
	<b>KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM</b>	
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**BEFORE THE AUTHORITY OF : Smt. Gayathri P.G., IRS &  
: Shri. Abdul Latheef K**

Legal Name of the applicant	Airports Authority of India
GSTIN	32AAACA6412D1ZH
ARN No.	AD320122000539Q
Address	Administrative Building, Vallakadavu. P.O., Sangumugam, Thiruvananthapuram, Kerala-695008.
Advance Ruling sought for	<p>1. Whether the transfer of business by the Airport Authority of India to the M/s. Adani Thiruvananthapuram International Airport Limited be treated as Supply u/s. 7 of the Central Goods and Service Tax Act, 2017 ("CGST") viz-a-viz Kerala State Goods and Service Tax Act, 2017 ("KGST")?</p> <p>2. Whether the transfer of business by Airports Authority of India to M/s. Adani Thiruvananthapuram International Airport Limited is treated as supply as going concern and covered in clause 4 of schedule II of CGST Act viz-a-viz KGST?</p> <p>3. Whether the transfer of business by M/s. Airports Authority of India to M/s. Adani Thiruvananthapuram International Airport Limited is covered under the Entry No. 2 of the exemption notification No 12/2017 – Central Tax (Rate) dated 28-06-2017 issued u/s Section 11 of CGST Act 2017?</p>



4. If the answer is negative, then whether GST is leviable on the transfer of Existing assets ("RAB"), Aeronautical Assets, non-aeronautical assets and Capital work in progress by M/s. Airport Authority of India to the M/s. Adani Thiruvananthapuram International Airport Limited?

5. Whether the aforesaid transfer of asset be treated as services and the classification for the same?

6. Whether the concession fees paid by M/s. Adani Thiruvananthapuram International Airport Limited to M/s. Airports Authority of India be treated as consideration for transfer of business?

7. Whether GST is applicable on Monthly/ Annual concession fees charged by the Applicant on the M/s. Adani Thiruvananthapuram International Airport Limited?

8. Whether GST is leviable on the invoice raised by the Applicant for reimbursement of the salary/ staff cost on M/s. Adani Thiruvananthapuram International Airport Limited? If yes at what rate?

9. Whether GST is applicable on the reimbursement claimed of Municipal tax, Property Tax and Water Charges by the Applicant from M/s. Adani Thiruvananthapuram International Airport Limited? If yes at what rate?

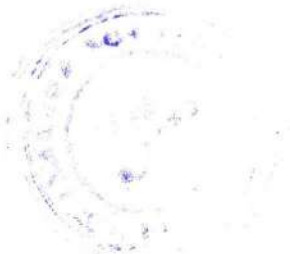
10. Whether any reversal is required in



	accordance with section 17 (2)/(3) of CGST Act viz-a-viz KSGST Act?
Date of Personal Hearing	20/12/2023
Authorized representative	Sri.Hem Mahesh Chhajed, Chartered Accountant

**ADVANCE RULING No.KER/02/2024 Dated 10/01/2024**

1. The applicant, M/s Airports Authority of India (the 'AAI') is the authority created under the Airports Authority of India Act, 1994 (the 'AAI Act') with registered office at administrative building Shangumugam, Vallakkadavu P.O., Thiruvananthapuram-695008. They carry out the functions specified in Section 12 of AAI Act and paragraph 5 of the application, and are not reproduced.
2. A reference in this ruling to the provisions of the CGST Act, Rules and Notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the Notifications issued there under.
3. The issues on which advance ruling is sought are detailed above and are not being reproduced. In this regard, para 2 of the 'statement of relevant facts' indicate that the bid was for Operations, Management and Development of 'Adani Thiruvananthapuram International Airport'. It is presumed that the same is a typographical error and that 'Adani International Airport Limited' took over such operations only on execution of the agreement. Further, para 3 mentions 'M/s Adani Enterprises Limited' as the concessionaire, whereas the agreement mentions that the concessionaire is 'Adani Thiruvananthapuram International Airport Ltd'. This ruling is issued on the presumption that the correct concessionaire is 'Adani Thiruvananthapuram International Airport Ltd', as evident from the agreement, and that the reference to 'M/s Adani Enterprises Limited' as concessionaire is a typographical error.
4. The statement of facts connected to the application, as submitted by the applicant, is as follows. Section 12-A of Airports Authority of India Act allows



AAI, in public interest or in the interest of better management of airports, make a lease of the premises of an Airport (including building and structures thereon and appertaining thereto) to carry out some of its functions under Section 12 as the AAI may deem fit. Accordingly, bids for undertaking the operation, management and development of certain airports, on a public private partnership basis, was invited by AAI. This was aimed at bringing efficiency in service delivery, expertise, enterprise and professionalism and to harness necessary investment for the Operations, Management and Development of Thiruvananthapuram International Airport for a lease period of 50 years ("Project). Request for Proposal (RFP) document for the Airport was issued on 14.12.2018. The Project was to be implemented in accordance with the terms and conditions stated in the RFP and Concession Agreement dated 14.02.2020 entered into between the Authority and the Concessionaire. The bid was later awarded to M/s Adani Thiruvananthapuram International Airport Limited (the "Concessionaire"). For implementation of the project, Concessionaire agreed to pay the Applicant-

- a- Rs. 4,24,00,00,000/- towards Estimated Deemed Initial Regulatory Asset Base ("RAB") i.e. estimated depreciated value of Investments made by the Applicant in the Aeronautical Assets at the airport as on 31<sup>st</sup> March 2018. (As per Clause 28.11.3 of the Concession Agreement which is subject to adjustment as per Clause 28.11.3(a) and 28.11.4). Rs. 7,15,00,000/- towards Estimated Initial Non-Aeronautical Investments i.e. estimated depreciated value of investments made by the applicant towards development of the Non-Aeronautical Assets at the Airport as on 31<sup>st</sup> March 2018 as onetime payment.
- b- Actual amount incurred by AAI in respect of contracts relating to Work-in-Progress as on the Commercial operation Date ("COD").
- c- Reimbursement of salaries inclusive. of other cost paid to employees of AAI having designation of Asst. General Manager and below during the Joint Management Period and deemed deputation period. Subject to the select employee cost the concessionaire shall pay the amount as indicated in invoice raised by applicant towards emoluments of the select employees as per clause 6.5.5 of the Concession Agreement.



d- Monthly concession Fee during the concession period shall be paid to the applicant as a share of passenger fee and passenger throughput for the month for both international and domestic passengers.

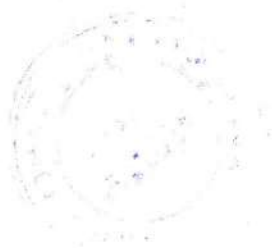
e- Monthly Concession Fee as consideration for granting lease right of land, building and the immovable assets.

As per the agreement, the concessionaire will be forming Special Purpose Vehicle Company ('SPV'). This SPV and the AAI will be entering into concessionaire agreement for operation, management and development of the airport which include civil, mechanical, electrical works, terminal buildings, cargo facilities, runway and all other project assets. The SPV will be undertaking the operations, management and development of the airport for a period of 50 years subject to the compliance of various terms and conditions as set forth in the concessionaire agreement. AAI will cease to operate, manage and develop the airport as per this agreement from a prescribed date.

The applicant has placed the copy of the concession agreement entered into in this regard. From clause 28.1 of the said agreement, we find that on and from COD and till the transfer date (i.e., the date of expiry of agreement), the concessionaire has the sole and exclusive right to demand, collect and appropriate fees from the users of aeronautical/non-aeronautical provisions, including from passengers. We find that this amount constitutes the consideration received by the concessionaire against the activity of 'operation, management and development of the airport'. The relevant portion of the agreement shall be cited as and when relevant to the discussions.

#### **5. Comments of the Jurisdictional Officer**

The application was forwarded to the jurisdictional officer as per provisions of section 98 (1) of the CGST Act. The Jurisdictional officer has not submitted any remarks and hence it is presumed that the jurisdictional officer has no specific comments to offer. It is also construed that no proceedings are pending on the issue against the applicant.



## 6. Personal hearing

The applicant was granted opportunity for personal hearing on 20/12/2023 via virtual mode. Sri. Hem Mahesh Chhajer, Chartered Accountant represented for the applicant for personal hearing. The representative reiterated the contentions made in the application and requested to issue ruling on the basis of the submissions made in the application.

## 7. Discussion and findings.

We have gone through the application in detail. The issues on which ruling is sought and the background of the issue are detailed above. The question wise discussions in this regard are as below.

1. Whether the transfer of business by the Airport Authority of India to M/s. Adani Thiruvananthapuram International Airport Limited be treated as Supply u/s. 7 of the Central Goods and Service Tax Act, 2017 ("CGST") viz-a-viz Kerala State Goods and Service Tax Act, 2017 ("KGST")?

We find that this is a 'loaded question', i.e., in asking whether the activity involved is to be treated as supply under the GST Act, the applicant presumes that the activity is 'transfer of business'. This is a feature of some of the other questions as well. Such a presupposition would negate the objectivity of the ruling. Hence, it is imperative to first examine the nature of the transaction before determining whether or not it is a supply under the GST law.

2. Whether the transfer of business by Airports Authority of India to M/s. Adani Thiruvananthapuram International Airport Limited is treated as supply as going concern and covered in clause 4 of schedule II of CGST Act viz-a-viz KGST?

a- In addition to presuming that 'transfer of business' is involved, this question wrongfully quotes Schedule II. Schedule II does not speak of 'supply as going concern' as mentioned by the applicant, but 'transfer of going concern' or being 'transferred as a going concern'.



b- In order to ascertain whether the transactions involve 'transfer as going concern', we first have to find out what constitutes a transfer of going concern. The CGST Act or Rules do not define the concept of transfer as a going concern. Based on accounting practices in vogue, the concept of going concern has been discussed by the High Court of New Delhi, in Indo Rama Textiles case (2013) 4 Comp 141 (Del). Accordingly, an enterprise is normally viewed as a Going Concern, if it is continuing in operation for the foreseeable future. It is assumed that the enterprise has neither the intention nor the necessity of liquidation or of curtailing materially the scale of the operations. In the same case, the Hon'ble Court observed "*To ensure that it is a going concern, the Court while sanctioning a Scheme can certainly examine whether essential and integral assets like plant, machinery and manpower without which it would not be able to run as an independent unit have been transferred to the demerged company*". Another clarification on transfer of going concerns is available in paragraph 7.11.15 of 'Taxation of Service An Education Guide' dated June 20, 2012 issued by CBEC, wherein it is clarified that "*Transfer of a going concern means transfer of a running business which is capable of being carried on by the purchaser as an independent business, but shall not cover mere or predominant transfer of an activity comprising a service. Such sale of business as a whole will comprise comprehensive sale of immovable property, goods and transfer of unexecuted orders, employees, goodwill etc. Since the transfer in title is not merely a transfer in title of either the immovable property or goods or even both it may amount to service and has thus been exempted*". This definition was upheld as applicable to GST statute as well, for example, as in the Advance Ruling in M/s Rajashri Foods Pvt. Ltd, by the authority at Karnataka.

c- Now let us look at some clarifications available in international law.

i- India is a member of OECD, the Organisation for Economic Co-operation and Development (OECD). OECD is an international inter-governmental organisation which sets global standards for trade and taxation policies. OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax



Administrations 2022, in the context of pricing, has given a write up on Transfer of activity (ongoing concern), which is as below.

*9.68. Business restructurings sometimes involve the transfer of an ongoing concern, i.e. a functioning, economically integrated business unit. The transfer of an ongoing concern in this context means the transfer of assets, bundled with the ability to perform certain functions and assume certain risks. Such functions, assets and risks may include, among other things: tangible property and intangibles; liabilities associated with holding certain assets and performing certain functions, such as R&D and manufacturing; the capacity to carry on the activities that the transferor carried on before the transfer; and any resource, capabilities, and rights.*

ii- As per the United Kingdom's His Majesties Revenue and Customs manual Transfer of a going concern (TOGC) is when a business, or part of a business, is sold and meets certain criteria which mean it is deemed to be a TOGC rather than a transfer of assets. In this scenario, no VAT applies to the value of the transaction, and it is 'outside the scope' of VAT (no output VAT is charged). The guidelines in this regard, issued by HMRC are as follows.

1.4 TOGC for VAT purposes, all of the following must apply:

- the assets, such as stock-in-trade, machinery, goodwill, premises, and fixtures and fittings, must be sold as part of the TOGC.
- the buyer must intend to use the assets in carrying on the same kind of business as the seller-this does not need to be identical to that of the seller, but the buyer must be in possession of a business rather than simply a set of assets.
- where the seller is a taxable person, the buyer must be a taxable person already or become one as the result of the transfer.
- in respect of land or buildings which would be standard-rated if it were supplied, the buyer must notify HMRC that they have opted to tax the land by the relevant date, and must notify the seller that their option has not been disapplied by the same date.





- where only part of the business is sold it must be capable of operating separately

- there must not be a series of immediately consecutive transfers of the business

d- From the above, it emerges that in order to be 'transfer of going concern', a going concern or an independent vertical of a going concern should be transferred to another person, such that transferee is able to carry on with the business of the transferred going concern independently. To so enable the transferee, the essential and integral assets like plant, machinery and manpower without which it would not be able to run as an independent unit should be transferred. Now we have to verify whether the concession agreement in question satisfies these conditions.

e- The relevant terms of the concession agreement were examined and the gist thereof annexed to this Ruling. We have also examined the annual report of the applicant, which is in public domain. What we discern from these documents is that-

i- the Government of India had invited bids for undertaking the operations, management and development (henceforth referred to as the 'Project' in terms of definition in Article 1 of the agreement) of certain airports of AAI on a public private partnership (PPP) basis. This was aimed to bring efficiency in service delivery, expertise, enterprise and professionalism, apart from harnessing necessary investments. After the due process, the concessionaire was selected to execute the project with regard to Trivandrum Airport, in accordance with the provisions of the Agreement, including all works, services and equipment relating to or in respect of the Scope of the Project. A concession agreement was signed between the applicant and the concessionaire.

ii- As per the agreement, a master plan for the development of the airport would be made and the airport would be developed in a phased manner as per the master plan. As per definition in the agreement, 'Master Plan' means the plan for construction of the Airport, prepared by the Concessionaire, covering Aeronautical Services and Non-Aeronautical Services. The guidelines for



preparing the Master Plan are provided in Annex II to Schedule A of the agreement. From Annexure II, we find that "Thiruvananthapuram international Airport is proposed to be developed into a state-of-the-art airport serving tourism and business markets and keeping pace with the growth in air travel demand in India". Hence, we find that the basic activity involved here is construction of the Airport, so that it is developed into a state-of-the-art Airport. The master plan is to provide the drawings and detailed mode of development. The commercial and technical terms and conditions for operations were prescribed by the applicant. The scope of the project includes design, development, financing, construction, upgradation and expansion of the Airport in a phased manner and also operations, maintenance and management of the Airport in accordance with the provisions of the agreement. These activities can be summed up as performance and fulfilment of obligations of the concessionaire. We find that all these activities are subsidiary or ancillary to the guidelines to the master plan viz., 'construction of the Airport, so that it is developed into a state-of-the-art Airport'.

iii- The exact role of the concessionaire is evident from Article-5 of the concession agreement which explains the obligations of the concessionaire. This article, inter-alia, clarifies that (5.1.7) the concessionaire shall (l) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this agreement, applicable laws and applicable permits including... (m) transfer the project assets to the Authority upon termination of the agreement, in accordance with the provisions thereof and (n) operate, maintain, and refurbish (if necessary) the existing Airport assets including but not limited to the terminal Building, Runway, cargo terminal, car park, apron, taxiway and other Airport assets as provided in Annex I of Schedule A.

iv- From the agreement, it is evident that the concessionaire is obliged to execute and fulfil the project in a time bound manner and in accordance with the agreement. The exclusive right, lease and authority were provided to the concessionaire for a period of 50 years to execute the project in a phased



manner. The concessionaire, as per the agreement, is duty bound to undertake expansion or augmentation of the Aeronautical Assets and Non-Aeronautical Assets in accordance with the provisions of the Agreement. That is to say, the expansion or augmentation of assets is not an independent activity in itself, but part of the concessionaire's obligations under the agreement. At all times during concession period, the Concessionaire shall, no later than 10 days after the close of each quarter, furnish to the Authority a quarterly management report in this regard. Thus the nature of service is evident. The applicant, viz., AAI wants to implement the project through the concessionaire, and the concessionaire is actually supporting, cooperating with and facilitating the applicant in the implementation of the project. The Concessionaire shall undertake or cause to be undertaken the development and maintenance of infrastructure such as roads, electric supply, water supply, sewerage and drainage systems forming part of City Side Development at its cost. In case of failure, the applicant can take action against the concessionaire. The proposed annual program of preventive, urgent, and other scheduled maintenance has to be submitted by the concessionaire to the applicant. The operations of the developed airport go back to the applicant on termination of the project and the interim operation, maintenance and refurbishment of the airport is the liability of the concessionaire.

v- The concessionaire is set up solely for the purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, i.e., the execution of the project. It has no free hand in executing the project. The Concessionaire is to undertake construction at the Airport in conformity with Schedule A, Schedule B, the specifications and standards set forth in Schedule C, and the Master Plan. The Concessionaire shall at all times procure and ensure that the Airport is constructed and developed in accordance with the Master Plan. The Concessionaire shall operate the Airport such that it achieves or exceeds the performance indicators specified in Article 23 and service quality requirements specified in Schedule H ("Key Performance Indicators"). Thus, operating and managing the airport is not the end activity, but are only the means to the end, viz., construction and development of the



airport so as to achieve or exceed the performance indicators. The core activity is 'development' of the Airport. This is also evident from Section 12A of the Airport Authority Act, 1994, which empowers the authority to 'make a lease of the premises of an airport (including buildings and structures thereon and appertaining thereto) to carry out some of its functions under section 12 of the Authority Act'. Hence, even the lease is not an end activity, but is only a means to carry out its functions under Section 12 of the Act, which includes, inter alia, the plan to '*develop, construct and maintain runways, taxiways, aprons and terminals and ancillary buildings at the airports and civil enclaves*'.

vi- The guidelines for preparing the Master Plan are provided in Annex II to Schedule A and the concessionaire is bound to prepare the master plan accordingly and further, should obtain the concurrence of the applicant, prior to finalization of the master plan. The Concessionaire further agrees to update the Master Plan periodically, every 5 years. Prior to commencement of construction Works, the concessionaire shall: (a) submit to the Authority and the Independent Engineer, its development plan, detailed design, drawings, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for Completion of the concerned Phase. The applicant also has the right to change the scope of the project, if necessary. The applicant may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services forming part of the 'Change of Scope', to any person on the basis of open competitive bidding. Thus, the concessionaire is only a person entrusted with the task of constructing and developing the applicants Airport as per a master plan.

vii- The concessionaire and their activities are subject to constant monitoring by the applicant. The Authority or its designated agency may, if require, inspect the Airport at least once a year with prior intimation to the Concessionaire. The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified in this Article 23 and for any shortfall in average performance during a quarter, the concessionaire shall be



liable to pay damages to the applicant. Any such damages will be determined in consultation with the Regulator and adjusted against Aeronautical charges for the specified period. The applicant shall, from time to time, have the right to access the drafts of all project agreements, or any amendments or replacements thereto and call for any document related to the execution of the project. The implementation of each phase of the project is subject to execution of irrevocable unconditional performance guarantee by the concessionaire. In case of default from the concessionaire, the applicant shall be entitled to appropriate the performance guarantee. The performance guarantee shall remain in force till the end of the entire concession period and shall be released only three months after the period. For each phase, additional performance guarantee is also required. If the concessionaire fails to achieve any milestone, damages shall be paid to the applicant. During the development Period, the Concessionaire shall, no later than 7 days after the close of each quarter, furnish to the Authority, a report on progress. The independent engineer shall inspect the Airport works, considering the quarterly progress reports submitted by the Concessionaire, at least once a quarter and make a report of such inspection and make a report to the applicant. If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and such breach is causing or likely to cause material hardship or danger to the users, the Authority can take appropriate action including suspension/ termination of the agreement. Even the revenue of the concessionaire is subject to constant monitoring by the applicant. The applicant is empowered to verify the international/ domestic passenger throughput and to ascertain the actual throughput at the Airport. For this purpose, the applicant can depute its representatives to the Airport and the offices of the Concessionaire, and undertake such other measures and actions as it may deem necessary. The applicant can also call upon the concessionaire to furnish any and all data, information, log, sheet, document or statement, as they may deem fit and necessary for these purposes. The applicant has the right, either through itself or through any of its authorized representative, to inspect the records of the Concessionaire during office hours



and require copies of relevant extracts of books of accounts, duly certified by the statutory auditors, to be provided to the applicant for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either party under this agreement. Even the day to day operations of the Concessionaire and the running of the airport continue to be closely monitored by the applicant. The concessionaire shall submit the reports in this regard to the Authority on regular basis.

viii- The applicant and the concessionaire have titled the agreement in this regard as a concession agreement. We have looked into what a 'concession agreement' means. Ind AS 115, vide appendix C, defines this term. Accordingly, Infrastructure for public services-such as roads, bridges, tunnels, prisons, hospitals, airports, water distribution facilities, energy, supply and telecommunication networks-has traditionally been constructed, operated and maintained by the public sector and financed through public budget appropriation. It further says that in recent times, governments have introduced contractual service arrangements to attract private sector participation in the development, financing, operation and maintenance of such infrastructure. The infrastructure may already exist, or may be constructed during the period of the service arrangement. An arrangement within the scope of this Appendix typically involves a private sector entity (an operator) constructing the infrastructure used to provide the public service or upgrading it (for example, by increasing its capacity) and operating and maintaining that infrastructure for a specified period of time. The operator is paid for its services over the period of the arrangement. The arrangement is governed by a contract that sets out performance standards, mechanisms for adjusting prices, and arrangements for arbitrating disputes. Such an arrangement is often described as a 'build-operate-transfer', a 'rehabilitate-operate-transfer' or a 'public-to-private' service concession arrangement. Thus, from the name 'concession agreement' itself, it is evident that the transaction does not involve a transfer of business or going concern, but involves only a



contractual service arrangement to attract private sector participation in the development, financing, operation and maintenance of such infrastructure.

ix- On an examination of the above facts, we find that the Airport or its activities are not transferred to the concessionaire. Though for a limited period, the project shall be jointly run by the applicant and the concessionaire. The employees of the applicant are not transferred to the concessionaire, but select employees alone will be posted to the Airport by the applicant. The employees still belong to the applicant and the liability for paying the employees are also with the applicant, though there is a provision to collect the expense from the concessionaire. The concessionaire shall have no obligation with regard to the employees of the applicant, other than the select employees. The property including the trees and mining, archaeological and geological rights on the property is with the applicant. The concessionaire has the right to operate the installations and capitalized items at the airport. However, these items have not been transferred to them. The existing assets of the Airport remain with the applicant and the right to claim depreciation on such items also remains with the applicant. This is evident from the annual report of the applicant, which is in public domain. Para 38 (iv) (a) of the annual report of the applicant for the year 2022-23, states that *"The upfront payment received by AAI towards the Estimated Deemed Initial RAB should be accounted for as Operating Lease Income over the Lease Period. Asset will continue to appear in the books of AAI"*. Further, as per Para 38 (iv) (b) of the report, they have received an expert advice that *"whenever the concessionaire puts CWIP assets into use after completion, AAI should capitalize the value with expenditure incurred by AAI till COD and start claiming depreciation on such assets"* and this advice has been accepted by them. Thus, the assets in the possession of the applicant have not been transferred to the concessionaire.

x- Now let us look at the limitations imposed on the concessionaire. As per the agreement, the Airport or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Airport shall be known, promoted,



displayed, advertised and branded by the name of "Thiruvananthapuram International Airport" only at all times. They cannot employ any contractor in connection with the execution of the project, without the permission of the applicant. As per the agreement, the concessionaire agrees and acknowledges that selection or replacement of any or all EPC Contractors or O&M Contractors and execution of all EPC Contracts or O&M Contracts shall be subject to the prior approval of the applicant. The Concessionaire shall not license or sublet the whole or any part of the site, save and except as may be expressly set forth in this Agreement. They also cannot make any material modification in the airport except as per agreement. All these show that nothing has been 'transferred' by the applicant to the concessionaire and the agreement does not amount to transfer of going concern.

f- From the above discussions, we come to the conclusion that neither the going concern, i.e., the Airport Authority of India nor any of its verticals have been 'transferred' to the Concessionaire either through Slump Sale, lease or in any other discernible manner, so as to enable the concessionaire to carry out the business of the concern independently.

g- The next question is then to find out the exact nature of the activity or transaction involved. The nature of transaction is evident from Section 12A of the AAI Act, 1994 and also from the Concession agreement. It is limited to bringing in of private partnership to carry out the activities in Section 12 of the Airport Authority Act, 1994. As per the concession agreement, the bids are for "*undertaking the operations, management and development of certain airports of AAI on a public private partnership basis*". The applicant wants to develop the airport on a PPP basis to bring efficiency in service delivery, expertise, enterprise and professionalism apart from harnessing investments, and invited the partnership of the concessionaire in the said activity. The annual report of the AAI for 2022-23 also includes this airport under its airports operating under PPP scheme (page 150). That being the case, it cannot be equated to 'transfer' of the Airport or any of its vertical. From the facts on record, in the transaction, it is evident that there is no transfer of any property or rights. All





the rights and leases granted to the concessionaire are part and parcel of this development activity only. Nothing stands transferred. Everything related to the airport, the real estate, title, capital assets, installations, employees, goodwill and the brand remain with the applicant. The concessionaire is engaged to develop the airport for the applicant. The said activity of development is subject to approval and constant monitoring of the applicant. To this end, the operations and management has been handed over to the concessionaire. This does not fall under 'transfer as going concern'. In order to facilitate the concessionaire for successful completion of the agreement, we find that the facilities of the airport have been leased to the concessionaire. We find that this lease is only an operating lease as admitted by the applicant in Para 38 (iv) (a) of the annual report of the applicant for the year 2022-23, wherein it is stated that *"The upfront payment received by AAI towards the Estimated Deemed Initial RAB should be accounted for as Operating Lease Income over the Lease Period. Asset will continue to appear in the books of AAI"*. An operating lease is a contract that allows for an asset's use but does not convey ownership rights of the asset. As per Ind AS 17, a lease is classified as an operating lease if it does not transfer substantially all the risks and rewards incidental to ownership, as against a finance lease which transfers substantially all the risks and rewards incidental to ownership. From the nature of the transaction, we find that the lease involved herein is of the category of 'operating lease' since no transfer of assets is involved.

h- In this background, we now seek to examine whether the transfer of business by the Airport Authority of India to the M/s. Adani Thiruvananthapuram International Airport Limited is to be treated as Supply u/s. 7 of the Central Goods and Service Tax Act, 2017 ("CGST") viz-a-viz Kerala State Goods and Services Tax Act, 2017 ("KGST")?.

- As elaborated *supra*, the transaction in question cannot be classified as a transfer of business, but is only an operating lease.
- Though no transfer of going concern is involved, there are two transactions taking place. One is the 'operation, development and



management' of the airport which includes design, development, financing, construction, up gradation and expansion of the Airport in a phased manner in accordance with the provisions of the agreement. This service is provided by the concessionaire to the applicant. No fee is specifically prescribed for this service. However, during the agreement period, the concessionaire is empowered to collect the entire fee for all operations at the airport, which otherwise would be due to the applicant, and this amount has to be construed to be remuneration to the concessionaire, for the services rendered by them to the applicant.

- The second is the set of services is provided by the applicant to the concessionaire. This includes leasing of the facilities, providing employees etc. for which a remuneration is fixed. In both these cases, both supply and consideration are involved.

As per Section 7 of the CGST Act, 2017, Supply includes *"(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business"*. Here, the concessionaire is constructing the Airport of the applicant to develop it *"into a state-of-the-art airport serving tourism and business markets and keeping pace with the growth in air travel demand in India"*. Further, they are receiving consideration in the forms of fee collected for all services rendered by the airport. Conversely, the applicant is supplying their employees to the concessionaire for a limited period and also leasing its facilities to the concessionaire for a consideration. Thus, both the conditions, viz., supply of service and consideration are satisfied in both the transactions. In other words, both the transactions fall squarely within the scope of supply.

3. Whether the transfer of business by M/s. Airports Authority of India to M/s. Adani Thiruvananthapuram International Airport Limited is covered under the Entry No. 2 of the exemption notification No 12/2017 – Central Tax (Rate) dated 28-06-2017 issued u/s Section 11 of CGST Act 2017"?



As elaborated earlier, as there is no transfer of business in this case, the question is void-ab-initio and does not merit to be answered.

4. The next question is, if the answer to above is negative, whether GST is leviable on the transfer of existing assets ("RAB"), aeronautical assets, non-aeronautical assets and capital work in progress by the applicant to the concessionaire?

On an examination of the concession agreement, it is clear that the applicant has not transferred the existing assets, aeronautical assets and non-aeronautical assets to the concessionaire. These are still with the applicant and applicant avails depreciation on them. Hence, this question becomes void-ab-initio and does not merit to be answered. However, it is also evident that the above has been leased to the concessionaire, though such lease does not merit to be called 'transfer' as discussed against question 2 above. The said lease is against a consideration. Thus GST is leviable on the same.

5. The fifth question is whether the aforesaid transfer of asset is to be treated as services and the classification for the same?

As for the above questions, we find that there is no transfer of assets involved and therefore, this question is also void-ab-initio.

6. The next question is whether the concession fees paid by the concessionaire to the applicant are to be treated as consideration for transfer of business?

There is no transfer of business involved. However, in order to find an answer to this question, we have to look into the reasons for payment of concession fee by the concessionaire to the applicant. As per Article 10.2.2 of the agreement, it is seen that *'In consideration of the Monthly Concession Fee, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, shall grant to the Concessionaire, commencing from the COD, lease rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and*



shown in Schedule A hereto, free of any Encumbrances, to develop operate and maintain the Site'. As already elaborated above, this lease does not empower the concessionaire to operate independently and thus does not qualify to be treated as 'transfer of going concern.' However, this lease is a supply against consideration, the consideration being concession fee. The supplier in this regard is the applicant and recipient of supply is the concessionaire. Thus the concession fee paid to the applicant by the concessionaire is a consideration for supply and is taxable.

7. The seventh question is whether GST is applicable on Monthly/Annual concession fees charged by the Applicant on the concessionaire?

For the reasons in the above paragraph, the transaction constitutes supply made by the applicant for a consideration from the concessionaire and thus GST is applicable on the same.

8. The eighth question is whether GST is leviable on the invoice raised by the Applicant for reimbursement of the salary/ staff cost on the concessionaire, and if yes, at what rate?

From clause 6.5.5 of the agreement, we find that this amount represents the 'emoluments payable by the applicant to select employees, i.e., employees of the applicant working for the concessionaire. In this regard, we find that the employees of the applicant are supplied to the concessionaire for a consideration, in pursuant to the agreement. This service falls under "Other employment and labour supply services nowhere else classified" viz. HSN 998519. The applicable tax rate for this SAC is 9% each towards CGST and SGST as applicable vide Notification No 11/2017 Central Tax (Rate) dated 28-06-2017.

9. The next question is whether GST is applicable on the reimbursement claimed of Municipal tax, Property Tax and Water Charges by the applicant from the concessionaire, and if yes, at what rate?

In this regard, we are of the opinion that such taxes do not constitute the consideration received by the supplier, but are actuals payable to government



departments and we are of the opinion that reimbursement of such taxes does not attract GST. This view is in tune with the view upheld by Circular No 206/18/2023-GST dated 31-10-23, which states that reimbursement of expenses without value addition is not taxable under GST. This is applicable only if such taxes are 'reimbursed' by the concessionaire to the applicant independent of the lease.

10. The last question is whether any reversal is required in accordance with section 17 (2)/(3) of CGST Act viz- a-viz KSGST Act?

This question is asked without specifying the context and without explaining the details under which the same is put. If the applicant has inward supply of goods or services or both which are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, then reversal is to be made as per Section 17 (2). There is no reversal to be made under Section 17 (3), since 17 (3) only explains about the value of exempt supply. With regard to the supply made by the applicant to the concessionaire which are specifically discussed above, we find that the services are not exempted and hence, no GST reversal is warranted in respect of those supplies.

In view of the observation stated above, the following rulings are issued;

### **RULING**

**Question No. 1** Whether the transfer of business by the Airport Authority of India to the M/s. Adani Thiruvananthapuram International Airport Limited be treated as Supply u/s. 7 of the Central Goods and Service Tax Act, 2017 ("CGST") viz-a-viz Kerala State Goods and Service Tax Act, 2017 ("KSGST")?

**RULING:** The transaction involved herein is not the transfer of business by the applicant to the concessionaire. However, the concessionaire is supplying the service of developing the airport of the applicant and applicant is supplying the



service of manpower, leasing etc., to the concessionaire and both constitutes supply under Section 7 of the GST Act.

**Question No. 2** Whether the transfer of business by Airports Authority of India to M/s. Adani Thiruvananthapuram International Airport Limited is treated as supply as going concern and covered in clause 4 of schedule II of CGST Act viz-a-viz. KGST?

**RULING:** There is no concept of 'Supply as going concern' in Schedule 4 of the CGST Act, 2017. The concept therein is that of 'Transfer as going concern'. The transaction involved herein cannot be treated as a transfer as going concern.

**Question No. 3** Whether the transfer of business by M/s. Airports Authority of India to M/s. Adani Thiruvananthapuram International Airport Limited is covered under the Entry No. 2 of the exemption notification No 12/2017 - Central Tax (Rate) dated 28-06-2017 issued u/s Section 11 of CGST Act 2017?

**RULING:** No. The said exemption does not cover the activity involved herein. The said entry covers 'Services by way of transfer of a going concern'.

**Question No. 4** If the answer is negative, then whether GST is leviable on the transfer of Existing assets ("RAB"), Aeronautical Assets, non-aeronautical assets and Capital work in progress by M/s. Airport Authority of India to the M/s. Adani Thiruvananthapuram International Airport Limited?

**RULING:** Since the assets mentioned have not been transferred to the concessionaire, the question *per se* is void-ab-initio. However, since the amounts are received as a consideration for leasing/supplying the assets to the concessionaire, GST is payable on the same.

**Question No. 5** Whether the aforesaid transfer of asset be treated as services and the classification for the same?

**RULING:** There is no transfer of asset and the question is void-ab-initio.



**Question No. 6** Whether the concession fees paid by M/s. Adani Thiruvananthapuram International Airport Limited to M/s. Airports Authority of India be treated as consideration for transfer of business?

**RULING:** No. It is not consideration for transfer of business.

**Question No. 7** Whether GST is applicable on Monthly/Annual concession fees charged by the Applicant on the M/s. Adani Thiruvananthapuram International Airport Limited?

**RULING:** Yes. GST is applicable on annual concession fees charged by the applicant on the concessionaire.

**Question No. 8** Whether GST is leviable on the invoice raised by the Applicant for reimbursement of the salary/ staff cost on M/s. Adani Thiruvananthapuram International Airport Limited? If yes, at what rate?

**RULING:** Yes. GST is leviable on the invoices raised by the applicant for reimbursement of salary/staff cost on the concessionaire. It is to be paid at 9% each towards CGST and SGST or 18% IGST as may be applicable under SAC '998519'.

**Question No. 9** Whether GST is applicable on the reimbursement claimed of Municipal tax, Property Tax and Water Charges by the Applicant from M/s. Adani Thiruvananthapuram International Airport Limited? If yes, at what rate?

**RULING:** We are of the opinion that reimbursement of such taxes, being reimbursement of expenses, do not attract GST and therefore, GST is not applicable on the reimbursement of such charges. This ruling is applicable only if such taxes are 'reimbursed' by the concessionaire to the applicant. If such taxes are embedded in the consideration for lease and cannot be identified, this ruling does not hold good.

**Question No. 10** Whether any reversal is required in accordance with section 17 (2)/(3) of CGST Act viz- a-viz KSGST Act?



**RULING:** This ruling is requested without specifying the context or situation in which the same is put. Therefore, only a general ruling can be offered. If the applicant has inward supply of goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, then reversal is to be made as per Section 17 (2). There is no reversal to be made under Section 17 (3) since 17 (3) only explains about the value of exempt supply.

*Gayathri P.G.*  
**Gayathri P.G., IRS**  
**Joint Commissioner of Central Tax**  
**Member**

*Abdul Latheef. K*  
**Abdul Latheef. K**  
**Joint Commissioner of State Tax**  
**Member**

To,

Airports Authority of India,  
 Administrative Building, Vallakadavu. P.O.,  
 Sangumugam, Thiruvananthapuram, Kerala -695008.

Copy submitted to:

1. The Chief Commissioner of Central Tax and Central Excise, Thiruvananthapuram Zone, C.R.Building, I.S.Press Road, Cochin-682018. [E-mail ID: [cccchin@nic.in](mailto:cccchin@nic.in); [ccu-cexcok@nic.in](mailto:ccu-cexcok@nic.in)]
2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram - 695002.
3. The Commissioner of Central Tax & Central Excise, Thiruvananthapuram Commr.'te, GST Bhavan, Statue, Thiruvananthapuram -. (E-mail id : [commr-tvmhqrs@gov.in](mailto:commr-tvmhqrs@gov.in) ).

Copy to :

1. The Joint Commissioner, TPS, HQ, Thiruvananthapuram.
2. The Deputy Commissioner, ITMD, Tvpm for uploading in the website
3. Tax payer services Circle, Fort Thiruvananthapuram.
4. Central Tax, Thiruvallam Range, Thiruvananthapuram South Division.





## ANNEXURE

## RELEVANT CLAUSES OF THE CONCESSION AGREEMENT

Sl No	Clauses/Description of the Concession agreement	Page
1	The Concession agreement is pursuant to the decision of the GOI to <i>"to invite bids for undertaking the operations, management and development of certain airports of AAI on a public private partnership basis to bring efficiency in service delivery, expertise, enterprise and professionalism apart from harnessing necessary investments"</i> .	4
2	The authority, prescribing the technical and commercial terms and conditions for operations, invited Request for Proposals (RFP) for the project. Project means the operations, management and development of the Airport in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;	-do-
3	The scope of the project is the operations, management and development of the Airport covering (a) design, development, financing, construction, up gradation and expansion of the Airport in a phased manner...as per the requirements broadly set forth in Schedule A and Schedule 8... (b) operations, maintenance and management of the Airport in accordance with the provisions of this Agreement... (c) development, operation and maintenance of City Side, in accordance with the provisions of this Agreement...and (d) performance and fulfillment of all other obligations of the concessionaire...under this Agreement, in accordance with the provisions of this Agreement...	25
4	Concession is given for including the exclusive right, lease and authority to operate, manage and develop the Airport	26



	("Concession") for a period of 50 (fifty) years...	
5	The concessionaire shall finance the development and expansion of the Airport; operate, maintain and manage the Airport and regulate the use thereof by third parties, perform and fulfill all of the concessionaire's obligations under and in accordance with this Agreement	-do-
6	Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the operations, management and development of the Airport	30
7	The Concessionaire shall, from time to time, undertake expansion or augmentation of the Aeronautical Assets and Non-Aeronautical Assets in accordance with the provisions of this Agreement.	30
8	The Concessionaire shall support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement	31
9	Transfer the project Assets to the Authority upon Termination of this Agreement, in accordance with the provisions thereof; and	-do-
10	The Authority shall, from time to time, have the right, but not the obligation, to access the drafts of all Project Agreements, or any amendments or replacements thereto. The Authority also reserves the right to seek and obtain true copies of all agreements, contracts, sub-lease, sub-license and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project even if the consideration of the contract less than Rs. 25 Crore, annually.	31
11	The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, i.e., the operation, management and development of the Airport.	36



12	<p>Only select employees are transferred. "Select Employees" shall mean those employees of the Authority as set forth in Schedule S (of the rank of assistant general manager and below) who are posted at the Airport by the Authority and shall be deployed at the Airport for the duration of the Joint Management Period and Deemed Deputation Period. "Deemed Deputation period" shall mean the period commencing from the expiry of the Joint Management Period and ending on the date which is 2 (two) calendar years there from. With the exception of the Select Employees, the Concessionaire shall have no obligations in relation to the existing employees of the Authority serving in connection with the Airport. The concessionaire shall pay to the Authority, on a monthly basis, such amounts as may be indicated in an invoice to be raised by the Authority on the Concessionaire with regard to the emoluments payable by the Authority to the Select Employees (This means that the employees are not transferred). the concessionaire shall not be liable to bear any costs in respect of the Senior Personnel, which costs shall be borne entirely by the Authority.</p>	39
13	<p>The Concessionaire shall, for the performance of its obligations during Phase I hereunder, provide to the Authority, no later than 120 (one hundred and twenty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent</p>	46
14	<p>Upon occurrence of a Concessionaire's Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in Applicable Law, be entitled to encash and appropriate from the Performance Security</p>	47
15	<p>The Performance Security shall remain in force and effect until the end of the Concession Period and shall be released 3 (three) months after such expiry, provided, however, that the</p>	48



	Performance Security shall not be released if the concessionaire is in breach of the provisions of this Agreement.	
16	The Parties expressly agree that , in respect of each Phase, an additional performance security for an amount equivalent to 2% (two percent) of the cost of the Construction Works of the relevant Phase (as determined by the Concessionaire), shall be deemed to be created under this Clause	49
17	It is expressly agreed that trees on the Site are property of the Authority	51
18	It is expressly agreed that mining, geological or archaeological rights do not form part of the lease granted to the concessionaire	52
19	Prior to commencement of construction Works, the concessionaire shall: (a) submit to the Authority and the Independent Engineer, its Development plan, detailed design, drawings, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for Completion of the concerned Phase;	56
20	The Concessionaire shall at all times procure and ensure that the Airport is constructed and developed in accordance with the Master Plan. The guidelines for preparing the Master Plan are provided in Annex II to Schedule A.	56
21	The Concessionaire further agrees to update the Master Plan periodically, every 5 (five) years or earlier as the case may be. The Development Plan for Phase I and the subsequent Phases shall be prepared by the Concessionaire as per the provisions of this Agreement, Applicable Laws and Applicable Permits.	56
22	The Concessionaire shall undertake construction at the Airport in conformity with Schedule A, Schedule B, the Specifications and Standards set forth in Schedule C, and the Master Plan.	58
23	In the event, the Concessionaire fails to achieve any milestone as per the Phase Milestone within a period of 90 (ninety) days	59



	from the date set forth for such Phase Milestone in Schedule F, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of	
24	During the Development Period, the Concessionaire shall, no later than 7 (seven) days after the close of each quarter, furnish to the Authority, a report on progress. During the Development Period, the Independent Engineer shall inspect the Airport works, considering the quarterly progress reports submitted by the Concessionaire, at least once a quarter and make a report of such inspection	60
25	In the event, the Authority determining that a Change of scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder	69
26	Notwithstanding anything to the contrary contained in this Article 17, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services forming part of the Change of Scope, to any person on the basis of open competitive bidding	69
27	During the Concession Period, the Concessionaire shall operate and maintain the Airport in accordance with this Agreement, Applicable Laws and Applicable Permits, either by itself, or through O&M Contractors	71
28	If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and such breach is causing or likely to cause material hardship or danger to the Users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.	74



29	On or before COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Concession Period, the Concessionaire shall provide to the Authority and the Independent Engineer, its proposed annual programme of preventive, urgent and other scheduled maintenance.	79
30	In the event the Concessionaire does not maintain and/or repair the Airport or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk	79
31	At all times during the Concession Period, the Concessionaire shall, no later than 7 (seven) days after the close of each quarter, furnish to the Authority a quarterly report, in a form acceptable to the Authority, stating in reasonable detail the condition of the Airport including its compliance or otherwise with the Safety Requirements	91
32	The AODB must provide all operations data at the Airport including but not limited to the data related to objective service quality requirement and parameters defining level of service of the Terminal Building and any other such information as may be required by the Authority	91
33	At all times during Concession Period, the Concessionaire shall, no later than 10 (ten) days after the close of each quarter, furnish to the Authority a quarterly management report	91
34	The Concessionaire shall submit the following reports to the Authority on regular basis: (a) quarterly activity report (Passenger Traffic, aircraft	92



	<p>movements, cargo, etc.);</p> <p>(b) quarterly financial accounts;</p> <p>(c) annual budget;</p> <p>(d) latest update of business plan;</p> <p>(e) annual maintenance program; (f) other operating statistics as may be required by any Government Instrumentality, including Gol, State Government, Ministry of Civil Aviation, DGCA, the Authority, ICAO or IATA; and</p> <p>(g) such other reports/ information (or analysis thereon) in relation to the operations, management and development of the Airport and that the Authority may request from time to time.</p>	
35	<p>The Concessionaire shall : by the 7th (seventh) day after the end of each quarter, provide to the Authority, a detailed report: (i) confirming that the levels of service at the Airport over the preceding quarter (or part thereof) never fell below IATA Level of Service Optimum or describing the dates on or periods of time during which the levels of service at the Airport fell below IATA Level of Service Optimum, and (ii) setting forth its analysis (along with any and all supporting data) of the level of service anticipated at the Airport over the reporting quarter, including any period of time when the level of service at the Airport is projected to fall below IATA Level of service Optimum. The Concessionaire shall, prior to the close of each day, notify the Authority and Designated Gol Agency, by facsimile and e-mail, a report stating accidents and unusual occurrences on the Airport relating to the safety and security of the users and Airport. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 21.4, accidents and unusual occurrences on the Airport</p>	92
36	<p>The Authority or its designated agency may, if require, inspect the Airport at least once a year with prior intimation to the</p>	93



	Concessionaire.	
37	Without prejudice to the obligations specified in this agreement, commencing from the date which is I (one) year from the COD, the Concessionaire shall operate the Airport such that it achieves or exceeds the performance indicators specified in this Article 23 and service quality requirements specified in Schedule H ("Key Performance Indicators").	96
38	The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified in this Article 23 and for any shortfall in average performance during a quarter, it shall be liable for Damages. Any such Damages will be determined in consultation with the Regulator and adjusted against Aeronautical Charges for the specified period.	97
39	The Authority and the Concessionaire shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in Schedule K, to be the independent consultant under this Agreement ("Independent Engineer"). The Independent Engineer shall be appointed in accordance with the provisions of Schedule K and role is specified in Schedule L. The role and functions of the Independent Engineer shall include review of all aspects of the execution of agreement.	100
40	The Concessionaire shall undertake or cause to be undertaken the development and maintenance of infrastructure such as roads, electric supply, water supply, sewerage and drainage systems forming part of City Side Development at its cost	101
41	The Authority may, in order to verify the international Passenger Throughput and/ or Domestic Passenger Throughput and/ or to ascertain the actual international Passenger Throughput and Domestic Passenger Throughput at the Airport, depute its representatives to the Airport and the offices of the Concessionaire, and undertake such other measures and actions as it may deem necessary. The Authority may call upon	107





	the Concessionaire to furnish any and all data, information, log, sheet, document or statement, as the Authority may deem fit and necessary for these purposes.	
42	The Authority has the right, either through itself or through any of its authorised representative, to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.	120
43	The Authority shall nominate a panel of six (6) Chartered Accountancy Firms ("Panel of Chartered Accountants") to the Concessionaire, such list to be prepared substantially in accordance with the criteria set forth in Schedule N.	120
44	Upon occurrence of a Concessionaire's Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect any Fee, and other revenues pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension ("Suspension").	130
45	For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project Assets shall be deemed to be acquired and owned by the Concessionaire. The Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under Applicable	151



	Laws.	
46	The concessionaire shall neither assign, transfer or create any lien or encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Airport nor transfer, or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.	26
47	The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written intimation to the Authority.	32
48	The Concessionaire shall not assign or in any manner create an Encumbrance on any Project Asset. (It is pertinent to note that 'Project Asset' means all physical and other assets relating to or forming part of the Site including all rights of the concessionaire under the project Agreements)	-do-
49	the Concessionaire agrees and acknowledges that selection or replacement of any or all EPC Contractors or O&M Contractors and execution of all EPC Contracts or O&M Contracts shall be subject to the prior approval of the Authority	-do-
50	The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.	33
51	The Airport or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. Save and except as may be necessary in the normal course of business and always with the name of the Authority, the Concessionaire undertakes that it shall not, in any manner, use the name or identity of the Airport to advertise or display its own identity, brand equity or business interests, including those of its shareholders.	36
52	The Airport shall be known, promoted, displayed, advertised and branded by the name of "Thiruvananthapuram	-do-

