser than Rs.12,504.15 Crores, set off must be given by AERA.

243. Moreover, there is no provision under AERA Act whereby AERA can fix minimum amount of non-aeronautical revenue, nor there is any provision under OMDA and SSA (Annexure A-4 and Annexure A-5 respectively) which permits AERA to fix minimum amount of non-aeronautical revenue.

244. It appears that AERA had given detailed calculation of minimum non-aeronautical revenue for the 4th Control period (1.4.2024 to 31.3.2029) in Table 343 and Table 344 of the impugned order in paragraphs number 10.5.8 and 10.5.9 which reads as under:

> Table 343: Non-Aeronautical Revenues as decided by the Authority for the Fourth Control Period (Rs. in crores) Particular Ref FY25 FY26 FY27 FY28 FY29 Total s Retail Licenses Revenue F&B 157.05 159.84 170.66 186.81 216.52 890.89 Flight 60.22 53.14 52.26 57.83 70.35 293.80 Kitchen Retail 155.95 147.99 147.61 161.35 189.89 802.80 Concession Foreign 94.16 74.26 67.85 72.02 76.97 385.25 Exchange, Banks & ATM IT & 146.35 126.97 122.61 133.20 159.25 688.38 Communica tion Car Rental 27.38 23.76 22.94 24.92 29.80 128.80 & Hotel Reservation Duty Free 377.00 298.80 277.57 296.31 316.32 1,566.00 Shops Advertising 235.82 204.75 197.84 214.93 256.88 1,110.23 Income Car Parking 63.40 57.62 58.30 66.35 83.10 328.78 / Ground Transport Ground 150.06 132.06 126.33 135.82 161.06 705.33 Handling Others 58.32 50.60 48.86 53.08 63.46 274.32 Total A 1,525. 1,329. 1,292. 1,402. 1,623. 7,174.5 Retail 71 77 84 62 63 7 Licences Revenue Rent & Services Revenue Land Rent 199.24 214.18 230.25 247.52 266.08 1,157.27 & Lease Hanger 35.49 19.07 - - - 54.56 Rent Terminal 116.93 113.95 109.86 118.10 140.36 599.19 Building Rent Cute 14.16 11.93 10.93 11.26 12.79 61.07 Counter Charges Lounges 161.65 148.78 149.56 163.42 192.30 815.70 Cargo 37.71 40.54 43.58 46.85 50.36 219.04 Building Rent & Other Building Rent Total Rent B 565.1 548.4 544.1 587.1 661.8 2,906.8 & Services 7 6 8 4 9 3 Revenue Cargo Revenue Domestic 32.46 32.78 33.80 36.55 41.79 177.38 Cargo Perishable 39.25 36.19 28.43 30.00 31.65 165.52 Cargo Courier 21.67 10.33 9.31 9.78 10.27 61.36 Revenue Internation 345.68 332.78 289.88 307.96 327.20 1,603.49 al Cargo Revenue Cargo 32.93 34.57 36.30 38.12 40.02 181.95

Handling Revenue Total C 471.9 446.6 397.7 422.4 450.9 2,189.6 Cargo 9 5 3 0 3 9 Revenue Other D 42.75 44.55 46.51 48.55 50.69 233.05 Income Total E= 2,605. 2,369. 2,281. 2,460. 2,787. 12,504.

Non-Aeronautical Revenue	A+B+C +D	62	42	25	72	13	15

Table 344: Non-Aeronautical Revenue and 'S'-Factor as decided by the Authority for the Fourth Control Period (Rs. in crores) S-Factor FY25 FY26 FY27 FY28 FY29 Total Calculation Total Non- 2,605.62 2,369.42 2,281.25 2,460.72 2,787.13 12,504.15 Aeronautical Revenue (A+B+C) (Refer Table

343) Cross 781.69 710.83 684.38 738.22 836.14 3,751.24 Subsidy (S-factor @ 30%) from Revenue Share Assets

245. The aforesaid calculation given by AERA cannot be a minimum amount of revenue as a non-aeronautical revenue, the present appellant has projected non-aeronautical revenue for 4th Control Period at Rs.11,382 Crores. AERA cannot presume the income of the present appellant. Actual income ought to have been appreciated at the time of set up or true up and, therefore, the decision of AERA that true-up of the non-

aeronautical revenues will be given in next Control Period only if the actual non-aeronautical revenue exceeds Rs.12,504.15 Crores as notional adopted by Respondent No.1. This is not permissible under the AERA Act, 2008. True-up must be given by AERA on the basis of actual non-aeronautical revenue collected by the appellant during 4th Control Period. We, therefore, quash and set aside the decision of AERA of fixing the minimum amount of non-aeronautical revenues at Rs.12,504.15 Crores. AERA shall consider Rs.11,382 Crores as projected by appellant as a tentative non-aeronautical revenue and true-up shall be given by AERA in the next Control Period i.e. in 5th Control Period (2029-2034) on actual amount of non- aeronautical revenue collected by the appellant during 4th Control Period. The verification shall be made by AERA of actual non-aeronautical revenue collected by appellant during 4th Control Period which shall be on the basis of audited books of accounts and balance sheets by the auditor.

246. The present appellant has projected non-aeronautical revenue for the 4th Control Period at Rs.11,382.29 Crores. This has been highlighted in Table no. 333 in Paragraph Number 10.1.4 of the impugned order dated 07.05.2025 (Annexure A-1). For the ready reference, Table no. 333 which is non- aeronautical revenue projected by appellant, reads as under:

Table 333: Non-Aeronautical Revenue/Revenue Share Assets Projections submitted by MIAL for Fourth Control Period:

(Rs. in crores) Particulars Ref FY25 FY26 FY27 FY28 FY29 Total Retail Licenses Revenue F&B 151.45 155.04 163.80 176.99 201.97 849.25 Flight 57.65 51.17 49.38 53.63 64.02 275.85 Kitchen Retail 149.65 142.58 139.90 150.29 173.52 755.94 Concession Foreign 94.16 78.46 71.68 76.08 81.30 401.68 Exchange, Banks & ATM IT & 146.35 130.06 125.60 136.44 163.13 701.58 Communica tion Car Rental 26.73 23.76 22.94 24.92 29.80 128.15 & Hotel Reservation Duty Free 348.01 286.05 260.41 272.32 284.84 1,451.63 Shops Advertising 230.23 204.75 197.84 214.93 256.88 1,104.63 Income Car Parking 61.89 57.62 58.30 66.35 83.10 327.26 / Ground Transport Ground 144.84 121.04 110.91 114.22 129.74 620.75 Handling Others 27.17 22.99 21.15 21.88 24.91 118.10 Total A 1,438. 1,273. 1,221. 1,308. 1,493. 6,734.8 Retail 13 54 92 06 23 8 Licences Revenue Rent & Services Revenue Land Rent & 199.24 214.18 230.25 247.52 266.08 1,157.27 Lease Hanger 35.49 19.07 - - - 54.56 Rent Terminal 116.93 113.95 109.86 118.10 155.42 614.26 Building Rent Cute 14.28 11.93 10.93 11.26 12.79 61.19 Counter Charges Lounges 79.80 77.67 79.55 85.91 98.02 420.95 Cargo 37.71 40.54 43.58 46.85 50.36 219.04 Building Rent & Other Building Rent Total Rent B 483.44 477.34 474.17 509.64 582.67 2,527.2 Revenue Cargo Revenue Domestic 33.26 32.78 33.80 36.55 41.79 178.18 Cargo Perishable 35.83 30.49 28.43 30.00 31.65 156.40 Cargo Courier 19.51 10.33 9.31 9.78 10.27 59.20 Revenue Internationa 323.52 295.87 289.88 307.96 327.20 1,544.43 l Cargo Revenue Cargo 32.93 34.57 36.30 38.12 40.02 181.94 Handling Revenue Total C 445.05 404.04 397.73 422.40 450.93 2,120.1 Revenue Total Non- D= 2,366. 2,154. 2,093. 2,240. 2,526. 11,382.

Aeronautic al Revenue	A+B +C	61	93	83	10	82	29

247. It has been held by this Tribunal in AERA Appeal No. 1 of 2023 and connected appeals in case of Mangaluru International Airport Limited Vs. AERA judgment dated 11.09.2025 in para 204 which reads as under: "204. Thus, in view of the aforesaid facts, reasons and judicial pronouncements, we hereby quash and set aside the decision of AERA that non-aeronautical revenue projected by the appellant is lower than actual NAR earned by Respondent No.2-AAI in Pre COD period i.e. the period running from FY 2016-21 till COD i.e. 31.10.2020. We also hereby quash and set aside the decision of AERA at Annexure A-1 for non-aeronautical revenue wherein AERA has held that non-aeronautical revenue of FY 2019-20 will be assumed also for FY 2022- 23 as traffic is expected to reach Pre-COVID period. We also hereby quash and set aside AERA's decision to increase non-aeronautical revenue by 5% Year-on-Year basis for remaining tariff for First Control Period. We also quash and set aside the decision of AERA of additional increase of 5% to non-aeronautical revenue for FY 2023-24 on account of expansion of existing terminal building area in FY 2022-23 and we hereby direct AERA to take into consideration the actual

> non-aeronautical revenue received by airport operator from Master Service Provider in pursuance of a contract between airport operator and Master Service Provider which is Adani Airport Holding Limited (AAHL), and necessary true up shall be carried out by AERA."

248. AERA has no statutory power to prescribe a minimum Non-

Aeronautical Revenue. Section 13(1) of the AERA Act confers jurisdiction upon AERA to determine tariff for aeronautical services. Non-Aeronautical Revenue enters the tariff determination exclusively for the limited purpose of computing the cross-subsidy 'S' Factor under the hybrid-till mechanism in Schedule 1 of the SSA. Clause 12.2 of the OMDA expressly grants the Appellant the freedom to fix charges for non-aeronautical services subject only to applicable law.

249. It is apparent that there is no provision in the AERA Act, OMDA, or SSA authorising AERA to prescribe a minimum revenue floor for non-aeronautical activities. The imposition of a minimum of Rs. 12,504.15 Crores is, in substance, an exercise of jurisdiction over non-aeronautical pricing that Parliament has not vested in AERA.

250. The definition of 'S' Factor in Schedule 1 of the SSA i.e. '30% of the gross revenue generated by the JVC from the Revenue Share Assets. The costs in relation to such revenue shall not be included while calculating Aeronautical Charges"

> uses the operative word 'generated', meaning revenue actually earned during the control period.

251. There is no provision in the SSA for a 'minimum' or 'floor' for the S-Factor computation. The phrase 'generated' admits of no notional or hypothetical minimum. AERA's substitution of a notional minimum for actual generation is a unilateral rewriting of an agreed contractual formula.

252. It ought to be kept in mind that Non-Aeronautical Revenue at a major international airport is an inherently variable commercial quantity driven by passenger volumes, consumer spending patterns, the composition of airline services, and global macroeconomic conditions, none of which are within the control of the Airport Operator.

253. If MIAL is required to achieve a minimum of Rs. 12,504.15 Crores, it can only do so by setting non-aeronautical service charges at levels sufficient to generate that minimum. This is precisely the form of non-aeronautical price regulation that Parliament chose not to vest in AERA. The regulatory boundary between aeronautical tariff determination (within AERA's jurisdiction) and non-aeronautical pricing (outside AERA's jurisdiction) must be maintained.

254. In view of the aforesaid decision, minimum amount of non-

aeronautical revenue cannot be fixed by AERA, no such powers have been vested in AERA under the AERA Act, 2008 nor there is any such provision for fixing minimum amount of non-aeronautical

revenues under OMDA and SSA. AERA, while passing the impugned order (Annexure A-1) and by fixing the minimum amount of non-aeronautical revenue has exceeded its jurisdiction and we therefore, quash and set aside the decision of AERA whereby AERA has fixed the minimum amount of non-aeronautical revenues at Rs.12,504.15 Crores. True-up must be given by AERA of actual non-aeronautical revenues collected by appellant during 4th Control Period.

255. It has been held by this Tribunal in AERA Appeal No.1 of 2024 in case of GMR Goa International Airport Limited Vs. AERA judgment dated 11.09.2025, in paragraphs 221, 223, 227, 228, 229 and 230 which reads as under:

> "221. These types of observations are not required for determination of minimum non-aeronautical revenue otherwise there will be no end for AERA for micro planning of the non-aeronautical revenue. AERA cannot decide that there must be a minimum particular amount of non-aeronautical revenue, to be earned by an Airport. ...
>
> 223. It ought to be kept in mind by AERA that such type of arbitrary or speculative determination of minimum threshold of non-aeronautical revenue, below which, it will be forced to bear the burden of under recovery, by the airport operator, will have an adverse effect on economic and viable operations of the airport. ...
>
> 227. In view of the aforesaid calculation, determination of tariff shall be done by AERA which is subject to true-up in Second Control Period based on actual non-aeronautical revenue. The concept of minimum threshold of non-aeronautical revenue in the impugned order dated 07-12-2023 at Annexure A-1 to the memo of this appeal is hereby quashed and set aside.
>
> 228. For the aforesaid reasons and looking to the provisions of the AERA Act, 2008 to be read with AERA Tariff Guidelines, 2011 to be read with Concession Agreement (Annexure A-3), we hereby quash and set aside decision of AERA for determination of Rs.509.47 Crores for minimum threshold for non-aeronautical revenue for First Control Period.
>
> 229. We also quash and set aside the decision of AERA to undertake true-up based on actual in Second Control Period only if the revenue exceeds the minimum threshold.
>
> 230. We hereby direct AERA the true-up exercise for the next Control Period shall be based upon actual non- aeronautical revenue irrespective of the fact that whether it exceeds or not, the minimum threshold of Rs.509.47 Crores, as fixed by AERA towards non-aeronautical revenue."

256. In view of the aforesaid decision, AERA cannot decide the minimum threshold of non-aeronautical revenues to be earned by the Airport Operator-Appellant.

257. If the minimum threshold for non-aeronautical revenues at Rs.12,504.15 Crores is allowed then it will tantamount to that AERA is in fact, indirectly regulating the pricing of non- aeronautical services which is contrary to the contractual framework envisaged under OMDA, SSA and AERA Act, 2008.

258. As per Clause 12.2 of OMDA, appellant shall be free to fix the charges for non-aeronautical services. For ready reference, Clause 12.2 of OMDA (ANNEXURE A-4) reads as under:

> "12.2 Subject to Applicable Law, the JVC shall be free to fix the charges for Non-Aeronautical Services, subject to the provisions of the existing contracts and other agreements."

259. It ought to be kept in mind by AERA that AERA may fix the estimated amount of non-aeronautical revenues but true-up must be given by AERA in the next Control Period on the basis of collection of actual non-aeronautical revenue. Here, AERA has fixed the minimum threshold of non-aeronautical revenue at Rs.12,504.15 Crores and, therefore, we are quashing and setting aside this decision. AERA could have fixed any figure as an estimated non-aeronautical revenue based upon data provided or collected, but, AERA has no power, jurisdiction and authority to put a condition that true- up shall be given only if the actual non-aeronautical revenue exceeds the minimum amount of non-aeronautical revenue estimated by AERA. This is not permissible under the AERA Act, 2008 to be read with provisions of OMDA and SSA. It is one thing to estimate the non-aeronautical revenues and it is altogether another thing to fix the minimum threshold of non-aeronautical revenues. We hereby quash and set aside the fixation of minimum amount of non-aeronautical revenue by AERA.

260. The distinction between a provisional estimate and a mandatory minimum is fundamental. AERA may, for present tariff-setting purposes, adopt an estimated figure on the basis of available material. But once the tariff order provides that true-up shall be undertaken only if actual revenue exceeds that estimate, the estimate ceases to be provisional and operates as an irrebuttable floor. Such a one-sided mechanism is inconsistent with the concept of true-up itself, which is intended to correct both over-estimation and under- estimation on the basis of actuals.

261. The Respondent has contended that the Appellant projects only the amount receivable from the Master Service Provider and not the gross revenue generated from Revenue Share Assets, and that such an approach may understate the base for computation of the 'S' Factor. T

262. The approach adopted by AERA in notionally considering non-aeronautical revenue at INR 12,504.15 Crores as against INR 11,382.29 Crores projected by the Appellant and in deciding to undertake true-up only if actual revenue exceeds such notional figure, is contrary to the statutory framework and cannot be sustained.

263. Section 13(1)(a)(v) of the AERA Act, 2008 requires AERA, while determining tariff to take into consideration the "revenue received from services other than the aeronautical services", which necessarily means the revenue actually received and not a hypothetical or assumed amount. This

Tribunal in GMR Goa International Airport Ltd. Vs AERA decided on 11.09.2025, has expressly held that whenever actual figures are available for any expenditure or revenue, AERA must accept the actual figures instead of hypothetical figures and further held that the AERA cannot prescribe a minimum threshold of non-aeronautical revenue and then restrict true-up only to cases where actuals exceed that threshold.

264. The Tribunal has further made it clear that AERA may scrutinize projections, benchmark them or assess whether opportunities are being under-exploited for the purpose of forecasting, but it must ultimately consider the revenues "received" in accordance with Section 13(1)(a)(v) of the AERA Act, 2008.

265. In view of the aforesaid judgment dated 11.09.2025 in AA no.1 of 2024 of GMR Goa International Airport Ltd Vs AERA, it has been specifically held that benchmarking may assist projection, but, cannot be converted into mandatory revenue floor that the Airport Operator must achieve the same. On that basis, this Tribunal has quashed and set aside AERA's fixation of a minimum non-aeronautical revenue threshold of INR 509.47 Crores for Goa airport and it was directed by this Tribunal that the next Control Period true-up must be based on actual non-aeronautical revenue irrespective of whether it exceeds the threshold.

266. The aforesaid reasoning given in AA no. 1 of 2024 judgment dated 11.09.2025 squarely applies here, because AERA's present methodology likewise replaces actual or projected contractual revenue with a higher notional amount and allows correction only in one direction.

267. The impugned methodology innovated by AERA is also inconsistent with the contractual and regulatory framework governing revenue-share assets, where the governing agreements contemplate sharing of actual revenue generated from such assets and do not prescribe any minimum guaranteed threshold of non-aeronautical revenue for tariff purposes, AERA cannot read such a floor into the arrangement through the tariff process.

268. If this newly innovated methodology of AERA is allowed by this Tribunal it will tantamount to rewriting of the contracting between the parties and will also tantamount to superimposing a contractual standard which does not exist, neither in SSA nor in OMDA.

269. It ought to be kept in mind by AERA that neither the AERA Act, nor the Tariff Guidelines nor the Concession Agreement confers any power to AERA to determine a minimum threshold of non-aeronautical revenue or to make true-up, conditional upon actuals crossing such threshold.

270. The one-sided true-up mechanism adopted by AERA is arbitrary because it protects against underestimation only where non-aeronautical revenue is higher than AERA's notional figure, but, gives no corresponding relief where actual revenue is lower. A true-up mechanism, by its very nature, is intended to correct both, over-recovery and under-recovery on the basis of actuals.

271. This Tribunal has recognised that "truing-up projections based on actuals" is an essential regulatory practice and has also noted that such methodology has generally been followed by AERA

for airports, except where it's sought to impose the impermissible threshold in Goa. AERA's present approach departs from that settled regulatory discipline and therefore, it fails the test of consistency and fairness.

272. The newly innovated approach followed by AERA also undermines the requirement of economic and viable airport operations under Section 13(1)(a)(iv) of the AERA Act, 2008. If the Airport Operator is compelled to absolve the short fall whenever non-aeronautical revenue falls below AERA's assumed figures, the tariff determination ceases to be cost- reflective and becomes distorted by a speculative revenue assumption.

273. Speculative determination of a minimum non-aeronautical revenue has an adverse effect on economic and viable operation of airport. Herein the facts of the present case, the impugned tariff order decided by AERA artificially inflates non-aeronautical revenue for computation of the "S" Factor and thereby depresses allowable aeronautical tariff on the basis of revenue that may never actually be realised.

274. The true and correct legal position under the AERA Act, 2008, is that AERA may use projections at the tariff-setting stage, but, the final true-up must be carried out on the basis of actual non-aeronautical revenue received during the Control Period, without imposing any floor, minimum threshold or one-sided condition that the true-up will be available only if actuals exceed a notional benchmark.

275. This interpretation of the power of AERA is consistent with Section 13(1)(a)(v) of the AERA Act, 2008 and therefore AERA cannot decide that there must be a minimum amount of non-aeronautical revenue which must be earned by the Airport Operator.

276. Accordingly, the non-aeronautical revenue for the Fourth Control Period ought to be considered and true-up on "actual basis" and the notional adoption of INR 12,504.15 Crores together with the condition that true-up shall occur only if actual revenue exceeds that figure, is liable to be quashed and set aside. We hereby hold that the true- up exercise for the next Control Period shall be done on the basis of actual non-aeronautical revenue received irrespective of the fact whether such actuals are higher or lower than the projections/figures adopted by AERA.

277. The approach adopted by AERA in notionally fixing non-

aeronautical revenue and restricting true-up only in cases where actual revenue exceeds such notional figure is contrary to the settled principles laid down by Hon'ble the Supreme Court of India governing regulatory tariff determination. Hon'ble the Supreme Court of India has consistently held that tariff determination must be cost- reflective and based on actual economic realities and that regulatory authorities cannot artificially suppress or distort revenue or cost-components through notional assumptions.

278. In BSES Rajdhani Power Ltd Vs. Union of India reported in 2025 SCC OnLine SC 1637/2025 INSC 937, it has been observed by Hon'ble the Supreme Court of India that tariffs must be cost

reflective as first principle and that under-recovery of legitimate costs cannot be perpetuated through regulatory mechanisms, as such practices distort financial viability and ultimately burden stakeholders, reference ought to be made to Paragraph No. 43 & 71.(i) of the judgement.

279. Applying these principles, the notional adoption of non-

aeronautical revenue by AERA, coupled with a one-sided true-up mechanism that operates only when actual revenue exceeds the assumed figure, is manifestly arbitrary. Such an approach has no rational nexus with the statutory requirement under Section 13 of the AERA Act, 2008, which mandates consideration of "revenue received" and instead substitutes actual revenue with a hypothetical construct. The regulatory authority- AERA must act consistently, transparently and in alignment with statutory objectives and cannot impose artificial financial constructs that distort tariff determination.

280. AERA must strike a balance between consumer interest and sectoral sustainability and suppression of legitimate revenue or cost elements in the name of consumer protection is neither sustainable nor legally permissible. By inflicting non-aeronautical revenue on a notional basis, AERA has effectively reduced allowable aeronautical revenue and thereby has created an artificial revenue gap which the Airport Operator is forced to absorb.

281. This is precisely the kind of distortion that is deprecated as it is inconsistent with cost-reflective tariff principles.

282. In view of the aforesaid facts and reasons, regulatory determination must be anchored in actual revenue realisation and not hypothetical projections. Any mechanism which allows correction only in one direction (i.e. when actuals exceed projections but not vice versa) is inherently arbitrary and unjustified.

283. There is substance in the submission to the limited extent that the true-up exercise must ultimately proceed on the basis of actual gross non-aeronautical revenue generated, and not on revenue net of costs or contractor margins. However, that contention does not justify the fixation of a minimum threshold by AERA. The proper regulatory remedy for any apprehended understatement is verification of actual gross revenue at the stage of true-up, and not imposition of a restrictive deemed floor in advance.

284. We therefore quash and set aside the methodology adopted by AERA in the impugned order as the same is contrary to law.

285. Accordingly, while AERA may adopt the Appellant's projected figure of Rs.11,382.29 Crores as the provisional non-aeronautical revenue for the Fourth Control Period, the true-up in the Fifth Control Period shall be carried out on the basis of actual gross non- aeronautical revenue generated from Revenue Share Assets, which are verified from audited accounts, irrespective of whether such actual revenue is higher or lower than the provisional estimate. To that extent, the impugned condition imposed by AERA is contrary to law and is set aside.

XIII. Cost of Equity for Fourth Control Period

286. By the impugned order dated 07.05.2025 (Annexure A-1), AERA has determined the Cost of Equity for the present appellant for 4th Control Period at 15.13% as against 18.30% proposed by the appellant.

287. As per AERA Guidelines, 2011, especially as per Clause 5.1.3, the Cost of Equity should be decided on the basis of Capital Asset Pricing Model (CAPM), for each Airport Operator. For ready reference, Clause 5.1.3 of AERA Guidelines, 2011 reads as under:

> "5.1.3 Cost of Equity Cost of Equity - The Authority shall estimate the cost of equity, for a Control Period, by using the Capital Asset Pricing Model (CAPM) for each Airport Operator, subject to the consideration of such factors as the Authority may deem fit."

288. Looking to the impugned order (Annexure A-1) and AERA Guidelines, 2011, it appears that AERA has not estimated Cost of Equity by using CAPM for MIAL.

289. This Appellant has submitted that PwC was engaged by Ahmedabad International Ltd. to carry out this study on evaluating the applicable cost of equity. This study was carried out in March 2021. It is further submitted that Pricewaterhouse Cooper Service Ltd.'s Report (PwC Report) wherein all the data has been supplied by Appellant through the aforesaid report as required under Clause A5.5.2.3 of AERA Guidelines, 2011 especially about-

i. the risk-free rate,

ii. ii. the equity market risk premium, and

iii. equity beta.

290. As per Pricewaterhouse Cooper Service Ltd.'s Report, the range of Cost of Equity is 17.32% to 23.68%.

291. The Pricewaterhouse Cooper Service Ltd.'s Report is based upon Capital Asset Pricing Model (CAPM) which is already submitted by the Appellant along with MYTP. AERA cannot ignore the Pricewaterhouse Cooper Service Ltd.'s Report submitted by this Appellant on the ground that it is not an independent study. It is a requirement of AERA Guidelines, 2011 and, therefore, Pricewaterhouse Cooper Service Ltd. was engaged which is a reputed company and carried out a detailed study on calculation of Cost of Equity (CoE). The report cannot be brushed aside on the ground that it is not an independent study. If such a report is to be rejected without reading, without appreciating and without considering the same, then there is no need of such a provision in AERA Tariff Guidelines, 2011. It is a requirement of AERA Guidelines that appellant is obliged to provide a report for calculation of Cost of Equity for three major factors as pointed out in Clause A 5.5.2.3 of AERA Guidelines, 2011 which are:

i. the risk-free rate,
ii. the equity market risk premium, and
iii. equity beta.

292. This report is to be supplied by the appellant as per AERA Guidelines must be based upon Capital Asset Pricing Model (CAPM). If every report is to be rejected, then it is not an independent study then there is no such requirement under the AERA Guidelines to supply the report. Hence, the reasons given by AERA that Pricewaterhouse Cooper Service Ltd.'s Report is not an independent study is not accepted by this Tribunal. If AERA wants to reject the PwC Report, then cogent and convincing reasons must have been given by AERA. No such cogent and convincing reasons have been supplied by AERA in the impugned order for not accepting Pricewaterhouse Cooper Service Ltd.'s Report and hence also, the determination of Cost of Equity at 15.13% by AERA is hereby quashed and set aside.

293. AERA has relied upon IIM-Bangalore study/report for determining Cost of Equity. The said study/report is based upon the study of 12 airports which are as under:

S. No.	Airport
1.	Sydney
2.	Melbourne
3.	Amsterdam
4.	Changi
5.	Gatwick
6.	Auckland
7.	Heathrow
8.	Johannesburg
9.	MAHB
10.	AoT
11.	Dublin
12.	Incheon

294. None of the aforesaid listed airports have traffic of 2-3 million passengers per annum. None of the aforesaid airports are comparable with Chhatrapati Shivaji Maharaj International Airport (CSMIA). The IIM-Bangalore study/report for arriving at Cost of Equity is not operationally

comparable to CSMIA. Moreover, IIM-Bangalore study was made for the developed market which are exposed to different risks as compared to developing market like India.

295. The principal error in the impugned order lies in the manner in which AERA has treated the earlier IIM-Bangalore study as determinative for the present Control Period without undertaking a fresh airport-specific exercise. Once the governing methodology is accepted to be CAPM, the determination of Cost of Equity cannot be reduced to mere repetition of a figure adopted in a previous tariff period. Cost of Equity is a regulatory estimate of return commensurate with the risk profile of the airport operator for the relevant Control Period. Therefore, when the Appellant specifically questioned the continued use of the earlier beta and placed before AERA a fresh CAPM-based study, it was incumbent upon AERA to deal with that material by a reasoned analysis and not by simple reiteration of the earlier determination.

296. We are unable to accept the submission of the Respondent that the Appellant is foreclosed from raising the present challenge because the figure of 15.13% had been accepted in the Third Control Period. In tariff jurisprudence, there can be no estoppel against a fresh determination required by the regulatory framework itself. Acceptance in an earlier Control Period does not sanctify continued adoption in a subsequent period if the regulated entity demonstrates that the underlying assumptions, comparables, or risk inputs require reconsideration.

297. AERA has invoked the decision of this Tribunal in the GHIAL TCP Judgment (AERA Appeal No. 04/2021, 14.02.2024, paragraphs 528-534) as authority for the proposition that an independently commissioned IIM-B study is to be preferred over a privately obtained report, since the latter carries an inherent element of conflict of interest.

298. AERA has also invoked the Supreme Court's observations in Delhi International Airport Limited v. AERA, (2024) 1 SCC 716, paragraphs 80, 86 and 88, to the effect that expert reports commissioned by airport operators at their own behest are 'self- serving.' We accept these propositions as statements of general regulatory principle, but they do not carry the weight AERA seeks to give them in the present context, and for the following distinct reasons.

299. It must be noted that the GHIAL TCP Judgment was decided in a context where AERA had commissioned the IIM-B study for the relevant airport for the relevant control period. The question in that case was whether an operator's privately obtained Jacobs Consultancy Report could displace the study that AERA had specifically commissioned. The answer that the private report could not displace the independent study is correct in that context.

300. However, the position in the present case is the inverse: AERA has not commissioned any study for MIAL for the Fourth Control Period. AERA has sought to recycle the 2019 study. The question is therefore not 'which study displaces the other', it is 'whether AERA may discharge its obligation to estimate Cost of Equity for the Fourth Control Period by reference to a study commissioned for the Third Control Period.' The answer is plainly in the negative. The principle that a privately obtained report cannot displace an independent study has no application where no independent study has in fact been conducted for the period in question.

301. In view of the aforesaid facts and reasons, we hereby quash and set aside the decision of AERA of determination of Cost of Equity for the appellant for 4th Control Period at 15.13% and we hereby direct Respondent No.1-AERA that Cost of Equity shall be estimated using CAPM by conducting a fresh study for MIAL, to that extent this issue is remanded back to AERA.

XIV. Cost of Debt For 4th Control Period

302. Looking to the impugned order dated 07.05.2025 for 4th Control Period (01.04.2024 to 31.03.2029), AERA has decided to consider the Cost of Debt at 10.15%.

303. This issue has been decided by this Tribunal in AERA Appeal No.2 of 2021 and AERA Appeal No.9 of 2016 vide judgment dated 06.10.2023 in case of MIAL Vs. AERA and it has been observed in paragraphs 313, 320, and 321 as under:

> "313. This contention of respondent no.1 is not accepted by this Tribunal mainly for the reason that there cannot be a fixed cost of debt for the entire 3rd Control Period of five years which is from 2019- 2024. The cost of debt which is actually incurred by the appellant should have been considered by AERA. The cost of debt depends upon marginal cost of funds based lending rate and the time period within which the loan is to be repaid. Inflation is one of the most important factor for determination of market forces for further determination of MCLR rates. Moreover, the spread for the time within which loan is to be repaid depends upon the credit profile of the entity.
>
> ...
>
> 320. In view of this, actual cost of debt shall be allowed by AERA for 3rd Control Period especially looking to the provisions of Section 13(1)(a)(i) of the AERA Act, 2008. For the ready reference, Section 13(1) of AERA Act, 2008 reads as under: -
>
> 13. Functions of Authority. - (1) The Authority shall perform the following functions in respect of major airports, namely: -
>
> (a) to determine the tariff for the aeronautical services taking into consideration-
>
> (i) the capital expenditure incurred and timely investment in improvement of airport facilities;
>
> (ii) the service provided, its quality and other relevant factors;
>
> (iii) the cost for improving efficiency;
>
> (iv) economic and viable operation of major airports;
>
> (v) revenue received from services other than the aeronautical services;

> (vi) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise; 38
>
> (vii) any other factor which may be relevant for the purposes of this Act: Provided that different tariff structures may be determined for different airports having regard to all or any of the above considerations specified at sub-

clauses (i) to (vii);

(b) to determine the amount of the development fees in respect of major airports;

(c) to determine the amount of the passengers service fee levied under rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934 (22 of 1934);

(d) to monitor the set performance standards relating to quality, continuity and reliability of service as may be specified by the Central Government or any authority authorised by it in this behalf;

(e) to call for such information as may be necessary to determine the tariff under clause (a);

(f) to perform such other functions relating to tariff, as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of this Act.

321. In view of the aforesaid provision, AERA ought to have allowed actual cost of debt incurred by the appellant especially looking to the fact that debt availed by this appellant is from reputed lenders. Putting a cap upon cost of debt is uncalled for, as AERA has in fact, allowed actual interest rate for First Control Period and Second Control Period and therefore the same methodology should be applied for Third Control Period as well. We therefore direct AERA to consider actual cost of debt and necessary true up shall be done accordingly. Further, this action of AERA is also in violation of provisions of AERA Act, 2008 especially Sec. 13 thereof because the expenditure incurred ought to be allowed to be recovered as per formula of Target Revenue given in SSA."

304. Moreover, as per decision rendered by this Tribunal in case of GMR Hyderabad International Airport Limited Vs. AERA in AERA Appeal No. 4 of 2021 judgment dated 14.02.2024, it has been held by this Tribunal that AERA must consider the Cost of Debt actually incurred by the Airport Operator, paragraph 466 thereof which reads as under:

> "466. In view of this judgment, AERA must consider Cost of Debt actually incurred by the airport operator. These aspects of the matter have not been properly appreciated by AERA while passing the impugned order especially in the correction of Cost of Debt especially in FY 2018 and has wrongly considered the cost of Debt at 7.94% instead of 9.28%. We, therefore, direct AERA to consider 9.28 for Cost of Debt for FY 2018 as stated in table number 40 of the impugned order."

305. It has been held by this Tribunal in AERA Appeal No.1 of 2023 in case of Mangaluru International Airport Limited Vs. AERA judgment dated 11.09.2025 and in other connected appeals that AERA shall allow actual Cost of Debt incurred by the Airport Operator, paragraph 130 thereof reads as under:

> "130. In view of the aforesaid facts, reasons and judicial pronouncements, we hereby quash and set aside the decision of AERA whereby AERA has considered CoD at 9% p.a. for computation of Fair Rate of Return (FroR). We hereby hold that, looking to the facts of the present case, simply because the appellant has availed debt from its one of the shareholders, the same cannot by itself disallow the appellant to claim actual Cost of Debt. This is more so when the entity from which the appellant has availed debt has in turn, availed debt from reputed lenders. Thus, AERA ought to have allowed actual Cost of Debt incurred by the appellant. Putting a cap upon Cost of Debt is uncalled for and unwarranted. We therefore direct AERA to allow actual Cost of Debt incurred by the appellant and necessary True Up shall be given for previous Control Periods accordingly."

Emphasis Supplied

306. Thus, in view of the aforesaid decisions, capping Cost of Debt is not permissible, AERA must allow actual Cost of Debt incurred by the Airport Operator.

307. It has been held by this Tribunal in AERA Appeal No. 1 of 2024 in case of GMR Goa International Airport Limited Vs. AERA judgment dated 11.09.2025 that actual weighted average Cost of Debt should be considered by AERA. It has been held in paragraphs 123, 126, 139, and 140 thereof which reads as under:

> "123. In the facts of the present case, this appellant has secured debt from Axis Bank led consortium of banks at the rate of A- MCLR+ 2% which is revised annually. The said Concession Letter is at Annexure A-8 to the memo of the 40 present appeal. As per this, appellant has secured the debt with 10.45% of the CoD whereas AERA has disregarded the actual CoD and has calculated FRoR considering 9% of the CoD. This is in violation of Section 13(1)(a)(i) of the AERA Act, 2008. As per this section, AERA is required to determine the tariff in accordance with actual capital expenditure incurred.
>
> ...
>
> 126. Thus, the sanction letter issued by Axis Bank led consortium of banks at the rate of A-MCLR+2% of Lending Rate which is dated 18.09.2024 (Annexure A 8). Since MCLR of Axis Bank range between 8.95% to 9.3%, the appellant could not have procured CoD at 9% as claimed by AERA. In fact, the CoD as per Annexure A-8 is A-MCLR+2% which is an admitted and actual CoD .

...

139. In view of the aforesaid facts, reasons, and judicial pronouncements, we, hereby quash and set aside the decision of AERA to normatively cap the Cost of Debt at 9% for the First Control Period and to compute FRoR/ARR on that basis.

140. We hereby direct AERA to consider the actual weighted average cost of debt at 10.45%, subject to true-up on an actual basis in the next control period, and to carry out all consequential recalculations of FRoR, ARR (including "T"), and the tariff card."

308. In view of the aforesaid facts and reasons and also in view of the reasons given in previous paragraph 104 of this judgment, AERA ought to have allowed actual Cost of Debt incurred by the Airport Operator instead of capping the same at 10.15% for 4th Control Period.

XV. Dividend Income from Fuel Farm Joint Venture

309. Looking to the provisions of AERA Act, 2008 especially Section 13 to be read with other Sections thereof, AERA has power to determine the tariff for aeronautical services. AERA does not have power, jurisdiction and authority to take into consideration the revenues which have no causal connection with aeronautical services or non- aeronautical services.

310. "Dividend Income" has no causal connection with aeronautical services nor it has any causal connection with non-aeronautical services.

311. Looking to the impugned order passed by AERA dated 07.05.2025 (Annexure A-1) for 4th Control Period (01.04.2024 to 31.03.2029), AERA has considered the Dividend Income from the Fuel Farm Joint Venture as Aeronautical. This is not permissible looking to the provisions of AERA Act, 2008 to be read with provisions of OMDA (Annexure A-4) and SSA (Annexure A-5).

312. This Tribunal has already decided in AERA Appeal No.2 of 2021 and AERA Appeal No.9 of 2016 vide judgment dated 06.10.2023 in case of MIAL Vs. AERA, in paragraph nos. 204, 206, 209, 224, and 226 which reads as under:

"204. The question that arises at this stage is whether:

"dividend income" earned by this appellant on investments made by it in joint ventures/subsidiary companies providing aeronautical and non- aeronautical services at CSMIA, Mumbai; "Interest income" which is earned by this appellant by investing surplus funds in treasury instruments and, "Interest on Delayed Payments" which is levied by MIAL to ensure timely recovery of receivables from concessionaires whether it is the "income" from the Revenue Share Assets or whether they are the income from the assets which are required to perform non-aeronautical services at the Airport as listed in Part I in Schedule-6 or whether listed in Part II of

Schedule-6 as stated hereinabove.

206. Therefore, upon collective reading of the aforesaid definition of "S", definition of "Revenue Share Assets", definition of "Non-aeronautical assets"

and definition of "Non-Aeronautical Services" as defined in Schedule-6 of OMDA and both Part-I and Part-II thereof, "Other income" is not an income or revenue obtained by this appellant by performing any non-aeronautical services, therefore, "other income" cannot be treated as part of Revenue from Revenue Share Assets. Moreover, MIAL generates revenue by performing Non-Aeronautical Services. Once the revenue is generated, it is upon MIAL to collect and manage the same and in the process, MIAL may earn some income in the nature of interest and dividend. Hence, once the revenue generated by performing Non-Aeronautical Services is taken as a part of "S" for the cross- subsidy as per SSA, further income, if any, arising out of management of the said revenue cannot be taken into consideration as part of "S".

209. Respondent No.1 has raised the contention that the income of "dividend" and "interest" are in fact from the income derived by the respondent by performing aeronautical and non-aeronautical services and, therefore, "other income" has rightly been treated as part of revenue, from "Revenue Share Assets". It is also contended by the counsels for respondents that the "dividend income" as a part of other income is a part of 3rd Control Period because dividend income is earned by MIAL through joint ventures set up with other group entities of MIAL who are carrying non-aeronautical related services and other non-aeronautical services provided in OMDA which if carried out by MIAL itself, would have earned surplus non-aeronautical income. These contentions are not accepted by this Tribunal mainly for the reason that "other income" is not relatable to and generated from the provision of any service by this Appellant and, therefore, it cannot be considered for cross subsidization of aeronautical charges (i.e. as a part of revenue from Revenue Share Assets).

224. In light of the aforementioned decision of Hon'ble the Supreme Court of India, once the definition of "Revenue Share Assets" states "shall mean" meaning thereby to that, it is an exhaustive definition. This definition is not extensive. It would cover only those assets which are defined as Revenue Share Assets. Thus, addition is not permissible. This aspect has not been properly appreciated by AERA while treating "other income" as part of revenue generated from Revenue Share Assets. We, therefore, quash and set aside the impugned orders in both the aforesaid AERA Appeals which are for 2nd and 3rd Control Periods so far as they are affecting "other income"

as a part of revenue, from revenue share assets and consequently, true-up has to be given for the earlier Control Periods also. We, therefore, direct AERA to give true-up for 2nd and 3rd Control Periods for "Other Income" as stated hereinabove.

226. In light of the aforesaid, "other income" cannot be a part of revenue, from revenue share assets and consequently, in calculation of "S" factor in target revenue formula which is TR= RB x WACC + OM + D + T - S. To the aforesaid extent, the impugned orders which are under challenge in both the aforesaid AERA Appeals which are at ANNEXURE A-1 in both the aforesaid AERA appeals are hereby

quashed and set aside."

313. It ought to have been kept in mind by AERA-Respondent No.1 that "Dividend Income" is not relatable to and generated from the provision of any service rendered by this appellant and, therefore, this income-" Dividend Income" is neither aeronautical nor it is non-aeronautical. In fact, it is "other income".

314. AERA has followed a zig-zag approach for the very same point, one decision is taken for one airport and a contradictory decision has been taken for another airport. Even for the very same airport, for different Control Periods, different approaches have been adopted. Thus, there is gross inconsistency in the approach of AERA. For the very same Chhatrapati Shivaji Maharaj International Airport (CSMIA), "Dividend Income" was considered as non-aeronautical revenue in Second Control Period and now in 4th Control Period, it is considered as aeronautical revenue thus, there are inconsistencies in the approach of AERA.

315. AERA has failed to appreciate that in the tariff order for the Second Control Period for the Delhi Airport, it was already decided by AERA that assets of joint venture does not form part of RAB and the Dividend Income accruing to the Airport Operator (DIAL) from such joint ventures should also not be considered towards cross- subsidization.

316. The Dividend Income is arising out of management of surplus amount of appellant thus, such type of income to the appellant is because of Cash Management Process (CMP).

317. Looking to the provisions of OMDA, Dividend Income is not forming part of aeronautical revenue or non- aeronautical revenue. This kind of addition of Dividend Income from Fuel Farm Joint Venture into the aeronautical revenue is beyond bargain (i.e. beyond the terms of contract), especially looking to the provisions of SSA and OMDA.

318. It would be prudent to differentiate between the nature of the activity undertaken by the joint venture with the nature of the income received by the appellant. The joint venture, MAFFFL, is indeed engaged in the provision of into-plane fuelling services, which are aeronautical in nature. However, the income that the appellant receives from that joint venture is not derived from the provision of any service by the appellant. It is dividend income, which is a return on the appellant's equity investment in the joint venture. The appellant does not perform the aeronautical service; it holds shares in an entity that does.

319. The regulatory framework under the OMDA and the State Support Agreement (SSA) governs the revenues generated by the appellant from the services it performs. It does not govern the returns that the appellant may earn from its investments in separate corporate entities, even if those entities are engaged in activities that, if performed directly by the appellant, would fall within the regulatory ambit.

320. The respondents' reliance on Clause 2.1.1 of the OMDA to argue that all revenues of the appellant must be classified as either aeronautical or non-aeronautical is, with respect, based on an

overly broad reading of that clause. The clause defines the scope of the grant to the appellant, namely the right to perform aeronautical and non-aeronautical services. It does not purport to characterise every rupee that flows into the appellant's coffers as revenue from those services.

321. The appellant, as a corporate entity, may engage in activities that are ancillary to its core operations, such as investing surplus funds or holding equity in subsidiaries and joint ventures. The returns from such activities do not cease to be "other income" merely because they are earned by an entity whose primary business is the operation of an airport. The regulatory jurisdiction of the Authority under the AERA Act extends to the determination of tariff for aeronautical services. It does not extend to every financial transaction or investment decision of the airport operator.

322. Furthermore, where a particular category of income has been treated in a certain manner across multiple control periods, and where that treatment is based on a correct interpretation of the governing documents, a departure from that treatment in a subsequent period must be supported by a reasoned justification.

323. In the present case, the Authority has offered no such justification. The dividend income from the Fuel Farm joint venture was treated as non-aeronautical revenue in the Second Control Period, and there is no material change in the nature of the income or the governing contractual provisions that would warrant its reclassification as aeronautical revenue in the Fourth Control Period. The Authority's decision to alter the classification without any change in circumstances or any reasoned explanation is arbitrary and cannot be sustained.

324. Moreover, it is not disputed that revenue generated from City Side Development (CSD) assets has been consistently treated as falling outside the regulatory purview. This demonstrates that the Authority itself recognises that not every income stream of the airport operator is susceptible to classification as either aeronautical or non-aeronautical. There is no principled basis for treating dividend income from a joint venture differently, especially when that income is not generated from any asset that is part of the Regulatory Asset Base (RAB) or from any service that the appellant performs.

325. We, therefore, quash and set aside the decision of AERA to consider Dividend Income from the Fuel Farm Joint Venture as aeronautical. We hereby hold that Dividend Income from the Fuel Farm Joint Venture is "other income".

XVI. Adjustment of Target Revenue on account of return on RAB and depreciation allowed on Alleged Assets as per the Self-Contained Note (SCN) of Authorized Investigation Agency (AIA)

326. Looking to the impugned order, AERA has pointed out that AERA has received a letter dated 30.08.2023 with a Self- Contained Note (SCN) from an Authorized Investigative Agency (AIA) and it has been mentioned in the impugned order that the said AIA has informed AERA that investigation has been completed and AERA is requested to adjust the excess amount of tariff to the tune of Rs.305 Crores as claimed by the appellant in the Third Control Period and, therefore, AERA has mechanically followed the directions in the letter of AIA and has trued-up Rs.305 Crores from

ARR. This decision of AERA is under challenge in this appeal.

327. AERA has given effect to the said request of AIA in the impugned order dated 07.05.2025 (Annexure A-1) by adjusting the amount of Rs.305 Crores of tariff claimed by the appellant under the heads of depreciation and return on RAB. Counsels for both the sides have referred table nos. 36 and 52 as mentioned in the impugned order. This is how true-up was effected in the Second Control Period and subsequent Control Periods subject to the final outcome of the matter. For ready reference, paragraph 3.1.6 of impugned order (Annexure A-1) reads as under:

> 3.1.6 Additionally, the Authority received a letter dated 30.08.2023 with a Self-Contained Note ("SCN") from the Authorized Investigation Agency (AIA). In the said SCN, AIA intimated the completion of the investigation and has requested AERA to adjust the excess amount of tariff claimed by MIAL. The relevant para 12 of the aforesaid SCN is reproduced as below:
>
> "In view of the aforesaid facts revealed during investigation, you are hereby requested to kindly adjust the excess amount of tariff of Rs. 305/- Crores claimed by M/s. MIAL in the 3rd Control Period (01.04.2019 to 31.03.2024). The same has to be trued up during the tariff determination of M/s MIAL (Airport Operator of CSMIA, Mumbai) for the 4th Control Period which will be starting from 1st April 2024."

As per the extract of para 48 of the notes to special purpose standalone financial statements of MIAL of FY 2023-24 as reproduced below:

> "... The management has received legal advice that the observations / allegations in the chargesheet are not to be treated as conclusive, final or binding till the time it is confirmed by the Court..."

Accordingly, the Authority, through its Independent Consultant, in compliance of the above mentioned SCN, has given effect to this request by adjusting the excess amounts of tariff claimed by MIAL under the heads Depreciation (Refer Table 36) and Return on RAB (Refer Table

52) in the True Up of the Second Control Period and subsequent control periods subject to the final outcome in the matter."

328. The aforesaid decision of AERA is beyond the power, jurisdiction and authority of AERA for the following facts and reasons:

> I. The letter upon which the reliance is placed by AERA was not supplied to the appellant neither by AIA nor by AERA thus, there is violation of Principles of Natural Justice.
>
> II. Looking to the provisions of Section 13 of the AERA Act, 2008, AERA cannot take into consideration such type of letter of AIA dated 30.08.2023, for reduction of

sizeable amount of ARR which is truing- up of Rs.305 Crores.

Similarly, there is no provision under OMDA and SSA whereby AERA can consider such type of letter for reduction of sizeable amount of ARR.

III. Whenever AERA considers the factors for determining aeronautical tariff outside the purview of AERA Act, 2008 to be read with SSA and OMDA, it knows as "extraneous consideration" by AERA while determining aeronautical tariff and, therefore, there is Wednesbury Unreasonableness on the part of AERA while determining aeronautical tariff.

IV. No Investigation Agency can direct AERA for deduction of Rs.305 Crores in the process of truing-up. Tariff determination process is exclusive prerogative of Respondent No.1 as per AERA Act, 2008 and, therefore, any such type of directive/suggestion by the Investigation Agency is non-est and void and hence, AERA cannot consider such type of letter in tariff determination process under Section 13 of the AERA Act, 2008.

V. AERA cannot place reliance upon Self Contained Note (SCN) which is written by AIA because the matter is pending before the Trial Court, nothing has been concluded so far. Filing of the charge-sheet by the AIA cannot be equated with the conviction order.

VI. Nobody can be punished for the act done by another, the predecessor of the present appellant who was operating MIAL was alleged to have been involved in the offence as per investigation and charge-sheet which is yet to be concluded in the trial, which is yet to be finalized by the appellate forums hence, merely because a letter is written by AIA for something which was done by predecessor of this appellant cannot be taken into consideration in the tariff determination process under the AERA Act, 2008.

VII. The present appellant-MIAL took over the operation of MIAL after execution of the contracts with the Government with effect from 13.07.2021. Thus, the present appellant cannot be held liable for "GVK", who was previously operating MIAL, the amount of Rs.305 Crores was trued-up in the impugned order of 4th Control Period and the amount has been enhanced and adjusted at Rs.404.93 Crores. Thus, the amount of Rs.305 Crores is converted into Rs.404.93 Crores as mentioned in table 353 of the impugned order. VIII. It ought to have been appreciated by AERA that Self Contained Note (SCN) written by AIA to AERA is not a direction neither is it a gospel truth nor the contents of SCN is a conclusive piece of evidence. In fact, the charge-sheet is nothing, but, an opinion of the Investigating Agency, such type of SCN cannot be considered while exercising powers by AERA under Section 13 of the AERA Act, 2008.

329. The adjustment made by AERA on the basis of the letter dated 30.08.2023 and the alleged Self-Contained Note cannot be sustained as the AERA has never furnished a copy of the said documents to this Appellant thus there is violation of principles of natural justice. Any material

relied upon to the prejudice of a party must necessarily be disclosed to such party and failure to do so constitutes a clear violation of principles of natural justice. It is settled law that an order having adverse civil and financial consequences cannot be founded upon undisclosed material which the affected party has neither seen not been permitted to rebut.

330. AERA has further erred in acting upon the communication of the Authorised Investigation Agency because neither the AERA Act, 2008 nor the governing contractual framework under the SSA/OMDA contemplates any determinative role for such third party in the tariff determination process.

331. Tariff determination is the exclusive statutory function of AERA and any recommendation, suggestion or request issued by an outside agency cannot be treated as binding or conclusive for the purpose of revising tariff thus reliance placed by AERA on the letter dated 30.08.2023 and the so-called "Self-Contained Note" is wholly misplaced and beyond the statutory scheme.

332. In our considered view, the reliance on the alleged "Self-

Contained Note" is also premature and contrary to law, since the investigation, even if completed, has not culminated in any final adjudication establishing wrongdoing on the part of the Appellant. Mere allegations, suspicions or investigative conclusions do not attain finality unless and until they are tested in appropriate proceedings and result in final and binding determination. In the absence of any final finding against the appellant, there was no occasion for AERA to make any downward adjustment in tariff at the present stage. Any true-up, if at all warranted, could arise only upon conclusion of the trial or adjudicatory process and only if the allegations are ultimately established.

333. It is also evident that the approach adopted by AERA amounts to penalising the Appellant in advance, before any final determination of liability. Regulatory tariff proceedings cannot be converted into a mechanism for anticipatory recovery on the basis of unproven allegations. Such an approach is contrary to fairness, due process and the settled principle that adverse financial consequences cannot be imposed, unless the foundational facts have been conclusively established in accordance with law.

334. In these circumstances, we have no hesitation in concluding that there was no justification whatsoever for AERA to adjust any amount from the tariff at this stage. The impugned adjustment, being founded on undisclosed material, based on non-final allegations, influenced by an authority having no statutory role in tariff determination and quantified in an arbitrary manner, is liable to be set aside. Any adjustment or true-up, if at all required, can only be considered in the appropriate Control Period after a final and binding determination on the allegations in question.

335. We also find merit in the Appellant's submission that the impugned approach improperly fastens present tariff consequences upon the Appellant in respect of allegations pertaining to an earlier period and concerning the conduct of the previous operator. Whether, and to what extent, any such allegations ultimately stand established is a matter for competent adjudicatory forums. If, upon final judicial determination, it is held that any asset base was wrongly inflated or any tariff

benefit was impermissibly claimed, the regulatory framework is not powerless; an appropriate adjustment can then be worked out in the relevant control period in accordance with law. But to permit AERA to act upon an unproved investigative note at this stage would be to substitute suspicion for adjudication and accusation for evidence. That course is impermissible.

336. In view of the aforesaid facts, reasons and provisions of AERA Act, 2008 to be read with OMDA and SSA, AERA has no power, jurisdiction and authority to consider such type of letter (which is termed by AERA as "Self-Contained Note"), for truing-up Rs.305 Crores for Third Control Period and which has resulted into reduction of Rs.404.93 Crores. We hereby quash and set aside the decision of AERA of adjustment of Rs.305 Crores in Third Control Period and truing-up methodology adopted by AERA during tariff determination of appellant for 4th Control Period.

337. We hereby hold that the true-up done by AERA of Rs.305 Crores on the basis of "Self-Contained Note"

> is not tenable at law thus, the amount which is adjusted at Rs.404.93 Crores as reflected in table no.352 of the impugned order is illegal and dehors the Provisions of AERA Act, 2008 to be read with SSA and OMDA.

XVII. Bad Debts

338. It is contended by the appellant that AERA should have considered aeronautical bad debts as a part of O&M expenses. AERA has not accepted this contention of the appellant and has explained in para no. 4.9.110 of the impugned tariff order (Annexure A-1) that in the present case, bad debts has a reason due to inefficiencies in reconciliation and collection by the appellant and, therefore, the claim of the appellant was not accepted by AERA. This decision is under challenge in the present appeal.

339. Looking to the facts of the present case, appellant recognized a bad debt of approximately Rs.6 Crores in FY 2021-22 which is only 4%, approximately of the total receivables of Rs.160 Crores due from Air India. It also appears from the facts of the case that appellant has recovered approximately 96% of the receivables from Air India thus, unreconciled amount is only Rs.6 Crores which is approximately 4% of the total receivables from Air India. The outstanding amount was since 2014, the settlement process with Air India has taken time and most of the amount has been recovered by this appellant and as part of final settlement, this unreconciled amount (Rs.6 Crores, approximately) could not be recovered.

340. Thus, there is no inefficiency on the part of this appellant in reconciliation and collection of the total receivables from Air India and, therefore, bad debts of Rs.6 Crores, approximately, is akin to unpaid, unrecovered or "not paid" incurred expenditure. This aspect of the matter has not been properly appreciated by AERA while passing the impugned order, there is no inefficiency on part of the appellant, looking to the facts of the present case.

341. On the contrary, approximately 96% of the amount has been recovered from Air India. Bad debts are an integral part of genuine and regular business. It happens even though the appellant is efficient and, therefore, AERA should have allowed bad debts of Rs.6 Crores approximately as part of O&M expenses. The bad debts of approximately Rs.6 Crores has a reason because of defunct airline company at the relevant time thus, the said airline was inefficient and not the present appellant.

342. It ought to be seen from AERA's own policy as stated in paragraph 4.9.130 of the impugned order is that bad debts arising from 'defunct airline companies' may be considered as O&M expenses 'based on demonstrated need.' This exception is significant because AERA has acknowledged, at the level of regulatory principle, that a category of bad debt exists that an airport operator cannot prevent through efficiency measures and that category is debt from a counterparty whose financial collapse renders recovery impossible.

343. The Appellant's bad debt of Rs. 6 Crores falls squarely within this exception. Air India, the debtor, was, at the relevant time, a company in the midst of an existential financial crisis that had culminated in it being sustained loss making entity, which was privatized through Government-facilitated sale under the Strategic Disinvestment process, and eventual transfer of ownership to the Tata Group in 2022.

344. For the period during which these dues remained unrecovered, Air India was a financially distressed entity, unable to service its commercial obligations to multiple creditors across the aviation ecosystem.

345. AERA's finding that the bad debt arose from the Appellant's 'inefficiency in reconciliation and collection' cannot be sustained as it relies upon a characterisation of the debtor's default as the creditor's failure, when the debtor's financial incapacity was the direct and proximate cause of the unrecoverable balance. AERA's own concession that defunct airline bad debts are allowable combined with the factual position that Air India was, during the relevant period, highly stressed government asset leads directly to the conclusion that the Rs. 6 Crores bad debt must be allowed.

346. The definition of 'OM' under Schedule 1 of the SSA does not exclude uncollectable receivables arising from counterparty default and as this Tribunal has held in the context of other O&M cost categories, an item not expressly excluded from the SSA framework cannot be categorically excluded by regulatory fiat without a sound basis in the statutory or contractual framework. AERA allowed bad debts related to aeronautical activities in the previous Control Periods. For the ready reference, learned counsel appearing for the Appellant has placed reliance upon the following extract from 3rd Control Period tariff order passed by AERA. The relevant extract from paragraph no. 4.9.120 of 3rd Control Period tariff order reads as under:

Bad debts written off	0.05	6.87	6.92	•	Bad debts have been classified based on the nature of

debt written off. Aero dues written off have been classified as non-aeronautical

347. We, therefore, quash and set aside the decision of AERA not to allow bad debt of Rs.6 Crores approximately as part of O&M expenses and we, hereby direct AERA to treat bad debt Rs.6 Crores approximately as part of O&M expenses.

XVIII. Aeronautical Allocation of Digitalization Cost

348. It is submitted by Learned Senior Counsel Mr. Sajan Poovayya on behalf of the appellant that as per the impugned order dated 07.05.2025 (Annexure A-1) AERA has decided to allocate the Digitalization Cost at 30% on Platform Usage Fees payable to the Digital Service Provider, for cost allocable to Aeronautical Services at Rs.149.10 Crores. The calculation has been given by AERA in the impugned order at Table No.327 which reads as under:

> "Table 327: Aeronautical Portion of Total Operating and Maintenance Expenditure decided by the Authority for the Fourth Control Period (Rs. in crores) Particulars FY25 FY26 FY27 FY28 FY29 Total Employee Costs 169.90 180.10 190.90 202.36 250.40 993.66 R&M Expenses 189.94 197.16 217.55 240.04 264.85 1,109.54 Operating Contract's 169.02 163.36 156.31 165.69 193.13 847.51 Utilities Expenses 155.17 146.10 136.25 142.25 164.79 744.55 Administrative 22.05 22.98 23.99 25.04 26.14 120.20 Expenses Rents, Rates & 59.53 60.00 60.49 62.04 62.57 304.63 Taxes Insurance Expense 15.94 17.27 18.45 19.26 20.88 91.81 Advertisement 3.30 3.44 3.59 3.75 3.91 17.98 Expense Consumable Stores 16.01 15.19 14.29 14.92 17.15 77.56 Corporate Cost 72.95 77.33 81.97 86.88 92.10 411.22 Runway Recarpeting 23.89 23.77 27.78 27.78 31.09 134.31 Carrying Cost on 10.41 7.38 5.61 3.59 8.23 35.22 Runway Recarpeting Digitalization Cost 27.00 28.50 29.70 31.20 32.70 149.10 Other Expenses 3.15 3.15 3.15 4.08 4.12 17.65 Working Capital - - - - - -
>
> Interest Financing Charges 32.40 41.19 33.11 32.66 25.07 164.43 Total Aero 970.67 986.89 1,003.15 1,061.54 1,197.14 5,219.38 Operating Expenditure

349. In view of the aforesaid Table No.327, AERA has determined Digitalization Cost amounting to Rs.149.10 Crores as O&M expenses for 4th Control Period.

350. It is a need of the hour that digital platforms have to be created even by the Airport Operator, basically the appellant has no technical expertise to achieve digitalization of airport experience and,

therefore, digitalization needs to be undertaken with the assistance of subject matter experts from the relevant fields. Digital platforms are an essential part of the management. Extensive CAPEX has been planned over the next few years as submitted by the Learned Senior Counsel on behalf of the appellant and hence, appellant needs to focus on augmenting airport infrastructure and enhancing passenger handling capacity coupled with substantial improvising overall service quality. The appellant does not have the bandwidth hence, the service provider was engaged for digital transfer services. The service provider engaged for digital transfer services was selected through transparent and fair practices as per the provisions of OMDA. The Schedule 12 of OMDA reads as under:

> "SCHEDULE 12 CONTRACTING PROCEDURES • No shareholder of the JVC (nor any of its Group Entities) that has an interest in the contract can be involved in the design of the contract, or the contracting process or decision-making.
>
> • Where a shareholder of the JVC (or any of its Group Entities) intends to tender for the contract, an independent probity auditor must be appointed to review and monitor the tender to ensure a complete arm's length arrangement. It is clarified that the independent probity auditor shall not be a Group Entity of the JVC or any of its shareholders. JVC shall agree to the appropriate terms of reference and the selection procedure of the independent probity auditor as laid down by AAI."
>
> "Clause 8.5.7 (f) of OMDA reads as under:
>
> "Contracts leases and licenses I. subcontracting, sub-leasing and licensing a. .....
>
> b. ....
> c. ....
> d. ....
> e. .....
>
> f. The JVC shall prior to entering into or modifying any contract with a Group Entity of the JVC or any of its shareholders (other than AAI), inform AAI about the key terms of such contract and disclose the draft contract to the AAI. In relation to such contracts, AAI shall have the right to object to any key terms that it can reasonably demonstrate are not equitable, are inconsistent with or contrary to the letter or spirit of this Agreement or not on arms- length, and the JVC shall address the reasonable concerns of AAI prior to execution of such contracts. The JVC shall further ensure that any contract with a Group Entity of the JVC or any of its shareholders (other than AAI) shall only be entered into after the board of directors of the JVC (the "Board") duly approves such contract itself and the same is not approved by any sub-committee of the Board or by delegation to any person whatsoever. The Board shall have the right to consider and comment on the terms and conditions of such contracts and suggest modifications thereto. The Board shall be entitled to seek a report on the terms of contracts from the Independent Engineer. The Board shall approve any such contract only if it is satisfied that the terms thereof are no less

> favourable to the JVC than those which could have been obtained from bona fide non-Group Entities/ non-shareholders on arms- length commercial basis. The rights and obligations of the Board hereunder shall be incorporated into the Articles of Association of the JVC prior to Effective Date."

351. Upon conjoint reading of Schedule 12 of OMDA with Clause 8.5.7 independent probity auditor must be appointed to review and monitor the tender to ensure a complete arm's length arrangement. The information has to be given to AAI about the key terms of such agreement. Even a draft contract has to be disclosed to AAI and AAI has the right to object to any key terms which are not equitable or which are inconsistent with or contrary to OMDA and SSA. All these procedures have been completed by this appellant.

352. It has been argued by Learned Counsel for AERA that a bid for digitalization was awarded to Adani Digital Labs Pvt. Ltd. (ADL) which is a new entity in comparison with Tech Mahindra. It ought to be kept in mind that AERA cannot suggest that which bidder should be given the contract, AERA cannot suggest that one bidder is more efficient than the other, whosoever is complying with the terms of the bid and is lowest number one and who is found to be efficient by the Board of Directors of Airport Operator shall be awarded the contract. It is a subjective satisfaction of the Board of Directors of the Airport Operator to choose a bidder who is complying with terms and conditions of the bid. This subjective satisfaction cannot be altered by AERA.

353. Moreover, the bidding process has never been called in for questions by AERA, there are no allegations of undue influence, coercion, fraud or illegality in the bidding process by the appellant for maintenance and development of digital platform for providing various services at the appellant airport.

354. In the facts of the present case, an independent probity audit report was obtained. Prior information of the contract was given to AAI. The price was also certified as per an Independent Probity Audit Report.

355. To get a seamless digital experience while using the airport, one of the key components of the digital platform is that Adani One App is to be downloaded by the users into their mobile phones and thereafter, several services are proposed to be added to the App in a phased manner as depicted in the picture.

356. This appellant has entered into a Digital Platform Agreement on 01.04.2024 to use a software platform that is developed and hosted on a private cloud by ADL. The definition of 'Digital Platform' in the Digital Platform Agreement reads as under:

> "9.2.91 .....
>
> "The Company has proposed to design, develop and implement based on its existing intellectual property and back end infrastructure (collectively and hereinafter referred to as "Existing IP") a customized platform which will be accessible through

applications, sites and other modes (collectively and hereinafter referred to as the "Platform"), and to own, operate and otherwise deliver the Platform as a service, so as to provide inter alia, the following functionalities:

(i) to enhance Airport User experience at CSMIA;

(ii) to update real time information about flights and various amenities and facilities at CSMIA;

(iii) to facilitate a state-of-the-art digital point of sale and inventory management system (as may be applicable) for CSMIA;

(iv) to develop solutions which enable Sellers (defined in Clause 2.3 hereinafter) to create and operate an online storefront enabling booking, purchase, and delivery of goods and services, which will be available to Airport Users;

(v) to provide loyalty benefits and drive user engagement as set out in Clause 2.6;

(vi) any other similar additional digital services as MIAL may decide to facilitate."

357. In view of the aforesaid Digital Platform Agreement, ADL has to design, develop and implement the Adani One App. This Digital Platform Agreement was also sent to AAI.

358. AERA has followed the Multi-Criteria Decision Analysis (MCDA) approach to allocate the costs between aeronautical and non-aeronautical. Various services which are offered on Digital Platform (Adani One App) have been grouped under aeronautical and non-aeronautical activities, by applying a list of variables like Necessity, Channel Usefulness, Revenue Generating Capacity, etc. Each variable has been assigned a score between 1 to 5, where 1 is the lowest and 5 is the highest. Table no. 312 from the impugned order which is followed by AERA reads as under:

Table 312: Digitalization Cost Allocation - Multi Criteria Decision Analysis Approach - Score card based on functionalities available in Adani One App Particulars Necessity Channel Revenue Total Usefulness Generating Score Capability Aeronautical Services:

Non-Aeronautical Services Porter Services & Baggage Wrapping Bills Payments & Banking Related Services Other Non-Aeronautical Services *The Relevant extract is reproduced from Para 9.3.17 at Pg. 426 of the Impugned Order @Pg. 573 Vol. III of Appeal.

359. On the basis of the aforesaid scores, AERA has allowed 30% of fixed cost to the digital service provider (Rs.497 Crores). Table 314 of the impugned order relied upon by AERA reads as under:

Table 314: Digitalization Cost Aeronautical Allocation as proposed by the Authority at the Consultation State Total Score's Aeronautical Allocation (%) (d = a/c) 30.00%

360. This Multi-Criteria Decision Analysis approach as mentioned in the Consultation Paper was objected by the Appellant. Following are the four major objections raised by this appellant at the Consultation Paper stage:

> "1. While determining the aeronautical ratio for other expenses such as Repairs & Maintenance (R&M), operating contracts, etc., the allocation is carried out based on the actual expenses incurred for aeronautical and non-aeronautical activities. Such allocation is dependent on Goods (like consumables, spares etc.) and Services (like manpower) deployed to perform these activities. Allocation of these expenses is neither based on usage nor necessity nor revenue generating capacity of these activities. Hence, it would be reasonable for the Respondent No.1/AERA to reconsider the logic of applying allocation cost based on parameters like necessity, usefulness and revenue generating capability.
>
> 2. Many essential Aeronautical services, such as maps, lost and found, and Wi-Fi, which are crucial for ensuring a seamless passenger experience, have been consolidated under the category 'Other Aeronautical Services'. This, in turn, has effectively resulted in the grouping of various aeronautical activities under only three categories, whereas non-aeronautical activities have been classified under five distinct categories. This approach is subjective and highlights potential bias towards minimizing the allocation for aeronautical services.
>
> 3. It is further stated that no basis is provided for assigning judgmental scores ranging from 1 to 5 to each variable. For example, the 'channel usefulness' variable has been assigned low scores for aeronautical activities and high scores for non-aeronautical activities, without any justification for these discrepancies.
>
> 4. It is pertinent to note that one of the variables used is "Revenue Generating Capability". The Appellant is not allowed to earn any revenue other than what is approved by Respondent No.1/AERA for providing aeronautical services. Therefore, score against this variable will always be "0" for aeronautical activities. Further, the scoring assigned to the Concessionaire is "5" which is also distorted, as concessionaire revenue generation has multiple channels and digital is only one of them which is at a nascent stage. Currently, most of the revenues generated by concessionaire are dependent on actual billing at the physical counter. This approach has serious cascading impact in widening the gap in the weightage scores being calculated for aeronautical and non-aeronautical activities."

361. The aforesaid points raised by this appellant after Consultation Paper is issued though were raised but were never addressed in the impugned order. No reasons have been assigned to brush aside any of the objections while passing the impugned order. Hence, the impugned order so far as it

relates to aeronautical allocation of digitalization cost is concerned, deserves to be quashed and set aside. The arbitrariness in Table Nos.312 and 314 have been highlighted in detail as mentioned in the aforesaid four major objections raised by this appellant.

362. In fact, this appellant has also proposed an alternative approach which addresses various biases and anomalies which have been highlighted in the aforesaid four points raised by the appellant. To make computation of aeronautical allocation more objective and specific and to map, this aspect of the matter has been pointed out in the following table, by counsel for the appellant. The table reads as under:

> Particulars Necessity Channel Passen- Total Usefulness ger Score Convenie nce Aeronautical Services:
>
> Flight Tracking Information 5 2 4 11 Baggage Belt Information 5 2 4 11 Maps 5 5 4 14 Lost & Found 5 5 4 14 Other Aeronautical Services: 5 2 3 10 Non-Aeronautical Services:

Concessionaires	5	5	3	13
Porter Services & Baggage Wrapping	5	5	2	12
Bills Payments & Banking Related Services	-	-	2	2
Other Bookings	4	3	2	9
Other Non- Aeronautical Services	1	1	2	4

Total Score	
Aeronautical Allocation (%) (d = a/c)	60%

> 363. We have heard counsels for both the sides on this issue and we are of the opinion that the approach demonstrated by this appellant in the aforesaid table which is reproduced from paragraph 9.4.2 of the impugned order is more objective and scientific than the MCDA approach followed by AERA mainly for the following reasons-

I. No basis has been provided for assigning judgmental scores ranging from 1 to 5 to each variable by AERA in Table no. 312.

II. The appellant is not allowed to earn any revenue other than what is approved by AERA, for providing aeronautical services and, therefore, score against this variable will always be zero for aeronautical services as mentioned in Table No.312. This is also a glaring error in following the MCDA approach which is followed by AERA.

III. The scoring assigned to the Concessionaire is 5 which is also distorted because the Concessioner revenue generation has multiple channels/methods and digital is only one of them, the digital methodology is in a nascent stage. Currently, most of the revenues generated by the Concessionaire depends upon actual billing at the physical counter. This approach which is followed by AERA in Table No.312 has serious ramifications and has a cascading impact in widening the gap in the weightage scores being calculated for aeronautical and non-aeronautical activities. This is a major error in the approach of AERA which is reflected in Table No.312.

IV. Looking to Table No.312, aeronautical services have been categorized under three different categories whereas, non- aeronautical services have been categorized into five categories. There is no basis for this type of categorization. This type of categorization is arbitrary in nature and hence, the approach of AERA as mentioned in table 31 Table No.312 is also arbitrary in nature.

V. Many essential aeronautical services such as-

a. Maps;

b. Lost and Found; and c. Wi-Fi, these are crucial for ensuring a seamless passenger experience.

364. They have been consolidated under the category "Other Aeronautical Services" which has effectively resulted into the grouping of various aeronautical activities under only three categories whereas non-aeronautical activities have been classified under five distinct categories. Hence, the approach of AERA is not objective and it tends to potential buyers towards minimizing the allocation for aeronautical services.

365. These issues are the major defects in the MCDA approach followed by AERA as per Table No.312.

366. Comparison in the aforesaid Table No.312 looking to the alternative approach as demonstrated by this appellant as mentioned in paragraph 9.4.2 of the impugned order which is reproduced hereinabove addresses the aforesaid issues and appears to be more reasonable and makes the computation of aeronautical allocation more objective and scientific rather than subjective and arbitrary, in which two important activities which are "Maps" and "Lost and Found" have been considered as separate activities. Moreover, "Passenger Convenience" is considered as variable in place of "Revenue Generating Capability", this bifurcation of aeronautical and non-aeronautical activities as per table provided by the appellant, reproduced above, is mainly based upon the fact that ultimate objective of all the activities done by Airport Operator is to enhance "Passenger Convenience".

367. There are several other defects highlighted in Table No.312 followed by AERA, one of them is that there is no basis which is provided for assigning judgmental scores ranging from 1 to 5 to each variable especially to the "Channel Usefulness" variable has been assigned low scores for aeronautical activities and high scores for non-aeronautical activities. This is absolutely arbitrary in nature, there is no basis, reasons, data available. Any random figure has been assigned under the "Channel Usefulness" variable.

368. We, therefore, quash and set aside the approach by AERA which is MCDA approach as referred to in Table No.312.

369. In view of the aforesaid two types of analysis, one advanced by AERA and another by this appellant as mentioned in Table No.312 and in paragraph 9.4.2 of the impugned order, gives different calculations for aeronautical score and non- aeronautical score which has resulted into different percentage of aeronautical allocation. Be as it may, the facts remain that present Airport Operator-appellant has developed digital platform in the form of Adani One App for several services for different stakeholders who are using MIAL for which digital platform agreement was entered into on 01.04.2024 and ADL was assigned the work as per the contract. A draft contract was sent to AAI who has a power to raise objections for any of the terms of the contract. The price was also informed to AAI, the contract including the price was approved by the board of directors of the appellant. Moreover, there is no allegation by AAI and AERA- Respondent No.1 that there was any illegality in the bidding process. Thus, market driven price was found out and ultimately the digital platform was developed and the cost paid thereof comes to Rs.659 crores.

370. It ought to be kept in mind that once a contract is entered into by the Airport Operator-Appellant, following the transparent bidding process as per OMDA and SSA and after supplying information to AAI and after the approval by the Board of Directors of the appellant, AERA has no power, jurisdiction and authority to alter the terms of the contract and much less AERA has any power to reduce the expenses incurred by the appellant. In fact, as per provisions of AERA Act, 2008, AERA has to consider "expenditure incurred"

while determining aeronautical tariff.

371. In the facts of the present case, total expenditure for digital platform developed by the appellant after bidding process is Rs.659 Crores as mentioned in the impugned order and looking to the aforesaid two different models, one proposed by AERA and another by the appellant, aeronautical allocation has to be arrived at by this Tribunal whether it is 30% or more.

372. Looking to the aforesaid facts and reasons, there are several defects, anomalies, arbitrariness and too much subjective approach in MCDA approach followed by AERA as per Table No.312, we see no reason to approve the criteria followed by AERA and we hereby quash and set aside this approach as per Table No.312 of the impugned order. Consequently, the aeronautical allocation arrived at by AERA which is 30% as per Table No.314 of the impugned order is also hereby quashed and set aside.

373. AERA has erred in allocating only 30% of Digitalisation Cost towards aeronautical services despite the Appellant having placed on record detailed material demonstrating that a substantially higher proportion of such expenditure is attributable to aeronautical functions. The digital platform in question is not a discretionary commercial add-on, but, an essential operation tool required for improving passenger facilitation, service delivery and airport efficiency, particularly in context of the extensive capital expenditure planned by the Appellant for augmentation of infrastructure and passenger handling capacity. In such circumstances, the expenditure incurred towards digitalisation is intrinsically linked to the discharge of core airport functions and cannot be artificially compressed into a marginal aeronautical allocation.

374. It is also evident that Appellant does not have the in-house bandwidth and technical expertise to independently undertake digital transformation and is therefore required to engage a specialised digital service provider for the development, maintenance and enhancement of the platform. The annual payments made for such services are thus genuine operating expenditures incurred for enabling the Appellant to perform and improve passenger-facing services across the airport ecosystem. To the extent that these services facilitate aeronautical operations and passenger processing, the corresponding cost necessarily deserve to be treated as aeronautical in character.

375. The Appellant has proposed an aeronautical allocation of 82% based on activity-wise manpower allocation, which was itself linked to the complexity of services being offered through the digital platform. This basis is rational, objective and commercially sound because intangible services such as software development, data processing, professional support and platform management are inherently deployed for designing, operating, and maintaining such services. In the context of digital and technology services, manpower deployment is a far more accurate indicator of cost causation than abstract variables such as revenue-generating capability and perceived usefulness.

376. AERA has however adopted a Multi-Criteria Decision Analysis methodology based on variables such as a necessity, channel usefulness and revenue-generating capacity and has assigned scores ranging from 1 to 5 without disclosing any objective basis for such scoring. Thus, we hereby hold that this renders the methodology subjective and arbitrary. In particular, the assignment of lower scores to aeronautical activities and higher scores to non-aeronautical activities without any discernible reasoning, undermines the credibility of the allocation exercise and suggests that the outcome has been structured in a manner that artificially depresses the aeronautical share.

377. We hereby therefore hold that the use of "revenue-

generating capability" as a parameter is especially flawed because aeronautical services are regulated services for which the Appellant cannot independently earn revenue beyond what is improved by AERA. The consequences of this methodology are that aeronautical services are structurally disadvantaged in the scoring matrix, while, non-aeronautical activities are accorded disproportionately high weightage merely because they have a notional possibility of generating revenue. This creates a cascading distortion in the ultimate allocation and results in a methodology that is biased by design against aeronautical services.

378. The Appellant has also correctly pointed out that many essential aeronautical services, including maps, lost & found, and Wi-Fi have been bundled into a broad residual category of "Other Aeronautical Services", whereas non-aeronautical services have been distributed across a larger number of distinct categories. This unequal classification has the effect of understanding the functional spread and importance of aeronautical digital services. Such grouping is not based on any technical necessity and instead results in a skewed analytical outcome that minimises the share allocation to aeronautical services.

379. It is further important to point out that the several other operating expenses such as repairs and maintenance and operating contracts, AERA adopts an allocation methodology based on actual deployment of goods and services, including manpower. There is no rational basis for abandoning that established cost-causation approach in the case of digitalisation expenses and replacing it with an abstract scoring exercise based on necessity, usefulness and revenue potential. The principle of consistency in regulatory treatment requires that similarly situated expenditure heads be allocated on a comparable and objective basis, particularly where manpower and service deployment are the real cost drivers.

380. It is rightly contended by Mr. Sajan Poovayya that Appellant has also proposed an alternative and more objective methodology by identifying important aeronautical activities such as maps and lost & found as separate heads and by replacing the variable of "revenue-generating capability"

> with "passenger convenience", which is a more appropriate criterion in the context of airport digital services. We are in full agreement with the contention of the Appellant that the very purpose of digitalisation in an airport setting is to enhance passenger convenience, improve process efficiency and facilitate access to critical travel-related information and services. A methodology that fails to recognise this fundamental objective and instead privileges speculative revenue potential over passenger-facing operational necessity is plainly unreasonable.

381. Even on AERA's methodology, the Appellant has demonstrated that the correct aeronautical allocation ought to have been at least 60% and that the adoption of 30% is the result of an error which AERA has not substantively denied. Hence, we hereby hold that carrying such an error through the entire five-year Control Period imposes a continuing financial prejudice upon the Appellant without any fault on its part. At the very least, the allocation ought to have been corrected to 60%, subject to true-up on the basis of actuals.

382. In these circumstances, we hereby hold that the restriction of aeronautical allocation of Digitalisation Cost to 30% is arbitrary, methodologically unsound and contrary to the material placed on record by the Appellant. The Appellant's claim of 82% is supported by a rational manpower-based methodology and in any event, even under AERA's own framework, an allocation of at least 60% ought to have been allowed. We accordingly allow Digitalisation Cost at 60%.

383. We hereby hold that aeronautical allocation shall be 60% of the total expenditure incurred by this appellant for development of digital platform agreement entered into between the appellant and

ADL dated 01.04.2024.

384. The bifurcation of the costs done by AERA into fixed cost to digital service provider, onboarding costs and loyalty program costs and thereafter to approve 30% of fixed cost is absolutely arbitrary in nature. We hereby hold that 60% of aeronautical allocation shall be calculated of total cost/expenses incurred by this appellant for developing digital platform which is Rs.659 Crores thus 60% of Rs.659 Crores ought to have been allowed by AERA in O&M expenses as per the following formula:

ARR=WACC x RAB + D + O&M +T - S

385. As per Clause 8.5.7 (i)(c)(aa) of OMDA mandates MIAL to go for competitive bidding procedure in the field of public works and contracts of which value exceeds Rs.50 Crores in the competitive bidding process & thus "market discovered prices" will be derived. Thus, "market driven price" has been held as a real and efficient capital expenditure as per the judgment delivered by this Tribunal dated 21.07.2023 in AERA Appeal No.1 of 2021 as well as well as judgement delivered by this Tribunal in AERA Appeal No.4 of 2016 dated 16.4.2025. thus, "market discovered prices" has been arrived at through competitive and transparent bidding process. Thus, it is not open for AERA to prescribe its own cost nor AERA has said power to reduce the said cost. In the facts of the present case, as per Digital Platform Agreement dated 01.04.2024 the total expenditure/cost incurred by this appellant for the digital platform is at Rs.659 Crores and 60% thereof has been allowed as an aeronautical allocation and we hereby quash and set aside the decision of AERA of aeronautical allocation of 30% of Rs.497 crores. Here AERA has not only reduced the aeronautical allocation ratio/percentage but has also reduced the contractual price from Rs.659 Crores to Rs.497 Crores. Hence, the decision of AERA of aeronautical allocation for digitalization of cost allocation as mentioned in Table No.312 and Table No.314 of the impugned order is hereby quashed and set aside.

386. AERA is hereby directed to allow aeronautical allocation of 60% of total and actual cost incurred by this appellant towards digitalization. The total cost incurred by this appellant as per digital platform agreement dated 01.04.2024 shall be taken into consideration by AERA without bifurcating or without subdividing the total cost into three different costs. AERA cannot sit in appeal against the terms of contract as per provisions of OMDA and SSA.

XIX. Legal Expenses for Fourth Control Period

387. It is submitted by Learned Senior Counsel appearing on behalf of the appellant that AERA has decided that legal expenses can only be taken up for consideration, on case to case basis, if it can be established that the incurrence of legal costs as any positive impact on the smooth operations of the airport and its efficient running.

388. Looking to the arguments canvassed by the Counsels for both the sides, SSA (Annexure A-5) dated 26.04.2006 does not exclude legal expenses from the scope of O&M expenditure. In fact, legal expenses are a part of O&M cost.

389. It ought to be kept in mind by AERA that Airport Operator sometimes has to go to Court/Tribunal/arbitration either as a petitioner or as a respondent to establish their rights against the wrongful decisions of some authorities or to resolve the dispute. This is inevitable for smooth and efficient running of the airport. If any injustice has been caused to the Airport Operator, and if the facts and laws are in favour of the Airport Operator, in that eventuality, Airport Operator cannot be a silent spectator. In that eventuality, Airport Operator has to go to court. Normally, complex commercial activities which involves several contracts and commercial transactions to take shelter of the Court/Tribunal/Arbitration is not unknown rather wherever there are any complex commercial activities going on to avoid injustice, going to the Court is not unknown. Even in such eventuality, persons are dragged into the litigation and hence, unwillingly also the legal expenses have to be incurred. But, in all eventuality whether as appellant or respondent, as plaintiff or defendant for smooth and efficient operations of the airport.

390. In view of the aforesaid facts and reasons, legal expenses are a part of O&M cost and, therefore, is admissible as pass- through cost for airport operations.

391. Appellant is seeking pass-through of its legal expenses which are admittedly recurring and non-profiteering in nature. Thus, looking to the audited books of accounts, whatever is the actual legal expenses ought to have been allowed by AERA as O&M expenses.

392. It ought to have been appreciated by AERA that out of Rs.100 Crores recovered by the appellant from the different stakeholders, 38.7% of the gross revenue collected by the appellant goes to AAI as revenue share and annual fee.

393. Thus, even if the appellant has paid Rs.100 Crores as legal expenses then it is allowed to be recovered from different stakeholders then also the appellant will get only Rs.61.3 Crores. Thus, the appellant is never going to get 100% legal fees which is already incurred as O&M expenses.

394. Herein also, the approach of AERA is inconsistent. The impugned order is for 4th Control Period; AERA has never disallowed legal expenses as a part of O&M cost right from 1st Control Period onwards. The appellant has to incur the legal expenses in its ordinary course of business for protecting its statutory and contractual rights. Hence also, the legal expenses ought to be protected by AERA as O&M expenses on actual basis.

395. AERA has no power, jurisdiction and authority to have a phishing enquiry on case-to-case basis. Legal expense nowadays is inevitable to protect the rights and for smooth operations of complex commercial activities especially where there are several contracts and varieties of activities involved.

396. AERA cannot ask for details of each and every case where the lawyer has appeared and for every case the present appellant has to justify how the appearance of the lawyer in the Court, Tribunal or in Arbitration is inevitable to protect the statutory and contractual rights of the advocates when the highest sovereign body of this country - the Union of India has put a faith in this Airport Operator-appellant to run the MIAL, Mumbai Airport then such kind of inquiry is on

case-to-case basis and that too for legal matters is not within the power of AERA. Nobody goes to the court just for fun. The actual legal expenses looking to the audited books of accounts of the appellant must be allowed by AERA as O&M during the tariff determination process under Section 13 of the AERA Act, 2008.

397. The Respondent No.1's contention that legal expenses lack a "direct and proximate nexus" with aeronautical services proceeds from an unduly restrictive interpretation of what constitutes airport operations. Legal expenses incurred by an airport operator encompass matters directly impacting aeronautical functions, including land and demised premises issues affect the very substratum of the airport; enforcement of dues from airlines ensuring financial viability of operations; and defence of proceedings arising from operational incidents. To characterize all such expenses as merely "corporate" or "commercial" is to ignore their integral connection to the safe, compliant, and efficient operation of a major international airport.

398. The absence of an express provision in the SSA or OMDA "allowing" legal expenses is of no consequence. The definition of OM under Schedule 1 of the SSA is functional in character and refers to "efficient operation and maintenance cost pertaining to Aeronautical Services". In a concession-based airport enterprise involving complex contractual, statutory and regulatory obligations, legal expenditure incurred for defending claims, enforcing contractual rights, ensuring regulatory compliance, and addressing disputes concerning airport land, safety, airspace restrictions, recovery of aeronautical dues and regulatory proceedings is an inevitable incident of operating the airport and such expenditure, when incurred in the ordinary course of managing the airport enterprise, bears a clear operational nexus and cannot be regarded as alien to airport operations.

399. AERA has erred in refusing to allow legal expenses as part of O&M expenditure for the Fourth Control Period on the ground that such expenses can be considered only on a case-to-case basis at a later stage. In absence of any specific exclusion in Schedule I to SSA, legal expenses, being a recurring operational expenditure incurred in the ordinary course of operating, maintaining and protecting the airport business, necessarily form part of O&M costs and are therefore admissible as pass-through expenditure.

400. The legal expenses incurred by the Appellant are not discretionary or profiteering in nature, but a re genuine and necessary expenses incurred for protecting the contractual, statutory and commercial interests of the CSMIA, ensuring regulatory compliance, defending litigation, enforcing recovery of dues and preventing disruptions to airport operations.

401. Such expenditure has a direct and positive nexus with the smooth operations and efficient functioning of the airport, since failure to incur such costs in a timely manner may expose the Appellant to legal, contractual and financial risks that could adversely affect service continuity and operational stability.

402. AERA has also acted inconsistently and arbitrarily in departing from the treatment adopted in the earlier Control Periods, where the legal expenses were allowed as a part of operational expenditure. The Appellant had a legitimate expectation that incurring legal costs, which were never

disallowed from the First Control Period onwards, would continue to be recognised as pass-through costs, particularly when there has been no change in the contractual framework nor there is any amendment to the SSA or OMDA and when there is no material change in the nature of expenditure. A sudden departure from an established regulatory approach, without cogent justification, is arbitrary and contrary to the principles of fairness and regulatory certainty.

403. It is not AERA's case that the Appellant is engaged into any other business, other than operating, maintaining and developing CSMIA and activities associated therewith. It has no other business activity or interest. Thus, we hereby hold that the observation of AERA that the legal expenses are "predominantly not related to airport operations" is unsupported by any substantive reasoning and is beyond the scope of a general and summary rejection at the stage of determination of tariff.

404. It ought to have been kept in mind by AERA that the Appellant being the lessee and operator of MIAL is duty bound to protect not only its own interests, but, also the interest of AAI, which owns the airport and is itself a shareholder to the Appellant. In such a case, the Appellant cannot avoid initiating, defending or managing legal proceedings that arise in connection with airport development, maintenance, operation, commercial arrangements, recovery actions, regulatory matters and other legal obligations incidental to running the airport. These legal functions are inseparable from the business of airport operation and cannot be treated as alien to O&M expenditure.

405. The decision of AERA to postpone consideration of legal expenses until the end of the Control Period also creates an unjustified mismatch in the Appellant's cash flows. The legal expenses are incurred as and when required and denial of upfront recovery compels the Appellant to bridge the gap through short-term borrowing and thereby increasing financing costs. Such additional borrowing costs would ultimately find their way into tariff and would therefore be avoidable if a proper upfront allowance is granted. A regulatory approach that unnecessarily creates cash flow strain for meeting legitimate operational expenditure cannot be said to be efficient or consumer friendly.

406. It is also relevant to mention here that AERA has, for other heads, adopted averaging or estimation based on historical trends for the purpose of tariff determination. There is no reason why a similar methodology could not have been adopted in the case of legal expenses by allowing a reasonable upfront amount, based on past periods, subject to true-up on actual incurrence in the Fifth Control Period. Such an approach would have balanced regulatory prudence with operational necessity and would have avoided unfairly burdening the Airport Operator during the subsistence of the Fourth Control Period.

407. In view of the aforesaid facts and reasons, AERA cannot deny fair recovery of a legitimate operational expense on the vague premise that its impact on airport operations may be examined later. Once the expenditure is of recurring operational character since the commence of CSMIA operations by Appellant is not expressly excluded under the governing agreements viz.- SSA and OMDA, and has historically been allowed in prior Control Periods, the proper course is to allow it

upfront, subject to true-up, based on actuals. The refusal to do so deprives the Appellant of timely recovery of genuine cost of operations and is therefore arbitrary and unsustainable.

408. In view of the aforesaid facts and reasons, we hereby hold that legal expenses claimed by the Appellant is hereby allowed as a part of O&M expenditure for the Fourth Control Period on an upfront basis, with a liberty to true-up the same, on the basis of actual incurrence at the time of tariff determination for Fifth Control Period. Such treatment would be consistent with the contractual framework, prior regulatory practice, principles of legitimate expectation, operational necessity and sound tariff regulation.

409. The methodology adopted by AERA of postponing consideration of legal expenses to an unspecified "case-to- case" exercise is also unsustainable. The Appellant presented its claim for legal expenditure as part of O&M in its MYTP for the Fourth Control Period. AERA was therefore required to examine the claim and determine its admissibility during tariff determination itself.

410. The impugned order does not undertake such examination but instead defers the issue altogether and such deferral effectively denies recovery of recurring operational expenditure during the relevant control period and creates avoidable cash-flow distortion by compelling the airport operator to finance these expenses through borrowing or internal resources.

411. In view of the aforesaid facts and reasons, we hereby quash and set aside the decision of AERA in the impugned order so far as the legal expenses are concerned. AERA has no power, jurisdiction and authority to examine wherein legal expenses must be allowed as O&M expenses only after considering case-to-case basis.

Application of Prior Binding Pronouncements of this Tribunal

412. Much has been argued by learned counsel for the Respondent on the applicability of the prior pronouncements of this Tribunal, including DIAL SCP & TCP, MIAL SCP & TCP, GHIAL TCP, and allied judgements on the ground that each of them has been appealed before the Hon'ble Supreme Court under Section 31 of the Airports Economic Regulatory Authority of India Act, 2008, and therefore stands, in the Respondent's submission, "in jeopardy".

413. It was contended that once an appeal has been preferred, even in the absence of any stay, the earlier decisions of this Tribunal lose their binding or precedential character by reason of the absence of "finality of proceedings". In aid of this submission, reliance was placed upon Union of India vs. West Coast Paper Mills, (2004) 2 SCC 747, Rupa Ashok Hurra v. Ashok Hurra, (2002) 4 SCC 388, and Modern Food Industries (India) Ltd. v. Sachidanand Dass, 1995 Supp (4) SCC 465.

414. We have given our most anxious consideration to this submission. We find, with respect, that it proceeds from a myopic understanding of the doctrine of stare decisis, a fundamental misappreciation of the principles governing precedents, and a complete misreading of the jurisdiction conferred upon this Tribunal by the legislative design. The Respondent's approach, if accepted, would amount to a "self- granted stay" of all adverse judgments by the mere act of filing an

appeal.

415. The submission, if accepted, would lead to a deeply destabilising consequence in regulatory adjudication. It would mean that every time a regulated entity or the regulator itself files an appeal against an adverse decision of this Tribunal, the precedential force of that decision stands suspended by the mere act of filing. The result would be that no coherent body of airport economic jurisprudence could ever be built by this Tribunal, for every settled issue could be reopened in every subsequent case by the simple expedient of preferring an appeal and such a proposition is antithetical to judicial discipline, certainty and the rule of law.

416. To appreciate the width and amplitude of this Tribunal's jurisdiction, and consequently, the binding nature of its pronouncements, it is essential to trace its origin and the legislative scheme that governs it.

417. That the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) owes its institutional origin to the Telecom Regulatory Authority of India Act, 1997 (TRAI Act). It was under Section 14 of the TRAI Act, that the TDSAT was established and was also conferred with original and appellate jurisdiction. The relevant extracts of Section 14, reads as under:

> "14. Establishment of Appellate Tribunal.--
>
> The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to--
>
> (a) adjudicate any dispute--
>
> (i) between a licensor and a licensee;
>
> (ii) between two or more service providers;
>
> (iii) between a service provider and a group of consumers;...
>
> (b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act."

(c) exercise jurisdiction, powers and authority conferred on--

(i) the Appellate Tribunal under the Information Technology Act, 2000 (21 of 2000);

(ii) the Appellate Tribunal under the Airports Economic Regulatory Authority of India Act, 2008 (27 of 2008); and

(iii) the Appellate Tribunal under the Digital Personal Data Protection Act, 2023.]

418. It ought to be kept in mind that Section 14A of the TRAI Act governs the procedural invocation of TDSAT's jurisdiction and most critically, sub-section (7) thereof contains the express legislative conferment of the depth and amplitude of TDSAT's jurisdiction and for the aforesaid purpose Section 14A reads as under:

> 14A. Application for settlement of disputes and appeals to Appellate Tribunal.--
>
> (1) The Central Government or a State Government or a local authority or any person may make an application to the Appellate Tribunal for adjudication of any dispute referred to in clause (a) of section 14.
>
> (2) The Central Government or a State Government or a local authority or any person aggrieved by any direction, decision or order made by the Authority may prefer an appeal to the Appellate Tribunal.
>
> (4) On receipt of an application under sub-section (1) or an appeal under sub-section (2), the Appellate Tribunal may, after giving the parties to the dispute or the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.
>
> (7) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any dispute made in any application under sub-

section (1) or of any direction or order or decision of the Authority referred to in the appeal preferred under sub-section (2), on its own motion or otherwise, call for the records relevant to disposing of such application or appeal and make such orders as it thinks fit.

419. Furthermore, section 18 of the TRAI Act, 1997, governs further appeals to the Supreme Court from order of this Tribunal made in matters arising from the TRAI Act, 1997, which reads as under:

> "18. Appeal to Supreme Court.--
>
> (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or in any other law, an appeal shall lie against any order, not being an interlocutory order, of the Appellate Tribunal to the Supreme Court on one or more of the grounds specified in section 100 of that Code."

420. When Parliament enacted the Airports Economic Regulatory Authority of India Act, 2008 ('AERA Act') to govern the economic regulation of major airports, it expressly conferred upon this tribunal, which was established under the TRAI Act as the Appellate Tribunal for the airport sector and the same is evident from Section 17 of the AERA Act, which reads as under:

> 17. [Appellate Tribunal].-- The Telecom Disputes Settlement and Appellate Tribunal established under section 14 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) shall, on and from the commencement of Part XIV of Chapter VI of the

> Finance Act, 2017 (7 of 2017), be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act to--
>
> (a) adjudicate any dispute--
>
> (i) between two or more service providers;
>
> (ii) between a service provider and a group of consumer:
>
> Provided that the Appellate Tribunal may, if considers appropriate, obtain the opinion of the Authority on any matter relating to such dispute:
>
> ...
>
> (b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act.

421. It is pertinent to denote that it is Section 18 of the AERA Act, which is the direct counterpart of Section 14A of the TRAI Act and the same governs the invocation of TDSAT's jurisdiction in appellate matters concerning the Tariff Order passed by AERA, and reads as under:

> 18. Application for settlement of disputes and appeals to Appellate Tribunal.--
>
> (1) The Central Government or a State Government or a local authority or any person may make an application to the Appellate Tribunal for adjudication of any dispute as referred to in clause (a) of section (2) The Central Government or a State Government or a local authority or any person aggrieved by any direction, decision or order made by the Authority may prefer an appeal to the Appellate Tribunal.
>
> (4) On receipt of an application under sub-section (1) or an appeal under sub-section (2), the Appellate Tribunal may, after giving the parties to the dispute or the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.
>
> (5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the dispute or the appeal and to the Authority, as the case may be.
>
> (7) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness, of any dispute made in any application under sub-

section (1), or of any direction or order or decision of the Authority referred to in the appeal preferred under sub-section (2), on its own motion or otherwise, call for the records relevant to disposing of such application or appeal and make such orders as it thinks fit.

422. Moreover, Section 31 of the AERA Act governs the further appeal to the Supreme Court from orders of this Tribunal and the same reads as under:

> "31. Appeal to Supreme Court.--
>
> (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in any other law, an appeal shall lie against any order, not being an interlocutory order, of the Appellate Tribunal to the Supreme Court on one or more of the grounds specified in section 100 of that Code..."

423. It is of utmost importance to highlight that Section 32 of the AERA Act provides that orders of this Tribunal are executable as a decree of a civil court, which itself the underscores their finality and binding character, for ready reference Section 32 of AERA Act reads as under:

> "32. Orders passed by Appellate Tribunal to be executable as a decree.--
>
> (1) An order passed by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.
>
> (2) Notwithstanding anything contained in sub-

section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court."

424. From the perusal of the above it can be seen that the appellate jurisdiction of this Tribunal under the Airports Economic Regulatory Authority of India Act, 2008 (AERA Act) is plenary and co-extensive with that conferred under the Telecom Regulatory Authority of India Act, 1997 (TRAI Act), reflecting identical legislative intent to create a specialized, expert appellate forum for economic regulation.

425. That the AERA Act, 2008, deliberately replicated the same appellate architecture as Section 17 of AERA Act, 2008, expressly provides that this Tribunal established under Section 14 of the TRAI Act shall be the Appellate Tribunal for the purposes of the AERA Act and Section 17(b) again empowers it to "hear and dispose of appeal against any direction, decision or order of the Authority under this Act."

426. Furthermore, Section 18(2) permits "any person aggrieved"

> to prefer an appeal. Section 18(4) empowers the Tribunal to "pass such orders thereon as it thinks fit" and Section 18(7), in language materially identical to Section 14A(7) of the TRAI Act, authorises the Tribunal to examine the "legality or propriety or correctness" of the impugned direction, order or decision and to call for records and make such orders as it thinks fit.

427. Consequently, Section 31, again in terms materially identical to Section 18 of the TRAI Act, provides an appeal to the Supreme Court only on grounds specified in Section 100 CPC; which should raise substantial question of law.

428. That the statutory consequences of this parallel drafting by the parliament are plain. First, Parliament has chosen not to create a diluted airport appellate model; it has instead adopted the TDSAT model already crafted under the TRAI Act. Second, the expressions "legality or propriety or correctness", "hear and dispose of appeal", "pass such orders as it thinks fit", and the power to call for records are words of wide appellate amplitude. Third, in both enactments the appeal to the Supreme Court is deliberately restricted to substantial questions of law. It follows that TDSAT is intended by Parliament to be the primary and comprehensive appellate forum for adjudication on merits, and not a narrow supervisory court.

429. The width of TDSAT's jurisdiction under the TRAI Act, which, as demonstrated above, is verbatim identical to its jurisdiction under the AERA Act has been definitively and authoritatively determined by the Hon'ble Supreme Court of India in Cellular Operators Association of India v. Union of India, (2003) 3 SCC 186 (hereafter "Cellular Operators") and this judgment constitutes binding precedent, binding upon this Tribunal under Article 141 of the Constitution, and its conclusions on TDSAT's jurisdiction are the authoritative framework within which the Respondent's submissions in the present case must be assessed. For ready reference the relevant Paragraphs of the aforesaid judgement is reproduced below:

> "8. ... That being the object for which an independent tribunal was constituted, the power of that Tribunal has to be adjudged from the language conferring that power and it would not be appropriate to restrict the same on the ground that the decision which is the subject-matter of challenge before the Tribunal was that of an expert body. It is no doubt true, to which we will advert later, that the composition of the Telecom Regulatory Authority of India as well as the constitution of GOT-IT in April 2001 consists of a large number of eminent impartial experts and it is on their advice, the Prime Minister finally took the decision, but that would not in any way restrict the power of the Appellate Tribunal under Section 14, even though in the matter of appreciation the Tribunal would give due weight to such expert advice and recommendations. Having regard to the very purpose and object for which the Appellate Tribunal was constituted and having examined the different provisions contained in Chapter IV, more particularly, the provision dealing with ousting the jurisdiction of the civil court in relation to any matter which the Appellate Tribunal is empowered by or under the Act, as contained in Section 15, we have no hesitation in coming to the conclusion that the power of the Appellate Tribunal is quite wide, as has been indicated in the statute itself and the decisions of this Court dealing with the power of a court, exercising appellate power or original power, will have no application for limiting the jurisdiction of the Appellate Tribunal under the Act. Since the Tribunal is the original authority to adjudicate any dispute between a licensor and a licensee or between two or more service providers or between a service provider and a group of consumers and since the Tribunal has to hear and dispose of appeals

> against the directions, decisions or order of TRAI, it is difficult for us to import the self- contained restrictions and limitations of a court under the judge-made law to which reference has already been made and reliance was placed by the learned Attorney- General. By saying so, we may not be understood to mean that the Appellate Tribunal while exercising power under Section 14 of the Act, will not give due weight to the recommendations or the decisions of an expert body like TRAI or in the case in hand, GOT-IT, which was specifically constituted by the Prime Minister for redressing the grievances of the cellular operators. We would, therefore, answer the question of jurisdiction of the Appellate Tribunal by holding that the said Tribunal has the power to adjudicate any dispute between the persons enumerated in clause (a) of Section 14 and if the dispute is in relation to a decision taken by the Government, as in the case in hand, due weight has to be attached both to the recommendations of TRAI which consists of an expert body as well as to the recommendations of GOT-IT, a committee of eminent experts from different fields of life, which had been constituted by the Prime Minister."

430. That in Cellular Operators Supra, in para 11 of the Judgement, the Hon'ble Supreme Court identified two foundational errors of law committed by TDSAT in the judgment under appeal before it. These errors are directly material to the submissions made by the Respondent in the present appeal and the relevant part of Para 11 reads as under:

> "11. ... At the outset, it may be stated that the Tribunal committed an error by holding that it exercises supervisory jurisdiction. As has been stated earlier, the jurisdiction of the Tribunal under Section 14 cannot be held to be a supervisory jurisdiction, in view of the language of the statute as well as the fact that it is the only forum for redressing the grievance of an aggrieved party inasmuch as the appellate jurisdiction to this Court is only on a substantial question of law and the jurisdiction of a civil court for filing a suit is also ousted. It has already been held by us that the Tribunal has the power to adjudicate any dispute but while answering the dispute, due weight has to be given to the recommendation of TRAI, which consists of experts. The Tribunal also committed yet another error in holding that the jurisdiction of the Appellate Tribunal cannot be wider than that of the Supreme Court. A bare comparison of the provisions of Section 14, which confers jurisdiction on the Tribunal and Section 18, which confers jurisdiction on the Supreme Court, would unequivocally indicate that the Tribunal has much wider jurisdiction than the jurisdiction of this Court under Section 18, as this Court would be entitled to interfere only on a substantial question of law, which arises from the judgment of the Tribunal and not otherwise."

431. That the Hon'ble Supreme Court in Cellular Operators Supra, under para 27, 31, 33, 34 & 37, further expounded upon TDSAT's wide jurisdiction in the following terms:

> "27. TDSAT was required to exercise its jurisdiction in terms of Section 14-A of the Act. TDSAT itself is an expert body and its jurisdiction is wide having regard to sub-section (7) of Section 14-A thereof. Its jurisdiction extends to examining the

> legality, propriety or correctness of a direction/order or decision of the authority in terms of sub-section (2) of Section 14 as also the dispute made in an application under sub-section (1) thereof. The approach of the learned TDSAT, being on the premise that its jurisdiction is limited or akin to the power of judicial review is, therefore, wholly unsustainable. The extent of jurisdiction of a court or a tribunal depends upon the relevant statute. TDSAT is a creature of a statute. Its jurisdiction is also conferred by a statute. The purpose of creation of TDSAT has expressly been stated by Parliament in the amending Act of 2000. TDSAT, thus, failed to take into consideration the amplitude of its jurisdiction and thus misdirected itself in law."

31. The rule as regard deference to expert bodies applies only in respect of a reviewing court and not to an expert tribunal. It may not be the function of a court exercising power of judicial review to act as a supermodel as has been stated in Administrative Law by Bernard Schwartz, 3rd Edn., in para 10.1, at p. 625; but the same would not be a case where an expert tribunal has been constituted only with a view to determine the correctness of an order passed by another expert body. The remedy under Section 14 of the Act is not a supervisory one. TDSAT's jurisdiction is not akin to a court issuing a writ of certiorari. The Tribunal although is not a court, it has all the trappings of a court. Its functions are judicial.

33. The regulatory bodies exercise wide jurisdiction. They lay down the law. They may prosecute. They may punish. Intrinsically, they act like an internal audit. They may fix the price; they may fix the area of operation and so on and so forth. While doing so, they may, as in the present case, interfere with the existing rights of the licensees.

34. Statutory recommendations made by it are normally accepted by the Central Government, as a result of which the rights and obligations of the parties may seriously be affected. It was in the aforementioned premise Parliament thought of creating an independent expert tribunal which, if an occasion arises therefor, may interfere with the finding of fact, finding of law or a mixed question of law and fact of the authority. Succinctly stated, the jurisdiction of the Tribunal is not circumscribed in any manner whatsoever.

37. There cannot be any doubt whatsoever that when jurisdiction upon a court or a tribunal is conferred by a statute, the same has to be construed in terms thereof and not otherwise. The power of judicial review of this Court as also of the High Court, however, stand on a different footing. The power of this Court as also the High Court although is of wide amplitude, certain restrictions by way of self-discipline are imposed. Ordinarily, the power of judicial review can be exercised only when illegality, irrationality or impropriety is found in the decision-making process of the authority."

432. Furthermore, the Hon'ble Supreme Court in Cellular Operators Supra, further addressing the implication of the restricted appellate jurisdiction of the Supreme Court itself under Section 18 of the TRAI Act , which is Pari Materia or counterpart of Section 31 of the AERA Act, held that this restriction imposes upon TDSAT a positive obligation of thorough and complete adjudication:

> "43. The learned TDSAT should have borne in mind that its decision on fact and law is final and appeal lies to this Court in terms of Section 18 of the Act only on substantial questions of law. It, therefore, was obliged to determine the questions of law and facts so as to enable this Court to consider the matter if any substantial question of law arises on the face of the judgment."

433. In the conspectus of above, it is expedient to state that the ratio of Cellular Operators supra is directly applicable to the facts of the present case and it is not confined to telecom merely because the immediate subject-matter there was the TRAI Act. The basis of the ruling lies in the statutory language conferring jurisdiction on TDSAT, and that language is reproduced in all material respects in Sections 17 and 18 of the AERA Act.

434. It reflects the same Tribunal, the same formulation of appellate power, the same standard of "legality or propriety or correctness", the same power to call for records, the same width of remedial authority, and the same restricted appeal to Hon'ble Supreme Court appeal under Section 100 CPC, all these features are present in the present appeal. Therefore, the principles declared in Cellular Operators regarding the amplitude of TDSAT's jurisdiction apply, mutatis mutandis and indeed with full force, to TDSAT acting under the AERA Act as well.

435. That the same is also apparent from the perusal of the legislative scheme, which, unequivocally demonstrates Parliament's intent to vest TDSAT with comprehensive appellate authority over economic regulation, including the power to examine on merits the tariff determinations and to ensure regulatory consistency across Control Periods.

436. Moreover, there is a further structural reason for rejecting the Respondent's attempt to diminish the force of this Tribunal's judgments. Parliament has, under both enactments, confined the appeal to the Supreme Court to substantial questions of law.

437. If TDSAT were itself to treat its jurisdiction as merely supervisory, then it would not be able undertake a scrutiny on merits as to the legality or propriety or correctness of AERA'S determination on fact, technical methodology, accounting treatment, financial assumptions and contractual application and this would in turn defeat the legislative design.

438. The law, therefore, requires the Tribunal to exercise its full appellate function and not to retreat into a narrow certiorari- style review. This is especially so in tariff matters, where factual, technical and mixed questions dominate the field and where the second appellate court under Section 31 is deliberately designed not to revisit the entire record afresh.

439. That the Hon'ble Supreme Court in Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, (1992) 3 SCC 1 : (1992) 75 Comp Cas 440 : 1992 SCC OnLine SC 274, while examining the legal effect of an interim stay order, authoritatively held that the 'even' mere stay of operation of an order does not obliterate or extinguish the existence of the order in law. The Hon'ble Court clarified that there exists a fundamental distinction between quashing of an order and stay of operation of an order. In paragraph 10 of the judgment, the Hon'ble Court observed:

> "10. ...While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending..."

440. We turn now to address, in the light of the statutory and jurisprudential framework established above, the overarching contention advanced by the Respondent in that all TDSAT judgments relied upon by the Appellant -- DIAL SCP & TCP (21.07.2023), MIAL SCP & TCP (06.10.2023), GHIAL TCP (14.02.2024) and allied matters carry no binding precedential force because each is under challenge before the Supreme Court under Section 31 of the AERA Act.

441. It is the foundational rule of Indian precedent law is that a judgment of a competent court or tribunal is binding both as an operative order and as a statement of the applicable law from the moment of its pronouncement. The pendency of an appeal does not suspend this effect, until reversal or stay by a superior court suspends or extinguishes it; the mere filing of an appeal does not. This principle has deep roots in various decisions of the Hon'ble Supreme Court.

442. The doctrine of merger in relation to special leave to appeal being granted under Article 136, as explained by the Hon'ble Supreme Court in Kunhayammed v. State of Kerala, (2000) 6 SCC 359, rests on the principle that once a superior forum has finally adjudicated upon a decree or order passed by an inferior court, tribunal or authority, the operative order thereafter becomes the order of the superior forum into which the earlier order merges.

443. However, the Hon'ble Court was careful to emphasise that the doctrine is neither automatic nor of universal application. Its operation depends upon the nature and scope of the jurisdiction exercised by the superior forum and the extent of the controversy that is actually placed before it. For ready reference Para 12 of the aforesaid judgement reads as under:

> 12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time.

When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way

-- whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view.

444. The Hon'ble Supreme Court expressly clarified that the mere invocation of appellate or supervisory jurisdiction does not, by itself, bring about merger of the impugned order into the order of the superior forum. The applicability of the doctrine must be determined with reference to the character of the jurisdiction exercised by the superior court and the precise subject-matter that forms the basis of the challenge. In other words, unless and until the superior forum has actually exercised its jurisdiction to examine and determined the issues raised before it, the order under challenge continues to subsist and operate in law.

445. The sound structural logic of this principle is inescapable.

Every judgment of every court below the Hon'ble Supreme Court is, in principle, amenable to further appeal. If the pendency of an appeal were sufficient to extinguish a judgment's precedential force, no judgment of any inferior court or tribunal, indeed, no judgment other than those of the Supreme Court itself would ever have any binding or even persuasive authority.

446. The doctrine of stare decisis, which the Hon'ble Supreme Court has repeatedly held to be a cornerstone of the rule of law in India, would be rendered meaningless. This consequence is obviously contrary to the constitutional and legal order and resultantly anti-thesis to rule of law.

447. While deliberating on the nature of the right of appeal and the contours of appellate power the Hon'ble Supreme Court in Shiv Shakti Coop. Housing Society v. Swaraj Developers, (2003) 6 SCC 659, observed as follows:

> "17. Right of appeal is statutory. Right of appeal inhered in no one. When conferred by statute it becomes a vested right. In this regard there is essential distinction between right of appeal and right of suit. Where there is inherent right in every person to file a suit and for its maintainability it requires no authority of law, appeal requires so. As was observed in State of Kerala v. K.M. Charia Abdulla and Co. [AIR 1965 SC 1585] the distinction between right of appeal and revision is based on differences implicit in the two expressions. An appeal is continuation of the proceedings; in effect the entire proceedings are before the Appellate Authority and it has the power to review the evidence subject to statutory limitations prescribed. But

> in the case of revision, whatever powers the revisional authority may or may not have, it has no power to review the evidence, unless the statute expressly confers on it that power. It was noted by the four Judge Bench in Hari Shankar v. Rao Girdhari Lal Chowdhury [AIR 1963 SC 698] that the distinction between an appeal and a revision is a real one. A right of appeal carries with it a right of rehearing on law as well as fact, unless the statute conferring the right of appeal limits the rehearing in some way, as has been done in second appeals arising under the Code..."

448. It is elementary principle of law and also the correct principle that is well settled in Indian jurisprudence is that a judgment continues to operate as binding precedent from the moment it is pronounced unless and until it is set aside or stayed by a superior court. The mere filing of an appeal does not suspend its precedential value.

449. In this backdrop the ratio of the Shree Chamundi Mopeds Ltd Supra, is of considerable significance. If even a stay order granted by a superior court does not wipe out the existence of the judgment under challenge, it follows a fortiori that the mere filing of an appeal, in the absence of any stay order whatsoever, cannot have the effect of suspending or destroying the binding force of the judgment appealed against. The decision continues to subsist in law and remains operative unless and until it is set aside, stayed, or reversed by a competent superior court.

450. As a cumulative effects of the aforesaid facts, arguments, findings and applicable legal principles, discussed hereinabove, this AERA Appeal no. 2 of 2025 is hereby allowed and accordingly stands disposed of. Consequently, AERA order no. 01/2025-26 issued on 07.05.2025 (Annexure A-1 to the memo of this appeal) passed by Respondent no.1-AERA stands modified to the extent the issues allowed in the present appeal. AERA is directed to consider giving effect to the same within a period of three months from the date of the receipt of the copy of this judgment. All the pending miscellaneous applications connected with this appeal are also disposed of.

_____ (JUSTICE D.N. PATEL) CHAIRPERSON /NS/
_____ (SANJEEV BANZAL) MEMBER