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COMPOSITION OF THE
COMMITTEE ON PUBLIC UNDERTAKINGS
(2013-2014)

Shri Jagdambika Pal

Chairman

Members, Lok Sabha

2. Shri Hansraj Gangaram Ahir
3. Shri Praveen Singh Aron
4. Shri Sanjay Bhoi
5. Smt. Shruti Choudhary
6. Shri Bansa Gopal Chowdhury
7. Shri Raja Ram Pal
8. Shri Adhalrao Shivaji Patil
9. Shri Rajendrasinh Rana
10. Shri Nama Nageswara Rao
11. Shri Magunta Sreenivasulu Reddy
12. Prof. Saugata Roy
13. Smt. Sushila Saroj
14. Shri Uday Singh
15. Shri Bhisma Shankar alias Kushal Tiwari

Members, Rajya Sabha

16. Shri Naresh Agrawal
17. Shri Anil Desai
18. Shri Janardan Dwivedi
19. Shri Naresh Gujral
20. Shri Mukhtar Abbas Naqvi
21. Shri Tapan Kumar Sen
22. Dr. Janardhan Waghmare

Secretariat

- | | | |
|----|-----------------------|---------------------|
| 1. | Shri P. C. Koul | Director |
| 2. | Shri M.K. Madhusudhan | Additional Director |
| 3. | Shri Girdhari Lal | Executive Officer |

COMPOSITION OF THE
COMMITTEE ON PUBLIC UNDERTAKINGS
(2012-2013)

Shri Jagdambika Pal

Chairman

Members, Lok Sabha

2. Shri Hansaraj Gangaram Ahir
3. Vacant
4. Shri Bansa Gopal Chowdhury
5. Dr. Mahesh Joshi
6. Shri Shailendra Kumar
7. Dr. (Smt) Botcha Jhansi Lakshmi
8. Shri Vilasrao Baburaoji Muttemwar
9. Shri Adhalrao Shivaji Patil
10. Shri Ponnamm Prabhakar
11. Shri Rajendrasinh Rana
12. Shri Nama Nageswara Rao
13. Shri Uday Singh
14. Dr. Prabha Kishor Taviad
15. Shri Bhisma Shankar alias Kushal Tiwari

Members, Rajya Sabha

16. Shri Anil Desai
17. Shri Janardan Dwivedi
18. Shri Naresh Gujral
19. Dr. V. Maitreya
20. Shri Mukhtar Abbas Naqvi
21. Shri T.M. Selvaganapathi
22. Dr. Janardhan Waghmare

* Vice Shri Ambica Banerjee, M.P. passed away on 25 April, 2013.

INTRODUCTION

I, the Chairman, Committee on Public Undertakings having been authorized by the Committee to submit the Report on their behalf, present this Thirtieth Report on Airports Authority of India Limited regarding unauthorised withdrawal from the Escrow Account held in a fiduciary capacity on behalf of the Government of India by Mumbai International Airport Private Limited based on Para No. 2.5 of the Comptroller & Auditor General of India Report No. 3 of 2011-12 for the year ended March 2010, Union Government (Commercial).

2. The Committee on Public Undertakings (2012-13) had selected the above said subject for detailed examination. Since, the examination remained inconclusive during their term, the present Committee again selected the subject to complete the unfinished task.

3. The Committee (2012-13) took the Oral Evidence of the representatives of the Ministry of Civil Aviation and Airports Authority of India Ltd. on the subject at their Sitting held on 06 December, 2012.

4. The Committee on Public Undertakings considered and adopted the Report at their Sitting held on 6 February 2014.

5. The Committee wish to express their thanks to the representatives of Ministry of Civil Aviation and Airports Authority of India Ltd. for tendering evidence before them and furnishing the requisite information to them in connection with the examination of the subject.

6. The Committee would like to place on record their appreciation for the assistance rendered to them in the matter by the Office of Comptroller and Auditor General of India.

7. The Committee also wish to express their sincere thanks to their predecessor Committee for their valuable contribution in examination of the subject.

8. For facility of reference and convenience, the Observations/ Recommendations of the Committee have been printed in bold letters in Part-II of the Report.

**New Delhi
7 February 2014
18 Magha 1935 (S)**

**JAGDAMBIKA PAL
Chairman
Committee on Public Undertakings**

REPORT

PART-I

BACKGROUND ANALYSIS

Audit Paragraph

1. In terms of Rule 88 of the Aircraft Rules 1937, the licensee of an airport is entitled to collect Passenger Service Fee (PSF) from the embarking passengers at a rate specified by Central Government and is also liable to pay for security component to any security agency designated by the Central Government for providing the security service.

2. Consequent to allowing private companies and Joint Venture Companies to own and operate airports in the country, the Ministry of Civil Aviation (MoCA) issued an Order on 9 May 2006 which was later amended by Order dated 20 June 2007. The order, *inter-alia*, stated that:

- (i) Passenger Service Fee (PSF) at Airports would be collected by the respective Airport Operator, which could be Airports Authority of India (AAI), a Joint Venture Company (JVC) or a private operator;
- (ii) An Escrow account would be opened and operated by the airport operator in fiduciary capacity. An amount of Rs. 130 of the PSF collected per passenger by such airport operator would be deposited in the Escrow account by the Airport Operator for payments to be made to Central Industrial Security Force (CISF). The Escrow Account would be subject to Government audit by the Comptroller and Auditor General of India (CAG).
- (iii) The remaining amount, if any, would be transferred to AAI by the airport operator through the process of mutual consultation for payment to CISF deployed for security purposes at other airports.

3. Audit examination of Mumbai International Airport Private Limited (MIAL), which is the operator of the Chhatrapati Shivaji Mumbai International Airport (CSI Airport) w.e.f. 3 May 2006, had revealed that the operator met expenses of Rs. 14.21 crore relating to consultancy and other professional charges (Rs.1.87 crore) and deployment of private security agencies (Rs.12.34 crore) from the PSF (SC) Escrow Account (PSF SC Account) during the years 2007-08 and 2008-09 which was not in accordance with various orders/instructions issued by the Government of India regarding operation of PSF SC Account. MIAL had also purchased an X-ray screening machine costing Rs. 1.01 crore in 2008-09 out of PSF SC Account for screening of export cargo. The income earned by MIAL by offering the use of cargo screening machine to airlines and their agents was not credited to PSF SC Account. However, MoCA in their clarification issued in January 2010 stated that:

“if expenditure for screening items including X-ray machines, multi view X-ray machine on inline baggage system is included in the scope of expenditure to be met out of PSF (SC), airport operator shall not be charging any hiring fees from concerned agencies viz., airline cargo, etc., and if the airport operator is charging any hiring fees/charges for use of screening equipment from the airlines, cargo agents, etc., then the expenditure relating to the installation and use of these screening equipment shall not be included in the scope of expenditure to be met out the PSF (SC)”.

4. The Audit observed that in view of the Government of India's orders and clarifications, withdrawal of Rs. 15.22 crore from the PSF SC Account by MIAL during the two years 2007-08 and 2008-09 for expenses in connection with the employment of private security agencies, consultant fees and purchase of cargo screening machine was not only in violation of the Government's orders prescribing the items on which moneys from PSF SC Account could be spent but also a loss to the Government/AAI since any surplus in the PSF SC Account should be ultimately transferred to the AAI by the airport operator. MIAL also admitted in a meeting of MoCA in April 2010 that it was discussed that expenses towards deployment of private security personnel were not to be incurred from PSF SC Account. Further, prior approval of Ministry of Home Affairs (MoHA) was not obtained by MIAL for engaging private agencies at Mumbai International Airport for Civil Airport Security.

5. The Audit findings / observations and other issues relating to the subject matter are dealt with in the succeeding paragraphs of this Report.

A. Unauthorized withdrawal from the Escrow Account held in the fiduciary capacity on behalf of the Government of India by MIAL

6. As per Audit observation, the orders of the Government regarding expenditure from Passenger Service Fee (Security Component) Escrow Account were violated by the airport operator – MIAL, resulting in loss to Government/AAI by Rs. 15.22 crore.

7. In response to the Audit observation, the Airports Authority of India in its written reply stated that AAI has no comments to offer as it is not involved with the PSF administration relating to MIAL.

8. When asked about the corrective action taken by AAI and /or MoCA in response to the Audit Observations, MoCA in their written reply stated that MIAL has been directed to reverse the expenditure debited from the Escrow A/c as per the observations of the audit. As per the SOP provisions of Escrow A/c, MIAL is bound to reverse these transactions.

9. In this regard, the Secretary, in the Ministry of Civil Aviation (MoCA) during the course of oral evidence held on 06 December, 2012 submitted:

“On 19 January, 2009, MoCA issued a Standard Operating Procedure (SOP) spelling out how this PSF amount is to be utilized, for what purpose it can be utilized, who can draw the amount and all those things. On 08 January, 2010, a further amendment to the SOP was brought and it was said that from this amount, equipments required for anti-hijacking purposes can also be purchased. It was also said that if the Bureau of Civil Aviation Security (BCAS) recommends, then the equipments related to anti-sabotage purposes can also be purchased out of PSF. It was made very clear that city-side security thing would not be purchased out of this money. On 16 April, 2010, it was again clarified by the Ministry that for all new brown field as well as green field airport projects, capital expenses can be met out of PSF. So, there was a deviation in the Ministry’s clarification of 16 April, 2010. Actually, they changed what was mentioned in the SOP of 2009 and here, it was provided that even all the security equipments can be purchased out of this money.”

10. The witness further added:

“On 17 May, 2012, the Ministry of Civil Aviation issued a direction to all the airport operators, including Mumbai, that if they have utilized this fund for anything other than what has been mentioned in the earlier SOP, those entries should now be reversed and now they should pay back that amount.”

11. A copy each of the Order dated 09 May, 2006 along with amendment order dated 20 June, 2007, SOP guidelines dated 19 January, 2009, amended SOP dated 08 January, 2010, clarificatory instruction dated 16 April, 2010 and the directions issued by the Ministry of Civil Aviation on 17 May, 2012 for reversal of entries and paying back the amount are appended as Annexures-I, II, III, IV and V.

12. On being asked whether any monitoring mechanism has been put in place in AAI/MoCA to ensure compliance of the parameters of the joint ventures between private airport operator and AAI as also the orders of the Government, the Secretary of the Ministry of Civil Aviation during the Oral Evidence deposed further :

“We have made specific provision that this account should be audited by the C&AG and also by the internal audit. We were all the while under the impression that these two audit mechanisms are put in place.”

It was further added that there are two directors of AAI on the Board of MIAL.

B. Internal Audit System

13. As per Audit, Government money credited to the PSF(SC) Account was to be utilized by private operators in fiduciary capacity towards payments to be made to CISF personnel and other security related matters in accordance with the orders/instructions issued by MoCA from time to time. Further, as per Standard Operating Procedure

(SOP) for Account/Audit of PSF(SC) Account for JVC/private operators, C&AG was nominated as an external auditor for audit of the PSF(SC) Account.

14. When asked about the mechanism established by AAI and MoCA to monitor the functioning of MIAL, the Ministry in their written reply reiterated that the PSF Escrow Account is governed by setting up deadlines, SOP and other orders issued on the subject. The account is subjected to internal audit and also to the audit by C&AG.

15. The Secretary of the Ministry during the Oral Evidence held on 06 December, 2012 stated further:

“There was an internal audit system to monitor expenditure and that there are two officers from AAI on the Board of Directors of MIAL.”

16. The Committee enquired as to whether at the time of handing over the airports to the private operators, any internal audit system having representatives from AAI and MoCA was set up to safeguard the financial interests of GOI and ensure that money from PSF(SC) Account is not spent by the private operators for unauthorized purpose(s) by resorting to distorted interpretation of the Orders/instructions issued by MoCA. In response, the Ministry in a written reply answered in affirmative. It was also stated that several instructions and orders have been issued to ensure that the money from PSF (SC) is used for the desired purpose.

17. Elaborating on the matter, the Ministry in their written reply stated that the PSF amount, which was collected prior to handing over of the airport remained with the AAI and only the amounts collected from passengers after handing over of the airport were retained by the DIAL/MIAL, the private operators and a separate account is being maintained since then. At the time of handing over, the entire equipment to the private operators was listed by AAI in handing over formalities. Therefore, the audit of the PSF account could be undertaken after handing over of the airport to the operators in their books.

18. To a query as to when internal audit of PSF(SC) Account was first conducted, MoCA in their written reply stated that the audit was conducted in 2009. When asked whether any observations on the manner of utilization of the money from PSF(SC) Account by MIAL were made by the internal audit team(s), the Ministry of Civil Aviation in their written reply stated that no significant observations were made by the internal auditors.

19. Asked further as to whether the coordination cell envisaged under para 6.3 of the SOP had a mandate to conduct internal audit of PSF(SC) Account, Ministry of Civil Aviation in their written reply stated that as per para 6.3 of the SOP, the private operator has to nominate officer(s) to coordinate and deal with the PSF matters with MoCA. This officer has no other role in the administration and regulation of PSF account.

20. When asked whether the two officers of AAI, who were on the Board of MIAL ever reported the matter to AAI or MoCA, the Ministry in their written reply stated that no such information is available. However, it may be indicated that the unauthorized withdrawal of funds out of PSF (SC) escrow account was never discussed at the Board meeting level.

21. According to Audit, the Airports, especially International Airports, are vulnerable points from the point of security. The discretion being used by a private operator in deploying private security personnel, instead of CISF personnel, at CSI Airport and posing a potential security threat may require review of the procedure by the Ministry of Home Affairs in consultation with the Ministry of Civil Aviation. Dy. CAG (Commercial) drew attention of the Secretary, Ministry of Home Affairs (MoHA) also vide his DO letter dated 10 February, 2011.

22. When asked whether any review has been done in this regard by MoHA and MoCA after the matter was brought to the notice of Home Secretary by Audit in February 2011, the Ministry of Civil Aviation in their written reply stated that the PSF is a levy on the passenger being done under Rule 88 of the Aircraft Rules under the mandate of MoCA. MHA has no role to play. Consequent to C&AG observations, necessary process has been initiated in this Ministry and action is being taken.

23. The Ministry further submitted that the Passenger Service Fee (PSF) was not under their control and was operated by the airport operator (*i.e.* MIAL was authorized to operate the account). Regarding the year of withdrawal of the Rs. 15.22 crore, the Secretary, MoCA further clarified that the withdrawal of the amount took place in 2009. In 2006, it was a transitory phase when the airport was handed over and detailed procedures *etc.* were not in place at that time. They were evolved gradually.

24. When asked as to how internal control system has failed to prevent the existence of the present case pointed out by C&AG, the Ministry in their written reply stated that the existing SOP guidelines on PSF (SC) administration provide for annual audit of the PSF (SC) escrow account by the C&AG. Further, each airport operator is required to get the books of accounts of PSF (SC) escrow account duly audited annually by Chartered Accountants.

25. It was also brought to the notice of the Committee by the Audit that MIAL has also withdrawn an additional amount of Rs 7.07 crore in 2009-10 for deployment of private security related expenditure out of PSF(SC) and the audit of 2010-11 accounts has revealed that MIAL has deployed private people for loading/aligning and in-line screening facility inside the airport and has incurred an expenditure of Rs.3.17 crore on this account out of PSF(SC) account.

26. Explaining the factual position in this regard, the Ministry in their written reply stated that the ineligible amount of Rs. 7.07 Cr has been pointed out by the C&AG against the FY 2009-10 and further the ineligible expenditure of Rs. 3.17 Cr against the FY 2010-11. These observations were reported on 09 November, 2011 & 13 August,

2012 respectively. Taking into account the repeated adverse observations made by the C&AG, an internal audit by a team of officers from the Ministry (headed by Financial Controller) was ordered by the Secretary of the Ministry for the first time in January, 2012.

27. When asked as to when the internal audit of PSF (SC) Account was conducted and the internal audit report issued, Ministry of Civil Aviation in their written reply stated that the decision to undertake the internal audit of Private/JV airports operators was ordered by the Secretary of the Ministry for the first time in January, 2012. Thereafter, a team of officers was constituted under the chairmanship of Financial Controller, MoCA to undertake the internal audit of Private/JV airport operators. In pursuance to this, the internal audit of DIAL was taken up by the team in the month of February, 2012 and report was handed over on 23 May, 2012. Similarly, on the above lines internal audit of MIAL was taken up by the team in the month of July, 2012 and the report was submitted on 04 January, 2013.

28. In this context, the Secretary of the Ministry of Civil Aviation in his deposition before the Committee also submitted:

“We also got an internal audit done of the Mumbai Airport with regard to the PSF (security component) in which several other irregularities have also been brought out by our internal audit.”

29. When asked whether any responsibility has been fixed on the officers of Internal Audit who failed to notice and rectify the unauthorized withdrawal despite C&AG audit observations on the issue, the Ministry of Civil Aviation in their written reply stated that C&AG Audit observation relate to the period 2006-2011 and the first internal audit of MIAL was conducted in the month of July, 2012.

30. When asked about the rationale of the Government behind allowing MIAL to operate the Escrow Account involving public funds, the Ministry in their written reply stated that as per Rule 88, the licensee of an airport is entitled to collect fees to be called Passenger Service Fee from the embarking passenger. On the basis of advice received from Department of Legal Affairs, M/o Law & Justice, it was clarified that PSF (SC) collected at the airport operated by JVC or private operator will be utilized at the airport concerned only to meet the security related expenses of that airport. However, Airport Authority of India will be considered as a single licensee in respect of its airport for this purpose with liberty to pool the PSF (SC) collections for such airports and use the same for meeting the security related expenses at any of its airport.

31. When asked as to why AAI is not being allowed to operate the Escrow Account, after the issue had been pointed out by C&AG and the matter coming to the notice of MoCA, Ministry of Civil Aviation in their written reply stated that the SOP on PSF utilization is being reviewed by the Ministry to address anomalies pointed out by the C&AG. A new SOP assigning the PSF (SC) operations to AAI is under active consideration.

C. Deployment of private security

32. According to Audit, the MIAL Management replied in September 2010 that CISF had not been able to take care of landside/city-side security due to non availability of adequate staff and due to this MIAL had to engage private security agencies. MIAL also contended that MoCA orders of June 2007 made it clear that all security related expenses of Airport could be met out of PSF (SC) account. In this connection, it is pertinent to mention that the communication dated 09 May, 2006 of MoCA stipulates that 'CISF will be deployed as per assessment of BCAS at airports operated by JVCs or private operators also.'

33. The Committee were also informed that MIAL in its letter dated 10.12.2010 to Audit stated that it had made several representations to MoCA to allow it to meet expenses out of PSF(SC) Account in engaging private security agencies till CISF was able to deploy full strength at the CSI Airport and produced a copy of its the then latest representation of 17 August 2010.

34. On the contention of MIAL that adequate CISF security personnel were not deployed at the Mumbai Airport by the Ministry of Civil Aviation and / or Ministry of Home Affairs (MHA), the Ministry in their written reply stated that as against the required strength of 2163 manpower, the CISF has nearly 2327 manpower for deployment at MIAL. Taking into account the future development of airport terminals (which is under construction), revised survey of the CISF requirement has been sent to MHA for sanctioning of the additional manpower, which is yet to be sanctioned. Adequate manpower to take care of security has been deployed at the Airport as per the proper threat assessment.

35. Asked about the rationale behind deploying additional security when CISF security was deployed in excess of the requirement, Ministry of Civil Aviation in their written reply stated that CISF has categorically clarified that at no point of time since Mumbai Airport was handed over to MIAL, any of the tasks entrusted to CISF as per BCAS guidelines, were left unattended by the CISF nor were any tasks handed over to the private operators to be performed by their private security guards. Ministry have further stated that engaging private security for aviation security duties is not permissible under the law and not practicable to execute either. Law and order functions cannot be assigned to private security.

36. To a query as to what action was taken by MoCA on representations of MIAL, Ministry of Civil Aviation in their written reply stated that MIAL's request for deploying the private security guards for city side policing was examined and it was not acceded to. The matter has also been referred to MHA from policy perspective. Ministry of Home Affairs on 6 June 2012 has intimated that the security related matters at the airport are dealt with in the Ministry of Civil Aviation as it is the nodal Ministry for Civil Aviation Security in the country.

37. Keeping in view the fact that deployment of private security personnel at the airport could pose a potential security threat, the Committee sought to know as to why MIAL was not forbidden from doing so. In response, the Ministry of Civil Aviation in their written reply stated that they have properly assessed the security risk and deployed CISF and the question of assigning any of these functions to private security guards does not arise.

38. The Committee enquired as to what corrective steps have been taken by the Ministry of Civil Aviation in coordination with the Ministry of Home Affairs to ensure that the private operators like MIAL, to whom management of airports have been handed over by Government of India, do not pose a potential threat to the security of travellers by deploying private persons to operate the strategic equipment installed at the airports, as was done by MIAL in the present case. In response, the Ministry of Civil Aviation in their written reply stated that the misuse of funds by deploying private security as objected by C&AG, relates to the period when CISF was not handed over the responsibility of land side security. This responsibility prior to 01 January, 2010 lied with the State police and in any case it was not the operator's responsibility. It may be stated that Private Airport operator cannot handle the sovereign security function which is a reserved subject under the State Support Agreement signed by the Government with the operator. As per the observations made by C&AG, the private security deployed by the MIAL was meant for protection of their own buildings, parking lots and to prevent encroachment of their own properties. The private security was not at all deployed for security of travelers. The traveler security was looked after by CISF.

39. The Ministry further stated that MoCA has deployed the CISF at all the important and strategic locations at the airports including guarding of ATC towers, oil installations and all other important structures on the city side apart from the main Airport and all the terminal buildings. No important and strategic buildings and installations are left unguarded. The private security engaged by the MIAL is meant for traffic management and providing Watch and Ward for the construction sites and protecting their properties from encroachment and misappropriation of construction materials. As per the counter terrorism contingency plan, which is known as city side policing plan of Mumbai Airport , none of these tasks assigned to heavily armed CISF are left unattended by them and there is no scope for assigning these to any private security as these men cannot be armed with heavy weapons as per law.

40. Since the above stated position was at variance with the MIAL communication dated 17 August 2010 addressed to MoCA wherein it was stated that in view of shortage of CISF personnel MIAL had deployed private security guards for landside security which was essential and unavoidable because no chance could be taken in security of Airport, a clarification was sought in the matter. The Ministry in their written reply stated that the fact that the operator had deployed private security guards owing to alleged shortage of CISF personnel on the city side of the airport was brought to the notice of this Ministry in the OMDA Implementation Oversight Committee (OIOC) meetings on various occasions. However, the operator was never authorized by Ministry of Civil Aviation to incur the expenditure on the private security deployment from the

PSF (SC) funds. Further, through their letter dated 27.06.2012 MIAL was categorically informed that expenditure on private security deployment cannot be allowed to be met out of PSF (SC) funds. It was also noticed that while MoCA involved the jurisdiction of MHA in regard to deployment of private security at airports, the MHA was of the view that airport security was in the domain of BCAS which is under MoCA.

41. When the Ministry were asked to clarify on the existing lacunae, if any, concerning the important aspect of security, they informed the Committee that the deployment for CTCP is 405 against a requirement of 405 personnel.

D. Procurement of Capital Items

42. According to Audit, MIAL had purchased an X-ray screening machine costing Rs. 1.01 crore in 2008-09 out of PSF (SC) Account for screening of export cargo. The income earned by MIAL by offering the use of cargo screening machine to airlines and their agents was not credited to PSF (SC) Account.

43. Asked whether MIAL sought permission from Government of India before procurement of capital items from PSF(SC) funds, Ministry of Civil Aviation in their written reply stated that the airport operators are permitted to procure capital items which are mandated by BCAS from the PSF (SC) funds as per guidelines of Ministry of Civil Aviation issued from time to time.

44. On being asked to elaborate on the specific orders before April 2010 under which Airport Operators are permitted to procure capital items from the PSF (SC) Account, Ministry of Civil Aviation in their written reply stated that MCA's order dated 09 May, 2006 provided for the manner and mode of collection of PSF by the Airport Operators. This order dated 20 June, 2007 provided as under:

'Security Component of PSF, in short PSF (SC) is not a regular revenue income of an airport-operator. PSF (SC) collected at an airport operated by a JVC or a private operator will be utilized at the airport concerned only to meet the security related expenses of that airport. However, AAI will be considered as a single licensee in respect of its airport for this purpose with liberty to pool the PSF (SC) collections from such airports and use the same for meeting the security related expenses at any of its airport'.

45. Further, MoCA issued SOP guidelines on utilization of PSF (SC) funds vide order dated 19 January, 2009. In so far as security related expenses are concerned these guidelines provided for payment of security related expenses to CISF as well as other security related expenses in terms of aforesaid order of MoCA dated 20 June, 2007 including any other decision of the Ministry/BCAS issued from time to time. It was further submitted that in order to define the phrase 'Security Related Expenditure' and to discuss the scope of expenditure which could be met out of PSF (SC) funds, a Committee was constituted by this Ministry and based on the recommendation of this Committee, clarificatory instructions dated 08 January, 2010 were issued by MoCA for

compliance of the Airport Operators. These instructions specifically mentioned the various permissible expenditure which could be met out of PSF (SC) funds alongwith clear indication about the expenses which could not be allowed to be charged out of PSF (SC) account. It may be noted that the various infrastructural capital items as also the security related equipment were specifically spelt out by the Ministry in these clarificatory instructions.

46. When the Committee desired to know whether the income being earned by MIAL is currently being credited to PSF (SC) Account, MoCA stated that the existing Rule 88 of Aircraft Rule, 1937 permits the collection and administration of PSF by the Airport operators by keeping the PSF (SC) funds in a separate Escrow Account held by the concerned Airport Operators in fiduciary capacity. Accordingly, MIAL also maintains a dedicated PSF(SC) escrow Account which is provided as per the Standard Operating Procedure Guidelines prescribed by the MoCA through its order dated 19 January, 2009.

47. However, on the issue of the legality or otherwise of procurement of capital items, the Secretary of the Ministry of Civil Aviation during the Oral Evidence held on 06 December, 2012 stated :

“The expenditure should have been capitalised and debited to the project cost itself. They have not done that and they have debited it to PSF and it is definitely a violation which I have already submitted.”

48. When further asked whether airport operators are currently permitted to procure capital items from the PSF(SC) funds, Ministry in their written reply stated that the procurement of capital items out of PSF(SC) funds, as mandated by the BCAS is to be done by the Airport Operators in accordance with the Government procedures. The Capital items as mandated by BCAS are permitted to be acquired by using the PSF(SC) funds. Based on the C&AG observation and also considering the OMDA obligations, this Ministry is in the process of withdrawing the said permission to meet the cost of capital items (Security) from PSF(SC) funds. It is also decided to reverse the entire cost of capital security items already debited by the operators including AAI to PSF(SC) escrow account funds. This will however permit the HHMD, DFMD, X-ray Hand baggage Screening System, weapons of CISF/Police; Radio (Walkie-talkie) to be acquired out of PSF(SC) funds. The cost of Capex being reversed here would be taken into project cost and will be considered for additional tariff fixation by AERA.

49. To a query whether any mechanism has been put in place by AAI and MoCA to ensure that the equipment(s) purchased by MIAL out of PSF(SC) Account are handed over to the AAI on cessation of the agreement with the private party operating the airport or on expiry of useful life of such equipment, Ministry of Civil Aviation in their written reply stated that as per the OMDA, there is a detailed mechanism to hand over the Airport along with the capital items acquired by the operator to the AAI on cessation of lease period. As per the PSF Escrow account, the operator has to maintain a detailed inventory of the fixed assets purchased by using PSF(SC) funds.

E. Reversal of entries of unauthorized withdrawal made out of PSF

50. The Secretary of the Ministry while dwelling upon the matter during the course of Oral Evidence on 6 December 2012 stated:

“My submission to the Honorable Committee for its kind consideration is that one way would be that we can say that hereafter they should strictly follow what has been mentioned in the agreement and what has been brought out by the C&AG, and whatever has happened in the past can be taken note of and the matter can be closed. I am saying this because they have already incurred the expenditure and they have also filed their tariff claim before the Airport Economic Regulatory Authority and in that they have not included this expenditure because it has been met out of the PSF. So, accordingly, their tariff has been fixed. But if we have to reverse it, then the whole tariff order has also to be gone through afresh and that will create some sort of avoidable complication of accounting, etc. But, certainly it can be done.....

51. Asked subsequently as to how the inclusion or exclusion of expenditure on security incurred for PSF in the claim before the AERA affects the tariff, the Ministry of Civil Aviation in a written reply stated that inclusion of expenditure, already incurred out of PSF, in the tariff claim would require re-determination of tariff by AERA for the past periods. There could be accounting complications based on which statutory liabilities like Income Tax etc. are discharged.

52. On this matter, the witness during the Oral Evidence also stated:

“One thing is that the recovery that we have to make will be done with full interest and will be credited into the account. Secondly, the Company has intimated that they are under some financial problem and there are some projects under construction. So we will deposit the amount very soon. Thirdly, we will issue a new order that we are taking all the operation of accounts in our control. Till now, it was that the operation was done by individual airports. As per the new order, the control of all the accounts would come directly to us.”

53. He further clarified:

“They (MIAL) have gone to Delhi High Court which has not given any stay. We will ensure that this entire amount is credited back to the Government account. But no further debiting is taking place. That we have ensured..... On 17 May 2012, the Ministry of Civil Aviation issued a direction to all the airport operators, including Mumbai, that if they have utilized this fund for anything other than what has been mentioned in the earlier SOP, those entries should now be reversed and now they should pay back that amount.”

54. Enquired about the grounds on which MIAL has gone to Delhi High Court for claim of the security component from the PSF, Ministry of Civil Aviation in their written reply stated that a WP Civil No. 4242/2012 has been filed by the MIAL in the Delhi High Court for claiming the expenses incurred by the private operator on deployment of private security guards to provide adequate security on the city side of the airport, to tide over the deficiency in the CISF manpower by the Government.

55. To a post evidence query about calculation, if any, done about the amount to be recovered including the interest thereon, the Ministry of Civil Aviation stated that MIAL has been directed to reverse this amount in the Escrow Account out of which an amount Rs. 15.21 crore for the period FY 2006-09 has been reversed. Since the matter is sub-judice no such calculations on interest has been made.

56. To a query regarding whether any action has so far been taken by the MoCA to recover this amount, Ministry of Civil Aviation in their written reply stated that repeated directions were issued by the MoCA to MIAL for reversal of the ineligible expenditure incurred by the private operator from PSF (SC) funds, as observed by the C&AG. MIAL filed a Writ Petition in the Delhi High Court (i.e. WP Civil No. 4242/2012) challenging the stand of this Ministry. However, the Hon'ble High Court in the hearing made on 29 January 2013 directed MIAL to reverse the ineligible expenditure, amounting to Rs. 15.21 Cr (as pointed out by the C&AG in its observations made against FY 2006-09) within a period of four weeks. MIAL has reversed the ineligible expenses and credited to the Escrow Account on 25 February 2013. The Escrow Account banker i.e. Bank of India has since confirmed the reversal of this amount.

57. When asked to specify the time by which MoCA would get the entire outstanding amount deposited into the amounts by MIAL along with penal interest, Ministry of Civil Aviation in their written reply stated that it would be difficult to provide details on this account as the extant matter is sub-judice and is scheduled for next hearing on 2 May 2013.

58. When asked about the timeline by which the new SOP on PSF(SC) would be issued by the MoCA, Ministry of Civil Aviation in their written reply stated that an amendment in Rule 88 and a new draft SOP has been prepared and circulated to all the Private/JV airports and AAI for their comments. A final view in the matter shall be taken after taking into consideration the views of all the stake holders and the Ministry of Law.

F. Mechanism to check improper utilization of PSF (SC) funds

59. When asked what specific provisions exist in the SOP on the aspects relating to reversal of unauthorized expenditure, MoCA stated that Para 5 of the SOP specifically deals with corrective actions, if any, required in pursuance to audit observations made by C&AG by way of issuing necessary directions/advise to JVC/Private Operator for necessary compliance by MoCA. These directions of MoCA are binding on operator.

60. When asked whether the existing provisions in the internal control mechanism are adequate enough to ensure that the irregularity in utilization of the PSF (SC) Account is prevented before it actually takes place, the Ministry in their written reply stated that taking this into consideration, MoCA *vide* their Order No. AV.1302/001/2009-AS dated 9 November 2011 added a separate clause i.e. Para 5.5 to further check improper utilization of PSF (SC) funds which reads as under:

“Each airport operator is required to get the books of account of PSF (SC) Escrow Account, duly audited annually by chartered accountants and submit the audit report to the Ministry”.

61. It was further stated that MoCA have started an additional audit by their Financial Controller also.

PART-II

OBSERVATIONS / RECOMMENDATIONS OF THE COMMITTEE

Unauthorised withdrawals from Escrow Account by MIAL

1. The Committee note that as per Rule 88 of the Aircraft Rules 1937, the licensee of an airport is entitled to collect a levy called Passenger Service Fee (PSF) from the embarking passengers at a rate specified by the Central Government. The licensee is allowed to retain a fixed part of PSF for passenger facilitation. The licensee is also liable to pay a fixed part of this Fee to a security agency designated by the Central Government for providing security at the airport. The Order issued by the Ministry of Civil Aviation on 9 May, 2006 under Rule 88 clearly stipulates that PSF is required to be deposited in an Escrow Account which would be operated by the concerned airport operator in fiduciary capacity and would be utilized for payment to Central Industrial Security Force (CISF) deployed at the Airport. Any balance amount is to be remitted by the airport operator to Airports Authority of India for being utilized for payment to CISF at other airports. As per the said Order, the airport operator was supposed to charge Rs. 200 per passenger as PSF. Out of this, an amount of Rs. 70 was to be retained by the airport operator and the remaining Rs. 130 was to be deposited in the Escrow Account for being paid to CISF. The Audit scrutiny has, however, revealed that Mumbai International Airport Private Limited (MIAL) which operates the Chhatrapati Shivaji Mumbai International Airport (CSI Airport) w.e.f. 3 May 2006 had met expenses of Rs.14.21 crore relating to consultancy and other professional charges (Rs.1.87 crore) and deployment of private security agencies (Rs.12.34 crore) from the PSF (SC) Escrow Account during the years 2007-08 and 2008-09 in violation of various orders/instructions issued by the Government of India regarding operation of PSF(SC) Escrow Account. Further, MIAL also purchased an X-ray screening machine costing Rs. 1.01 crore in 2008-09 out of PSF(SC) Escrow Account for screening of export cargo. Moreover, the income earned by MIAL by offering the use of this cargo screening machine to airlines and their agents was again in violation of rules and regulations not credited to PSF(SC) Account. Audit observed that in view of the Government of India's orders and clarifications, withdrawal of the entire amount of Rs. 15.22 crore from the PSF(SC) Escrow Account by MIAL during the two years 2007-08 and 2008-09 was not only in violation of the Government's orders prescribing the items on which moneys from PSF(SC) Escrow Account could be spent but also a loss to the Government/AAI since any surplus in the PSF(SC) Escrow Account should be ultimately transferred to the AAI by the airport operator for being utilised for expenditure on security at other airports.

2. The Committee's examination revealed that while the airport operator is to be squarely blamed for these highly irregular withdrawals through deliberate misinterpretation of the law, rules and regulations and basic facts, from an Escrow Account, which it was operating in fiduciary capacity, the Ministry of Civil

Aviation and Airports Authority of India by remaining mute spectators for years together have contributed no less to these irregularities. Thus, notwithstanding the fact that the administration and regulation of the PSF Escrow Account held by the airport operator in fiduciary capacity is governed by Standard Operating Procedures (SOPs) and other orders issued by the Government on the subject from time to time, and is also subjected to internal audit, none of these checks and balances was made use of by the Government to prevent unauthorized withdrawals from PSF (SC) Account by MIAL. Worse, as per Operation, Management and Development Agreement (OMDA), though AAI is empowered to seek such other report/information in relation to the airport operations it failed to obtain information on unauthorized withdrawal of funds by MIAL and consequently, it did not take any action and let MIAL have a complete and unfettered say in the operation of PSF (SC) Account. In so far as the administrative Ministry's role is concerned, the admission of the Secretary, Civil Aviation during evidence before the Committee "We have made specific provision that this account should be audited by the C&AG and also by the internal audit. We were all the while under the impression that these two audit mechanisms are put in place" speaks volumes about the quality and extent of oversight exercised by the Ministry to ensure that PSF funds were utilised in accordance with the extant practices and SOPs.

3. The Committee find it highly intriguing that though internal audit of PSF (SC) Escrow Account was conducted in 2009, no significant observations were made by the internal auditors regarding the manner of utilization of money from the Account. However, in a subsequent internal audit of PSF (SC) Escrow Account got conducted by MoCA in 2012 i.e. after the C&AG Audit, several irregularities reportedly came to the fore. Mysteriously, the Ministry of Civil Aviation have no information available with them on unauthorized withdrawal of funds out of PSF(SC) Escrow Account. It is also surprising that the matter was never discussed in the Board level meetings. All this while the airport operator has used all sorts of excuses to continue with the unauthorised withdrawals and justify them in contravention of all rules and regulations. To further compound the illegality, it has also brazenly continued to defy the instructions, albeit, very belated of MoCA to reverse the withdrawals from the Escrow Account which it was operating merely in a fiduciary capacity. What is all the more galling is that the Ministry of Civil Aviation, instead of coming down on the errant airport operator with a heavy hand, has given it a long rope by remaining content with advisories which have not been enforced. The testimony of the Principal Witness i.e. the Secretary of the Ministry of Civil Aviation before the Committee where he harped upon the airport operator being in some financial problem and some of its projects being under construction is sufficiently indicative of how the Ministry, rather than ensuring the safety of the public money, have gone ahead with bailing out the airport operator. Unfortunately, the Committee's pointed and repeated queries as to how internal audit/control and oversight mechanisms failed to detect these blatant irregularities did not yield any specific information which is highly condemnable.

4. The Committee also note that MIAL has continued with this patently illegal practice of unauthorized withdrawals in subsequent years as well. An amount of Rs 7.07 crore was withdrawn in 2009-10 for deployment of private security related expenditure out of PSF (SC) and it has also deployed private people for loading/aligning and in-line screening facility inside the airport during 2010-11 and has incurred an expenditure of Rs.3.17 crore on this account.

Procurement of Capital Items from PSF(SC) Escrow Account by MIAL

5. Audit pointed out that purchase of an X-ray screening machine by MIAL costing Rs. 1.01 crore in 2008-09 out of PSF (SC) Account for screening of export cargo and non crediting the income earned by MIAL by offering the use of cargo screening machine to airlines and their agents to PSF (SC) Escrow Account was in clear violation of MoCA clarification issued in January 2010. The Civil Aviation Secretary admitted before the Committee that the expenditure should have been capitalised and debited to the project cost itself and not doing so and debiting it to PSF is definitely a violation. To obviate recurrence of such lapses, the Ministry of Civil Aviation have stated that based on the C&AG observation and also considering the OMDA obligations, they are in the process of withdrawing the said permission to meet the cost of capital items (Security) from PSF (SC) funds. The Committee desire that Government should take a final decision in the matter with due promptitude so that process of debiting the cost of capital security items in the PSF(SC) Escrow Account is discontinued forthwith. The Committee further desire that the Ministry should inquire into as to how in the first instance the instant instructions which were in the breach of OMDA were issued and share with the Committee the inquiry report and action taken thereon.

Reversal of Entries of Unauthorised Withdrawals made out of PSF (SC) Escrow Account

6. The Committee note that MoCA have also decided to reverse the entire cost of capital security items already debited by the operators including AAI to PSF (SC) Escrow Account. The cost of Capex being reversed here would be taken into project cost and will be considered for additional tariff fixation by AERA. The Committee, however, deprecate the marked reluctance of the Ministry about the changes in tariff claims of MIAL for the past period as it would supposedly inconvenience MIAL and lead to accounting complications based on which statutory liabilities like Income Tax, etc. are discharged. They, therefore, strongly recommend that the airport operator should be asked to pay all its liabilities to various government agencies for the entire period of it indulging in unauthorised withdrawals from PSF(SC) Escrow Account.

7. The Committee note that pursuant to the Ministry of Civil Aviation direction issued on 17 May 2012 to all the airport operators, including MIAL, for reversal of the ineligible expenditure incurred by the private operator from PSF (SC) funds in

the Escrow Account an amount Rs. 15.21 Crore for the period FYs 2006-09 has been reversed. As regards recovery of penal interest from MIAL, Ministry of Civil Aviation stated that since a writ petition has been filed by the MIAL in Delhi High Court for claiming the expenses incurred by the private operator on deployment of private security guards to provide adequate security on the city side of the airport, it would be difficult to provide details on this account as the extant matter is sub-judice. From the information placed before the Committee, it is observed that the High Court has not granted a stay on the Writ Petition filed by MIAL. They, therefore, find it inexplicable as to why the Ministry of Civil Aviation are reluctant even to work out the interest component on the suspicious plea that the matter is sub-judice. More so, when the Ministry are liable to file all these details in the High Court in support of their claim while pleading in the said Case. The Committee also find it inexplicable as to why the Ministry have not ensured the reversal of all unauthorized withdrawals by the airport operator, post C&AG Audit. While expressing their strong disapproval of this inaction by the Ministry, the Committee desire that needful should be done at the earliest along with all out efforts to expedite the legal process.

New Delhi
7 February 2014
18 Magha 1935 (S)

JAGDAMBIKA PAL
Chairman
Committee on Public Undertakings

**MINUTES OF THE 13th SITTING OF THE COMMITTEE ON
PUBLIC UNDERTAKINGS (2012-13)**

The Committee sat on Thursday, the 6th December, 2012 from 1515 hrs to 1645 hrs in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

Shri Jagdambika Pal - Chairman

MEMBERS

Lok Sabha

- 2 Shri Hansraj G. Ahir
- 3 Shri Ambica Banerjee
- 4 Shri Shailendra Kumar
- 5 Dr. (Smt.) Botcha Jhansi Lakshmi
- 6 Shri Vilas Muttemwar
- 7 Shri Ponnamm Prabhakar
- 8 Shri Nama Nageswara Rao
- 9 Shri Uday Singh

Rajya Sabha

- 10 Shri Naresh Gujral

SECRETARIAT

- | | | |
|---|----------------------|---------------------|
| 1 | Shri A. Louis Martin | Joint Secretary |
| 2 | Shri Rajeev Sharma | Director |
| 3 | Shri Ajay Kumar Garg | Additional Director |

OFFICE OF C&AG

- | | | |
|---|--------------------|---|
| 1 | Shri A.K Patnaik | Dy. C&AG (Commercial) and Chairman, Audit Board |
| 2 | Shri P. Sesh Kumar | Director General (Commercial)-I |

REPRESENTATIVES OF THE MINISTRY OF CIVIL AVIATION, AAI AND CISF

- | | | |
|---|-------------------------|---------------------------------------|
| 1 | Shri K.N. Srivastava | Secretary, Ministry of Civil Aviation |
| 2 | Shri S. Machendranathan | AS&FA, Ministry of Civil Aviation |
| 3 | Shri V.P Agrawal | Chairman, Airports Authority of India |
| 4 | Shri Arun Chaudhary | Special DG, CISF |

2. The Committee took oral evidence of the representatives of Ministry of Civil Aviation (MoCA) and Airports Authority of India (AAI) in connection with examination of Para No. 2.5 of C&AG Report No. 3 (Commercial) of 2011-12 on Airports Authority of India regarding unauthorized withdrawal from the Escrow Account held in fiduciary capacity on behalf of the Government of India by Mumbai International Airport (P) Limited

3. At the outset, the Chairman welcomed the representatives of the MoCA and AAI and drew their attention to Direction 58 of the Directions by the Speaker relating to evidence before the Parliamentary Committees. The representatives of MoCA then made a brief presentation on the subject before the Committee. Thereafter, the Chairman and Members raised queries on various aspects pertaining to the subject and explanation/clarification on the same were given by the representatives of MoCA and AAI. Information on some of the points raised by the Members was not readily available with the representatives of MoCA. They were, therefore, asked to furnish the same to the Committee Secretariat at the earliest possible.

The witnesses then withdrew.

A copy of the verbatim proceedings has been kept on record separately.

The Committee then adjourned.

COMMITTEE ON PUBLIC UNDERTAKINGS
(2013-14)

MINUTES OF THE TWENTIETH SITTING OF THE COMMITTEE

The Committee sat on Thursday, the 6th February 2014 from 1500 hrs to 1530 hrs in Room No. 147 (Chairman's Chamber), Parliament House (Third Floor), New Delhi.

PRESENT

Shri Jagdambika Pal - Chairman

MEMBERS

Lok Sabha

2. Shri Hansraj Gangaram Ahir
3. Shri Praveen Singh Aron
4. Smt. Shruti Choudhary
5. Shri Raja Ram Pal
6. Shri Nama Nageswara Rao
7. Prof. Saugata Roy
8. Shri Uday Singh
9. Shri Bhisma Shankar Alias Kushal Tiwari

Rajya Sabha

10. Shri Anil Desai
11. Shri Janardan Dwivedi
12. Shri Naresh Gujral
13. Dr. Janardhan Waghmare

SECRETARIAT

- | | | |
|----|-----------------------|---------------------|
| 1. | Shri P.C. Koul | Director |
| 2. | Shri M.K. Madhusudhan | Additional Director |
| 3. | Shri G. C. Prasad | Deputy Secretary |

OFFICE OF C&AG

- | | | |
|----|--------------------|-------------------------|
| 1. | Shri P. Sesh Kumar | DG (Commercial) |
| 2. | Shri Jayant Sinha | Principal Director (RC) |
| 3. | Ms. Atreyee Das | Principal Director (C) |

2. At the outset, the Chairman welcomed the Members and the Officers of C&AG to the Sitting of the Committee.

3. The Committee then took up for consideration the draft Reports on the following subjects and adopted the same without any modifications:

(i). XXXX XXXX XXXX;

(ii). Airports Authority of India Limited regarding unauthorised withdrawal from the Escrow Account held in fiduciary capacity on behalf of the Government of India by Mumbai International Airports Limited based on Audit Para No. 2.5 of Report No. 3 of 2011-12 of Comptroller and Auditor General of India; and,

(iii). XXXX XXXX XXXX.

4. The Committee then authorized the Chairman to finalize the Reports on the basis of factual verification and present the same to Parliament.

The Committee then adjourned.

XXXX ***Matter not related to this Report.***