



2024 :DHC :7893



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 10<sup>th</sup> April, 2024  
Pronounced on: 30<sup>th</sup> September, 2024*

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**CS(COMM) 1118/2016**

1. **BKP ENTERPRISE**

A Proprietary concern,  
Through Mr. Bharat Zaveri,  
Having its Office at 150,  
Kewal Industrial Estate,  
Senapati Bapat Marg, Lower Parel,  
Mumbai-400013

..... Plaintiff No. 1

2. **AEROCARE AVIATION SERVICES PRIVATE LTD.**

A Company registered under the Companies Act, 1956,  
Through Mr. Sohil Zaveri,  
Having its Office at 150,  
Kewal Industrial Estate,  
Senapati Bapat Marg, Lower Parel,  
Mumbai-400013

..... Plaintiff No. 2

Through: Mr. Bhuvan Mishra, Mr. Yash  
Maheshwari & Mr. Krishna Kanhaiya  
Kumar, Advocates.

versus

**SPICEJET LIMITED**

Public Limited Company,  
Incorporated under the Companies Act, 1956,  
Having its registered Office at Indira Gandhi International Airport,  
Terminal 1D, New Delhi-110037

..... Defendant

Through: Mr. Sudanshu Batra, Sr. Advocate  
with Mr. Dipan Seth, Advocate.



**CORAM:  
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. The present Suit for Declaration, Specific Performance, Damages and Rendition of Accounts has been filed on behalf of the plaintiffs.
2. The plaintiff No. 1 is the Proprietary concern of Mr. Bharat Zaveri, engaged in the business of representation, setting up, overseeing and managing the entire Haj operations at various Airports in India on behalf of various airlines.
3. The plaintiff No. 2 is a Company registered under the Companies Act, 1956, of which Mr. Sohil Zaveri is the Director.
4. The defendant is a Private Limited Company registered under the Companies Act, 1956 and is engaged in running the business of a low-cost Domestic and International Airline by the name of 'Spicejet'.
5. In response to Tender Notice dated 19.02.2016, the MoCA appointed the defendant as one of the designated Indian Carriers for transporting approximately 8,250 Indian pilgrims to Saudi Arabia from Indian embarkation stations of Gaya, Bihar and Indore, Madhya Pradesh for Haj, 2016 on its Charter flights. Accordingly, the MoCA and the defendant entered into a Memorandum of Understanding dated 02.05.2016 for undertaking Haj operations, 2016.
6. The conduct of the Haj Pilgrimage annually has serious ramifications on Indo-Saudi relations being the subject matter of Bilateral Treaty between the two countries and also has far-reaching implications for individual



pilgrims for many of whom the Haj is once in a lifetime pilgrimage with immense personal and religious significance.

7. The MoCA invites Tenders every year from the designated airlines of India and Kingdom of Saudi Arabia for transporting Haj pilgrims by the HCoI from India to Saudi Arabia and back to India during the prescribed period of Haj operations.

8. The defendant was desirous of submitting its bid for the aforesaid Tender, and therefore, sought the services of the plaintiffs, owing to their expertise and experience in conducting the Haj operations which require an enormous amount of mobilisation of resources on the part of the plaintiffs to conduct the flawless operations.

9. The plaintiffs have many years of demonstrated capacity with their knowledge and experience coupled with an excellent track record in conducting Haj operations.

10. The defendant had previously attempted to conduct the Haj operations in 2012, but was unable to qualify due to its lack of experience in understanding and undertaking Haj operations. The defendant led the plaintiffs to believe that it required the assistance of the plaintiffs in its proposed bid for appointment as a Designated Haj Charter Operator from India for the Haj, 2016. On account of the assistance rendered by the plaintiffs, the defendant submitted a bid Tender invited by the Ministry of Civil Aviation, Government of India (*hereinafter referred to as "MoCA"*) for the Haj Operations, 2016 and was eventually allotted two locations i.e., Gaya, Bihar and Indore, Madhya Pradesh. On the request of the defendant, the plaintiffs deployed all their resources, including manpower, money, expertise and their network in India, Saudi Arabia and UAE, solely for the



purpose of enabling the defendant to successfully discharge its obligations by organising a flawless Haj Charter Operation.

11. The plaintiff assisted the defendant in virtually every aspect of the Haj Charter process, including *inter alia* (i) sourcing aircrafts for the defendant on lease, (ii) introducing, setting up and organising operations in India (at the embarkment stations i.e., Gaya, Bihar and Indore Madhya Pradesh), Saudi Arabia (Jeddah and Medina) and UAE (Fujirah Airport) for carrying out the Haj operations; (iii) providing all the support, logistical and otherwise to the defendant insofar as strategizing and planning flight schedules, setting up vendors and facilitating execution various Agreements with vendors for ground handling, ground supervision, catering, hotels, fuelling of aircrafts are concerned; and (d) ensuring all the regulatory compliances and preparing and supervising the paperwork for the same to almost the stage of the actual flight take off.

12. The parties continued to work in collaboration with one another without any demur on the part of the defendant which even represented to third parties that the plaintiffs were their agents with interest till about 22.07.2016. Thereafter, on the pretext of a purported advice from the Haj Committee of India (*hereinafter referred to as "HCoI"*), the defendant sought to revoke the authority granted in favour of the plaintiffs for Haj operations despite the subsequent clarification from HCoI itself. The defendant availed the plaintiffs' manpower, time, expertise, goodwill, reputation and network in India, Saudi Arabia and UAE to garner all possible benefits by conducting Haj Charter operations in an area where the defendant had not been able to achieve any success in the past. The plaintiffs had acted admittedly for 4-5 months to the defendant's satisfaction



and were still willing and ready to perform the remaining part of their obligations under the Agreements.

13. The defendant entered into a Collaboration/Partnership with the plaintiffs for Haj operations, right from the stage of bidding to the stage of actually undertaking the charter flights for Haj operations. The Letter of Intent dated 16.03.2016 (*hereinafter referred to as "LoI"*) was entered into between the parties, confirming their mutual understanding.

14. The plaintiffs have stated that even prior to formalisation of LoI, the plaintiffs had already started working towards the submission of technical and the financial bids on behalf of the defendant, which is evident from the fact that the plaintiff had already provided their Collaboration Proposal for Haj, 2016 and had provided a check list for documents viz., NOC from Directorate General of Civil Aviation etc., on 10.03.2016 to the defendant to meet the requirements for qualifying under the Tender. After signing of the LoI as well, the plaintiffs continued to mobilise various resources for the impending Haj operations. This entire exercise included preparation of requisite documents regarding the schedules for flights, appointing and coordinating with the agents based in Saudi Arabia, sourcing suitable aircrafts and crew on lease, negotiating and executing the Ground Handling Agreements, providing documents for slot allocation for the Haj operations, and preparing complex paperwork.

15. The plaintiffs kept the defendant informed of each and every step that was being undertaken. The officials of defendant consistently acknowledged each step that was taken by the plaintiffs for and on behalf of and in consent with the defendant.

16. Further, in acknowledgement of the efforts of the plaintiffs, the



defendant issued a Letter dated 26.05.2016 to the plaintiff No. 2 appointing it to provide the ground supervision and support services of the defendant for Haj operations, 2016 for the stations i.e., Gaya (Bihar) and Indore, (Madhya Pradesh), UAE and Saudi Arabia to Spicejet. The defendant *vide* the said letter also authorised the plaintiffs to appoint the local agent in Saudi Arabia on behalf of the defendant. The nature and extent of the association between the parties i.e., collaborators working in tandem was also represented by the defendant to third parties on several occasions, including to the Assistant President, Safety, Security and Air Transport, General Authority of Civil Aviation, Kingdom of Saudi Arabia stating that the defendant in cooperation with the plaintiff No. 2 appointed 'Airgate Logistics Group' as its Saudi local Agent for Haj, 2016.

17. In the similar manner, contemporaneous correspondence was exchanged between the parties to demonstrate the nature and extent of association between them. So much so that the Spicejet e-mail IDs were created by the defendant for various officials of the plaintiffs on 12.06.2016 in order to ensure smoother coordination with the concerned Agents/local bodies/Government agencies in Kingdom of Saudi Arabia and portraying the partnership with the plaintiffs as one unit for the sole purpose of conducting Haj operations.

18. While all this work was being undertaken, the parties wanted to formally crystallise the Engagement terms/Profit-Sharing patterns which had been already agreed pursuant to which understanding the plaintiffs had commenced rendering their services to the defendant. A *formal Engagement Agreement* between the plaintiff No. 1 and the defendant was exchanged for execution w.e.f. 02.05.2016 outlining the obligations of the parties. As per



this Agreement, the net revenue earned from Haj operations, 2016 was to be distributed between the defendant and the plaintiff No. 1 in ratio of 75%, defendant and 25%, plaintiffs. The draft Agreement was exchanged and the defendant acknowledged the signing of LoI and also receiving the draft Agreement too *vide* Communication dated 21.06.2016. While awaiting the signatures of the Agreement which, given the scale and amount of work done in the meanwhile, was a mere formality/ministerial act and the plaintiffs continued to do their work.

19. While the execution of Engagement Agreement was pending, another Letter dated 02.07.2016 exclusively authorising the plaintiff No. 2 to deal with and handle all ground supervision and support services with all the required agencies i.e., GSA in KSA, ground handlers, Airport Authorities, Immigration, Customs, ATC, fuelling companies, maintenance companies, catering companies, hotels, security, Haj Mission Office, Indian Consulate etc., in the Kingdom of Saudi Arabia was issued on behalf of the defendant.

20. In the meanwhile, the Aircraft Operator Security Program (AOSP) which was a crucial Regulatory compliance for the defendant, was achieved with the efforts of the plaintiffs, as is reflected from the Communication dated 21.06.2016 addressed by Vice President (Legal) and Company Secretary of the defendant.

21. During this period, the defendant also reverted to the plaintiffs on the Engagement Agreement dated 07.07.2016, wherein while keeping the other conditions as it was in the earlier draft, proposed the ratio profit sharing to be made as 77.5%, defendant and 22.5% plaintiff No. 1. As per the Agreement, the payment of the plaintiff No. 2 was to be disbursed by the defendant from the receipt of the 4<sup>th</sup> instalment from the MoCA.



22. At this time, the parties were also in the process of formalising a *Service Agreement* under which the plaintiff No. 2 was to provide the services as per the Schedule attached thereto, including but not limited to (i) appointing a Saudi local agent on behalf of defendant, (ii) arranging for a Foreign Operator Certificate (FOC) for the leased operator, (iii) plan and conduct station visits to set up operations at Gaya and Indore, (iv) plan and conduct overseas station visit to set up operations at Jeddah, Medina and Fujirah (UAE), and (v) appoint a city check agent etc. The service fee was agreed by the defendant at USD 60 per passenger to be payable to the plaintiff No. 2 as a part of the supervision costs towards the Operation.

23. Pending the signing of the Agreements, the plaintiffs continued their efforts, owing to the time-bound schedule of the Haj operations, wherein the first flight from India was scheduled on 04.08.2016.

24. On 12.07.2016, the plaintiffs wrote a letter to the Consulate General of Jeddah on behalf of the defendant, to intervene to immediately resolve an issue with GACA, the Civil Aviation Authority of Saudi Arabia to recognise the designation of the defendant as a scheduled Carrier.

25. Around the same time, a team from the plaintiff No. 2 initiated pre-operation Station visits along with the defendant at Gaya and Indore Airports for Haj coordination meetings to discuss the operations with various agents, like ground handling, catering and marketing for and on behalf of the defendant. The officials of the plaintiff were also slated to visit Fujirah (UAE) and Jeddah, Medina (Saudi Arabia) during this period to oversee the set up for the impending operations.

26. On 13.07.2016, the plaintiffs requested the defendant to execute the pending Agreements. The defendant in its Response dated 14.07.2016,





pleaded its inability to pay the revenue share of the plaintiffs (as per LoI and the Engagement Agreement) in the same manner as received from MoCA and also stated that the defendant in order to provide some comfort, could start payment to the plaintiffs from the time of 3<sup>rd</sup> instalment, rather than 4<sup>th</sup> instalment as was proposed earlier.

27. Insofar as the Service Agreement was concerned, the defendant proposed a lesser payment than contemplated earlier. With the said proposal, the defendant sought the acceptance of the plaintiffs after which the Agreements could be finalised. In response dated 15.07.2016, the plaintiffs accepted the proposal for the Engagement Agreement and requested the defendant to sign the same. As regards the Service Agreement, the plaintiffs left the matter to the defendant and sought conclusion of both the Agreements.

28. The plaintiffs continued with their obligations and managed to obtain the operating authorisation from the GACA (Civil Aviation Authority of Saudi Arabia) for Spicejet Aircrafts to operate into Kingdom of Saudi Arabia for Haj Season, 2016. This was communicated to the defendant on 17.07.2016, while also clarifying that all work necessary to conduct a successful operation, was nearing completion.

29. On 20.07.2016, while the plaintiffs were working closely with the defendant's team in its Office, the plaintiffs' officials were called by the Chairman of the defendant to review the progress of the Haj. In the meeting, it was informed that there were apparently some issues *qua* the plaintiffs that had been raised in the HCoI Meeting on 16.07.2016, regarding the plaintiffs being tagged as subcontractors and the plaintiffs were advised to seek a clarification in this regard from HCoI. The plaintiffs assured that there were



no such issues since the plaintiffs were neither an Airline nor Sub-contractors or Operators but were only Service Providers, like the current arrangement with the defendant. The Chairman of the defendant assured the plaintiffs of a positive response.

30. All the works were nearing completion and had been done to the satisfaction of the defendant for start of Haj operations, including estimating the costs. Unexpectedly, on 22.07.2016, the plaintiffs were served with two Letters dated 20.07.2016, whereby it revoked the exclusive Authority granted in favour of the plaintiff No. 2 without assigning any basis/reasons for the same and appointed Airgate Logistics Group as its local partner in Saudi Arabia for Haj, 2016 operations in circumvention of the Agreement with the plaintiff No. 2.

31. In fact, on 26.05.2016, in cooperation with the plaintiff No. 2, the defendant had appointed Airgate Logistics Group as its Saudi local agent for Haj, 2016 to provide liaisoning and support services with all Saudi Authorities on behalf of the defendant. The plaintiffs were unable to understand this change of attitude of the defendant, when defendant itself had acknowledged and appreciated the exhaustive work undertaken by the plaintiffs in the last 4-5 months after deploying all their resources at places which were unknown territory to the defendant.

32. The plaintiffs as advised by the defendant, immediately met the Chairman of HCoI in the morning of 22.07.2016 and clarified that Mr. Bharat Zaveri was neither a subcontractor nor an owner, partner or an operator for Dynamic Airways and that bracketing Bharat Zaveri with M/s Dynamic Airways for shortcomings was without any basis and completely unjustifiable. That the plaintiffs had only provided logistics and supervision



support to various airline customers to serve Haj pilgrims of India and Saudi Arabia and the plaintiffs' role was confined to providing assistance and ground support which had been discharged without demur or complaint.

33. However, the defendant *vide* Letter dated 22.07.2016 cancelled the Authority vested in the plaintiffs on the baseless ground that it was purportedly advised by various Regulatory Agencies involved in carrying Haj operations, 2016, including HCoI not to engage M/s Dynamic Airways/Bharat Zaveri for undertaking any activity due to past failed obligations.

34. The plaintiffs have claimed that from the Minutes of Meeting at HCoI dated 16.07.2016, it is evident that the defendant was fully aware that as per the Tender document, the embarkation points awarded to it could not be sub-contracted to another party and had rightly represented before HCoI that it had not entered into any sub-contract with the plaintiffs. The defendant was asked to provide an Undertaking that it had not entered into a sub-contract. However, instead of giving the Undertaking and clarifying the issue of sub-contracting, the defendant fraudulently issued the Undertaking and terminated the services of the plaintiffs without any consolation or without any information to the plaintiffs.

35. It is claimed that this attempt of the defendant was only a fraudulent way to unjustly enrich itself of the benefits or advantages that had jointly inured in both the parties, after riding piggy back on efforts of the plaintiffs in setting up of the complete operations. The defendant has merely used HCoI as a pretext for its fraudulent conduct.

36. After the aforesaid incident owing to the outstanding reputation of the plaintiffs in the market, two Member of Parliament wrote Letters dated



29.07.2016 and 01.08.2016 to the Chairman, HCoI asking it to issue necessary communication to the defendant to clarify the misconception about the plaintiffs and also recommended that HCoI may not have been any objections if the defendant engaged the services of the plaintiffs.

37. In view of the aforesaid clarifications, the Chairman, HCoI issued a Letter dated 01.08.2016 directing the Chairman of the defendant-Company that the HCoI in its Meeting dated 16.07.2016 had merely expressed concern that the sub-contracting Air Charter operations and that the defendant was free to engage the services of the plaintiffs as they were only the service providers. It is evident that nothing prevented the defendant from continuing its obligations under the Agreements with the plaintiffs, especially after the HCoI in categorical terms stated that the defendant can engage the services of the plaintiffs.

38. The plaintiffs under the *bona fide* belief that in light of the aforesaid clarification, the issues raised in Letter dated 22.07.2016 by the defendant stood resolved, wrote a Letter dated 02.08.2016 to the defendant to withdraw its letter and to continue with the arrangements to ensure a joint successful operation of Haj by the defendant and the plaintiffs. However, no positive response was received from the defendant and the plaintiffs got to know that the defendant was illegally attempting to engage its local agents directly, after riding on the goodwill and reputation of the plaintiffs in the field where the defendant by itself had no adequate expertise, experience or infrastructure and when it was not possible for the defendant to undertake Haj operations. The plaintiffs thereafter, attempted to meet the concerned officials of the defendant and also kept writing Letters but to no avail.

39. The defendant continued to avoid the interactions with the plaintiffs



only in an attempt to resile out of the Agreement with the plaintiffs to the detriment of the plaintiffs on fallacious grounds.

40. The plaintiffs have asserted that they are ready and willing to perform their obligations as per the arrangement as embodied in LoI, its extension through Letter dated 20.05.2016, Engagement Agreement and the Service Agreement. No amount of damages would adequately undo the insurmountable loss caused to the goodwill and reputation of the plaintiffs. if they are not adequately protected, the plaintiffs would suffer irreparable damage to the standing in the market i.e., of a service provider which have always managed to ensure smooth Charter operations for many years. It would negatively impact their business prospects in future and also their reputation. The plaintiffs would suffer damage to the tune of USD 8,61,065/-, being the profits under the Engagement Agreement for setting up and organising the Haj operations till final stage and also USD 60 per passenger, being fee payable as per the Service Agreement, apart from other damages.

41. The plaintiffs have thus, sought a Decree of Declaration that the contract between the parties embodied in LoI, its extension through Letter dated 20.05.2016, the Engagement Agreement and Service Agreement are valid subsisting and binding between the plaintiffs and the defendant. The Letter dated 22.07.2016 issued by the defendant is null and void and to direct the defendant to perform its obligation under the Agreements and or in the alternative a Decree for Damages for the amounts under the Agreements, including pre-operative expenses incurred by the plaintiffs under the Service Agreement and the guaranteed minimum profits under the Engagement Agreement be awarded to the plaintiffs, in addition to damages



for loss to the goodwill and reputation of the plaintiffs. The rendition of accounts for direct operating costs incurred in connection with the Haj pilgrimage, 2016 and all payments received from MoCA in connection therewith along with the actual vendor invoices and costs have also been sought.

42. **The defendant in its Written Statement** has taken the *preliminary objections* that LoI extended *vide* E-mail dated 20.05.2016 on the basis of which the entire claim of the plaintiffs is based, is neither enforceable nor has it conferred any right to the parties thereto and does not create any contractual obligations. The LoI simply indicated the intention of the parties to enter into a definitive Agreement sometime in future. The LoI is not legally binding document on either party. The LoI cannot be subsequently enforced and the Suit is liable to be dismissed.

43. Further, the exchange of draft Agreements between the parties well beyond 15.06.2016 is only indicative of the fact that the LoI was not pending on either party.

44. The defendant has claimed that there is a gross concealment and misrepresentation of facts by the plaintiff No. 1 which had not been intentionally disclosed to the defendant, that it was involved with Air India in its Haj operations, 2014 and that it had been discredited and held responsible for the collapse of the Air India Haj Operations, 2014.

45. The defendant was cautioned by HCoI as well as threatened by the MoCA that the defendant should not work with the plaintiff No. 1 and should strictly adhere to the conditions of the Tender and work should not be outsourced, especially to plaintiff No. 1.

46. It is claimed that the plaintiffs dishonestly induced the defendant to



enter into such LoI on account of this fraud perpetrated by the plaintiffs. The defendant has suffered loss of goodwill for which it reserves its rights to claim damages and other remedies under law.

47. Furthermore, the plaintiffs have also claimed damages which have been quantified for an amount of USD 8,61,065/-, which makes it evident that the present Suit has been filed in contravention of Section 10 of the Specific Relief Act, 1963. Hence, the damages actually quantified indicate that the damages are quantifiable and the LoI is not to be specifically performed. While the defendant has admitted that the plaintiffs had approached the defendant for soliciting business for Haj operation in 2016 and the plaintiff No. 1 and the defendant had entered into the LoI dated 16.03.2016, but it did not create any contractual obligations on the parties thereto.

48. It is asserted that in the said Appointment Letter, there was no mention of the intention of the parties to enter into an Agreement in future and the same was merely a Letter of Appointment. It did not create any contractual obligations.

49. In the meanwhile, the parties exchanged draft Agreements *vide* E-mail dated 10.07.2016, wherein Sohil Zaveri through plaintiff No. 2 demanded that the alleged Agreements be signed immediately. The plaintiffs were *ad idem* with the defendant that the LoI and the Appointment Letter were not meant to create any legally binding effect on the respective parties.

50. The defendant has asserted that a Meeting was held on 16.07.2016 at HCoI amongst its members, Consulate General of India, Jeddah and the representatives of the selected airlines, wherein the defendant was instructed not to avail the services of plaintiff No. 1 as it was brought to the notice of



HCoI that the defendant was engaging the services of plaintiff No. 1 which is a discredited Operator, responsible for the collapse of Haj operations of Air India in the year 2014. It was also made clear that the Tender conditions specifically barred sub-contracting of the operations.

51. After the HCoI Meeting, the defendant came across various Letters issued by HCoI and its relevant Sub-Committee in the previous years to MoCA and Cabinet Ministers as well as the Prime Minister, wherein serious allegations were levelled against the Air India which had collaborated with Bharat Zaveri in conducting the Haj operations, 2014.

52. Moreover, the plaintiff No. 1 through Bharat Zaveri clandestinely and under a scandalous liaisons issued a Letter dated 14.06.2016 to the employees of the defendant, namely, Manjiv Singh and Debojo Maharshi, whereby he promised to share with these employees 25% of its alleged profit share from the Haj operations, 2016. This frequent inducement was made to the employees of the defendant so that they could persuade the defendant to formalise the Agreement between the parties. The plaintiffs thus, indulged in gross professional misconduct and corrupt practices.

53. Hence, the defendant *vide* its Letter dated 22.07.2016 revoked the LoI issued in favour of the plaintiff No. 1 and the Appointment Letter in favour of the plaintiff No. 2 since they were both working in collaboration with each other.

54. On 03.08.2016, the defendant also received a letter from the MoCA stating that HCoI has informed it that the defendant was engaging the services of the plaintiffs which are tainted and blacklisted Operators and warned the defendant against engaging their services.

55. The defendant has asserted that the complete operational set up was





put in place by itself which included sourcing of aircraft for Haj operations, optional opening of operations at concerned airports, namely, Gaya and Indore, Fujirah, Jeddah, and Medina, deploying its staff procuring engineering and technical support, hiring ground handling agencies at these airports, securing contracts for procurement of air turbine fuel, catering services, hotel arrangements, insurance etc. It is further submitted that the plaintiffs did not provide any services to the defendant and that the minimal activities that were undertaken by them were only preparatory in nature and there was no formal Agreement in respect of the same between the parties. It is further submitted that the services which were purported to be provided by the plaintiffs were to be rendered by them only as Service Providers.

56. Due to the misrepresentation of the credibility of the plaintiffs, the defendant at the fag end of the timeline, i.e., just before the commencement of Haj Operations, had to run pillar to post to ensure that the services which were allegedly to be provided by the plaintiffs, were also performed by the defendant on its own in order to ensure smooth Operations. The fraud perpetrated by the plaintiffs caused last minute operational hindrances to the defendant which greatly impacted its usual business Operations.

57. **On merits**, it has been asserted that the defendant is a fully functional scheduled commercial Airline having its operation within India and abroad and does not require any expertise of the plaintiffs in respect of carrying out the chartered Air Operations, more so for the purpose of Haj operations. The plaintiffs may have many years of demonstrative capacity, knowledge and experience coupled with accident track record in conducting Haj operations which require a high degree of specialisation and precision given the serious ramifications of any mistake, mishap which is substantially



proved by the fact that Bharat Zaveri/Dynamic Airways had been held responsible for the collapse of Air India Haj Operations in the year 2014.

58. The professional misconduct and failure of the obligations/commitments on the part of Bharat Zaveri in the previous years was such that HCoI and MoCA had decided that from 2015 onwards, there would be no subcontracting of Haj Operations and Bharat Zaveri was also blacklisted by all the Regulatory authorities involved in overseeing Haj Operations.

59. The defendant has explained that it was a successful bidder for Haj Operations in the year 2012 and was allotted embarkation points but because of the extraneous reasons, no formal Agreement could be executed between the defendant and the Government of India due to which it was unable to carry out operations for Haj in the year 2012. It is stated that it was not due to lack of experience in understanding and undertaking the Haj Operations that the same could not be carried out in 2012, as is evident from the fact that the defendant is successful in carrying out the operations for Haj, 2016 and has even completed first phase without any external support which establishes its capacity to undertake such Haj operations. The defendant started its Airlines operations in May, 2005 and undertook and successfully completed this huge exercise of Haj operations within two years of its being coming into operation which itself is manifest of its expertise and excellence in Airlines Operation. It also corroborates that the defendant does not require any third party expertise to run its operation as alleged by the plaintiff.

60. It is denied that the defendant ever requested the plaintiffs to deploy any resources including manpower, money, expertise and network in India,



Saudi Arabia, UAE or any other location.

61. It is claimed that the plaintiffs did not mobilise any resources to allegedly enable the plaintiffs to carry out the Operation. The defendant had sourced Aircraft business with whom it has been successfully working since a long time in the past. It has previously operated as a regular scheduled Airline from one point of embarkation in India i.e., Indore and has also been having operations in Saudi Arabia. It is, therefore, incorrect to claim that the defendant has no experience in the embarkation points in India or in Saudi Arabia. The defendant has substantial amount of experience in performing such activities being a successful operating scheduled Airline.

62. The defendant has submitted that it was only under the good faith of the plaintiffs' representations and their specific requests that the plaintiffs were granted authority and means *vide* which they may represent itself as an extended arm of the defendant as the plaintiffs had explained that in the event they did not so represent themselves to other contracting parties, they may not be entertained as a third party.

63. The true colours of plaintiffs were discovered only on 16.07.2016, and that too from HCoI, that the plaintiffs were discredited Operators and that the relevant Authorities had specifically instructed the defendant not to associate with the plaintiffs.

64. Admittedly, the Letter dated 01.08.2016 was issued by Ch. Mehboob Ali Kaiser, in his personal capacity but it was only to give a clarification that the plaintiffs were not the Sub-contractors but only Service Provider, though it did not have the effect of clearing the name of the plaintiffs as successful Service Providers. The defendant was left with no option but to revoke LoI and Appointment Letter as soon as since it found that the plaintiffs



misrepresented their capability in providing the services for which they were engaged and that they were blacklisted by the Authorities.

65. The defendant claims that it has solely carried out the activities required to be conducted for the successful operation of Haj flights and associated responsibilities. The defendant made all arrangements in respect of sourcing of aircraft, its fuelling, catering therein and all travels on its own. All negotiations in respect of sourcing of the aircraft by way of a Wet Lease and all ancillary arrangements including but not limited to fuelling of the aircraft with the concerned vendors/lessors, were solely carried out by the defendant and the plaintiffs were nowhere involved in the scenario in any manner. Further, all the studies and research were carried out by the defendant itself in which the plaintiff had no role to play. The defendant had already worked with ground handling Agencies in the past as is admitted by the plaintiffs in their E-mail dated 08.05.2016 and 21.05.2016, which would demonstrate that even as on date the plaintiffs were yet to commence negotiation which had actually not happened.

66. The defendant has stated that it was not even aware of the entity called "*Aerocare Aviation Pvt. Ltd.*" and was caught off guard when the plaintiffs requested the defendant to issue the Appointment letter in favour of the said entity which has been arrayed herein as plaintiff No.2. It is also submitted that the said Letter has been issued to the defendant by the plaintiffs without any confirmation of the arrangement/understanding of the commercial terms between the parties and that the parties never arrived at any conclusive commercial understanding.

67. The defendant has denied that any obligation in respect of Haj, 2016 was created under the draft Agreements. Since the Agreements were still in



process of the finalised and were mainly drafts, none of the parties to present Suit were bound by them. The insistence of the plaintiff to formally execute these Agreements is reflective of the fact that LoI was not a binding document and is not enforceable in law. The signing of the Agreements was not a ministerial act. It is evident that the parties had not come to a consensus on the terms of the Agreements and they were still in the process of negotiating the same. The assistance of the plaintiff to procure Regulatory compliances was not required as defendant was capable of achieving it on its own. In fact, it was only the plaintiffs which had requested the defendant to allow them to procure the said Licence. In fact, the plaintiffs indulged in unethical practice of bribing the employees of the defendant as is evident from the Letter dated 14.06.2016. Such unfortunate event could have cascading effect on the defendant which is a Public Limited Company and the investments of the public at large are always at stake.

68. The defendant has explained that it is the full-fledged Airline Operator having operations from India and abroad and does not require any expertise from a party or an organization which does not even belong to the Airline industry, operating the Airlines. The defendant operates almost 290 flights in a day with a volume of flying an average of 36,000 passengers every day to 35 domestic and 6 international destinations, including the fact that the defendant was previously also operating one of the embarkation points i.e., Indore and even in Riyadh (Saudi Arabia) and is also successfully running Haj operations as on date, on its own.

69. The defendant has claimed that it was due to its own efforts that it was able to adhere to the time-bound schedule of the Haj Operations and the



plaintiffs did not have any role to play therein. In fact, the plaintiffs made a wrong representation to GACA that the defendant was coming in a scheduled carrier since the defendant never expressed such intent.

70. Further, no timeline to pay the alleged revenue share ever existed in the LoI; in any event since the Agreements were not finalised, the question to pay such alleged revenue does not arise.

71. The defendant has denied that it had revoked the Letter dated 20.07.2016 without any basis; rather it was the plaintiffs who had grossly misrepresented their credibility to defendant and had acted dishonestly to induce it to enter into the LoI and the Appointment Letter, respectively.

72. The defendant has asserted that since the Appointment Letter and LoI stood revoked, the defendant was free to engage the services of any other entity. It is denied that the defendant lacked adequate resources or expertise to undertake the Haj operations. It is further submitted that the alleged Agreement between the plaintiffs and the local Agents was only being entered into by the plaintiffs solely for and on behalf of the defendant and not in its individual capacity. The only component of the said Agreement that was negotiated by the plaintiffs was the commercial aspect which also is different in the Agreement finally executed between the defendant and the Local Agent. It is further submitted that the local agent communicated that it had no belief in the reputation/credibility of the Plaintiffs and it did not wish to enter into an Agreement with the plaintiffs directly.

73. Furthermore, it is asserted that the plaintiffs are not entitled to any benefit arising out of the draft Agreements. They are also not entitled to any profit revenue from the defendant's Haj operation since it was carried by the defendant itself and in any event, the figure of the revenue arrived at by the



plaintiffs is merely speculative without any concrete basis.

74. The defendant has asserted that it functions as a single business entity in respect of all its operations and Haj Operations do not serve as a separate profit Centre.

75. Therefore, the defendant has submitted that the present Suit of the plaintiffs is liable to be dismissed.

76. **The plaintiffs in their Replication** have reaffirmed their assertions as made in the Plaint.

77. On the basis of pleadings, the **issues were framed vide Order dated 18.10.2016 which are as under: -**

*“Issue No.1: Whether any binding enforceable contract on which the suit claim is based came into existence between the parties? OPP*

*Issue No.2: If the above issue is decided in favour of the plaintiffs, whether the defendant was absolved from its contractual obligations owing Haj Committee of India 'and the Ministry of Civil of Aviation cautioning, the defendant against dealing with the plaintiffs and/or owing to the plaintiff no. 1 having made the defendant enter into the contract by practising fraud and concealment? OPD*

*Issue No.3: Whether the plaintiffs provided, any services to the defendant and if so to what effect? OPP*

*Issue No.4: Whether the plaintiffs were ready and willing to perform their part of the contract and the defendant has breached the contract? OPP*

*Issue No.5: If all the above issues are decided in favour of the plaintiffs, to what amount are the plaintiffs entitled to from the defendant towards compensation for breach of contract? OPP*

*Issue No.6: If the above issue is decided in favour of the plaintiffs, whether the plaintiffs are entitled to any interest and if so at what rate and for what period? OPP*

*Issue No.7: Relief.”*



78. The plaintiff No. 2 (Sohil Zaveri) has appeared as PW1 and tendered his evidence by way of Affidavit, **Ex.PW1/A**, and has relied upon the documents exhibited **PW 1/1 to PW 1/56**.

79. DW-1 Shri Girraj Prasad Gupta, Chief Administrative Officer and Accountable Manager of the defendant, has tendered his evidence by way of Affidavit, Ex.DW-1/A and reaffirmed the facts as stated in the Written Statement filed on behalf of the defendant. He has placed reliance on documents exhibited as **DW 1/1 to DW1/7**.

80. DW-2 Shri Manjiv Singh, Advisor to the Chairman of the defendant, tendered his evidence by way of Affidavit, **Ex.DW-2/A** and deposed that he and Debojo Maharshi were lured by Bharat Zaveri, the plaintiff No. 1, to persuade the defendant to accept the formalisation of the Agreements between the parties. He has placed reliance on document exhibited as **DW 2/1 and Mark D-8**.

81. *Shri Shreejesh AC, General Manager-FPA and Treasury of the defendant*, was examined pursuant to the directions of the Court *vide* Order dated 22.09.2016 to produce the accounts of the defendant.

82. *Learned counsel for the plaintiffs has addressed the arguments at length and also filed the Written Submissions.*

83. It has been argued on behalf of the plaintiffs that there is a Bilateral Agreement between India and Saudi Arabia for certain agreed pilgrims, 25% travel is undertaken through private agencies, while 75% is through the Government subsidised rates.

84. Admittedly, the Government Tender was floated on 19.02.2016 for Haj Operations, 2016. According to the plaintiffs, the defendant had made a





bid in the year 2012, but it failed. In the year 2015, the plaintiffs extended the expertise and the help to the defendant to be successful in Tender. Consequently, the LoI was entered into between the parties for sourcing Haj activities which were executed in May, 2016.

85. It has been submitted on behalf of the plaintiffs that the flights were scheduled to take off on 04.08.2016 but few days prior to it, the Agreements were revoked by the defendant *vide* Letter dated 22.07.2016, Ex.PW1/43. The specific performance of the Agreements may not be now possible but the claims for damages still survive, for which the defendant is liable to furnish the statements of the accounts. As per the affidavit filed on behalf of the defendant in 2017, the defendant had a profit of Rs. 317 million, out of which the plaintiffs are entitled to 22.5% of the net profit i.e., Rs. 71.3 million.

86. Learned counsel on behalf of the plaintiffs has explained that there was no sub-contracting of the Tender in favour of the plaintiffs but they were only Agents. The HCoI also clarified *vide* its Letter dated 01.08.2016, **Ex.PW1/47** that the service providers for logistical ground support, were not disqualified. The plaintiffs also wrote the Letter dated 22.07.2016, **Ex.PW1/41** explaining that they were not a sub-contractor but was only providing logistical ground support. There was not any sub-contracting done in favour of the plaintiffs as they are not an Airline. Despite the Letter from HCoI dated 01.08.2016, the plaintiffs were not a sub-agent of the defendant. The LoI and the Appointment Letter had been illegally terminated by the defendant. The MoU dated 02.05.2016 entered into between the MoCA and the defendant for undertaking Haj Operations, 2016 in its various Clauses and in its subsequent exchange of letters also indicates



that the services of the plaintiffs have been engaged. The schedule of payment was duly finalised and the Service Agreement was also proposed to be entered into between the parties.

87. It is submitted that the plaintiffs had undertaken the liasoning work on behalf of the defendant as is evident from the Letter dated 11.07.2016, **Ex.PW1/27**, and Letter dated 12.07.2016, **Ex.PW1/36**. The Minutes of the Meeting dated 16.07.2016 of HCoI are **Ex.PW1/46**, wherein it was clarified by the HCoI that the plaintiffs were not a sub-contractor. Despite this voluminous record and evidence, the defendant has fraudulently and illegally terminated the services of the plaintiffs. The plaintiffs are thus, entitled to damages as prayed for.

88. *Learned Senior Advocate on behalf of the defendant* in his arguments has submitted that LoI was confirmed, accepted and countersigned by the plaintiff No. 1. The LoI was based on the representations made by the plaintiff No. 2, resulting in defendant appointing the plaintiff No. 2 for ground supervisions and support services to be rendered to the defendant in terms of Appointment Letter dated 26.05.2016, Ex. PW1/20. LoI itself expressly stated that “*Letter of Intent does not create any legal binding between the parties unless the parties enter into a definitive Agreement on or before 30.04.2016 with regard to the matter mentioned herein*”.

89. Admittedly, the draft of the definitive Agreements i.e., the Engagement Agreement, **Ex.PW1/35** were exchanged between the parties on 07.07.2016 and 15.07.2016, **Ex.PW1/37**, but the fee for services and other payment terms, of both the draft Agreements were undecided and not agreed between the parties. Subsequently, pursuant to the communication



received from the Consulate General of India, Jeddah and HCoI who informed that the plaintiff No. 1 was a discredited Operator responsible for the collapse of Haj Operations of Air India in 2014, the meeting was commenced on 16.07.2016 by HCoI, where the defendant was directed not to engage the services of the plaintiffs. Accordingly, the defendant informed the HCoI that it would be undertaking all the necessary arrangements solely on its own, by sending E-mail dated 21.07.2016, marked as **D-7**.

90. The defendant exchanged several letters with HCoI and its Sub-Committees in previous to MoCA and Cabinet Ministers, including the Prime Minister and letters issued by CGI, Jeddah complaining of the performance of the plaintiffs during Haj Operations in 1996, 2012, 2013 and 2014. Consequently, the defendant withdrew the LoI and Appointment Letter dated 22.07.2016 *vide* its Letters, **Ex.PW1/42-43**.

91. It is thus, submitted that in the conspectus of the aforesaid facts, it is evident that there was no legally enforceable Agreement between the parties and consequently withdrawal of LoI and the Appointment Letter does not constitute a breach on the part of the defendant and the plaintiffs are not entitled to any damages. There is no binding contract in terms of Section 7 of the Contract Act which mandates there has to be an acceptance of the offer which must be absolute and unqualified. Before the proposals got accepted, the same were withdrawn on account of resulting in non-execution of the draft Agreements. The defendant has placed reliance on the decisions in Vedanta Limited vs. Emirates Trading Agency, (2017) 13 SCC 243, PSA Mumbai Investments PTE Ltd. vs. Jawaharlal Nehru Port Trust, (2018) 10 SCC 525, South Eastern Coalfields Limited & Ors. vs. S Kumar's Associates AKM (JV), 2021 (9) SCC 166, Up Rajkiya Nirman Nigam Ltd. vs. Indure



Pvt. Ltd., (1996) 2 SCC 667, Himachal Pradesh State Electricity Board vs. M/s Sumer Chand & Sons, decided vide RFA (OS) 8/2021 by this Court and Dresser Ram S.A. vs. Bindal Agro Chem Ltd., 2006 (1) SCC 751.

92. It is, therefore, argued that even if it is held that the LoI and the Appointment Letter were withdrawn illegally, then too, the defendant is absolved from its purported contractual obligation owing to the cautioning of HCoI and MoCA against the dealing with the plaintiffs because of their poor performance in contracting Haj operations in previous years, which was fraudulently concealed from the defendant.

93. The defendant has submitted that the entire case of the plaintiffs is predicated on the alleged clarification issued by Ch. Mehboob Ali Kaiser, in his personal capacity in his Letter dated 01.08.2016, **Ex.PW1/47**. However, the only clarification given was to the effect that the plaintiffs are not the sub-contractors but are service providers, but this does not have the effect of clearing the name of the plaintiffs as successful Service Providers. The HCoI, in fact, did not withdraw its instructions issued in the HCoI Meeting dated 16.07.2016. On the contrary, MoCA in its Letter dated 03.08.2016 reminded the defendant not to engage the services of the plaintiffs.

94. It is submitted that the defendant being a prudent Airline Operator would not have engaged the services of the plaintiffs, had these details of their past track record been revealed to the defendant. The LoI and the Appointment Letter had been procured by the plaintiffs by active concealment and misrepresentation of their past credentials which have been vitiated in terms of Section 19 read with Sections 17 and 18 of the Contract Act.

95. The defendant is not bound by the purported contract and absolved of



its obligations, if any. The fraudulent conduct of the plaintiffs is also demonstrated from the Letter dated 14.06.2016 issued by the plaintiff No. 1 to employees of the defendant, namely, Mr. Manjiv Singh, DW2 and Mr. Debojo Maharshi, D8 giving fraudulent inducement to the employees of the defendant so as to persuade the defendant to formalise the Agreements between the parties at the earliest, apprehending that the fact of they being discredited Operators may come to the knowledge of the defendant. Such corrupt practices of the plaintiffs corroborate the stand taken by HCoI and the MoCA and the Consulate General of India, Jeddah in regard to the conduct of the plaintiffs in past operations.

96. Insofar as the question of plaintiffs having provided any services to the defendant is concerned, it is argued that the defendant itself had placed the complete operational set up which includes sourcing of aircraft, functional opening of airports, deploying its staff there, procuring engineering and technical support, securing contracts for procurement of ATF, etc.

97. The plaintiffs had undertaken minimal activities which were preparatory in nature. None of the services as contemplated in the draft Agreements were provided by the plaintiffs. Such minimal activities were undertaken by the plaintiffs at their own risk and cost and not pursuant to LoI or in anticipation of the execution of the draft Agreements. These facts are admitted by PW1 in his cross-examination.

98. It is, therefore, evident that no substantial services in terms of the proposed Agreements were ever provided by the plaintiffs to the defendant. Since there was no concluded Agreements/contract, there is no question of any enforceability of contract between the parties. Therefore, the question of



plaintiffs' readiness and willingness to perform their obligations, if any, or the breach of the defendant does not arise. Even if for the sake of arguments, it is accepted that there was any enforceable contract but the same stood vitiated by fraudulent and misrepresentation done by the plaintiffs. No evidence has been led by the plaintiffs to prove that they were ready to perform their obligations under the draft Agreements. No enforcement of any non-concluded contract can be sought by the plaintiffs. The plaintiffs are, therefore, not entitled to any compensation from the defendant.

99. The plaintiffs have claimed USD 8,61,065 as damages suffered by them. Since, it was the profit quantified under the Engagement Agreement for setting up and organising the Haj operations till the final stage and also USD 60 per passenger, being the fee payable as per the Service Agreement. However, no such services were provided and therefore, the plaintiffs neither incurred any cost in this regard nor have they entitled to any compensation/damages.

100. Moreover, the plaintiff No. 2 in terms of draft Service Agreement was entitled to payment of charges which both the plaintiffs undertook. The repayment of charges undertaken by the plaintiffs was purely on cost basis and without any mark up whatsoever. However, it is on record that the defendant carried out the Haj operations itself and no evidence has been led by the plaintiffs to prove the expenses incurred by them in undertaking the services under the draft Engagement Agreement or draft Service Agreement.

101. The plaintiffs have not suffered any loss which is *sine quo non* for claiming the damages. The words "*loss or damage*" under Section 73 of the Contract Act necessarily indicate that the party who complains of breach, must have really suffered some loss or damage apart from being faced with



the mere act of breach of contract. This is because not every breach of contract would necessarily result in actual loss or damage. The compensation under Section 73 of the Contract Act is only for loss or damage suffered by breach and not on account of simplicitor breach of a contract. Reliance has been placed on the decision in Draupadi Devi vs. Union of India, (2004) 11 SCC 425 and Hindustan Petroleum Corporation Ltd. vs. Dhampur Sugar Mills, 2002 SCC OnLine Del 42.

102. It is submitted that the plaintiffs would receive a windfall gain if damages are awarded to them. No evidence has been led by the plaintiffs in proving the damages suffered by them and also on account of loss of goodwill or their reputation on account of the alleged acts of the defendant. Even otherwise, the plaintiffs have not been able to prove any non-pecuniary/pecuniary losses. Moreover, even if there has been loss of reputation and social discredit on account of breach of contract, the compensation is not tenable in commercial contract as the present one.

103. In the end, it is submitted that the Suit of the plaintiffs is liable to be dismissed.

**104. Submissions Heard and the record and written submissions perused.**

105. The issue wise findings are as follows.

*Issue No. 1 - Whether any binding enforceable contract on which the suit claim is based came into existence between the parties? OPP*

106. Before considering the merits of the case, the first aspect for consideration is the competence of the Defendant No. 1 who in his cross-examination, admitted that he was appointed as a CAO in the year 2009 and



was made Accounts Manager in the year 2015 or beginning 2016 but failed to produce any of his Appointment Letter. He further admitted that he had no Resolution of Board of Directors authorising him to depose as a witness. He was advised by Mr. Chandan Sand, the Head of Legal and Company Secretary to appear as a witness but there was no Letter given in writing to this effect. Pertinently, even though a specific question was put, he failed to produce any Resolution in favour of Mr. Chandan Sand, issued in his favour by Board of defendant Company either authorising him to file the Written Statement or to delegate his power to make the statement in the Court. Be as it may, he is a competent witness in regard to the facts in his personal knowledge or based on records.

107. In the cases of commercial contracts, the fundamental policy recognized which runs as a threat to the jurisprudence, is the need for certainty in commercial negotiations. In commercial dealing, the reasonable expectations of honest sensible business persons must be protected. The governing criteria are the reasonable expectations of honest sensible businessman. Contracts may come into existence not as a result of an offer of acceptance but during as a result of performance.

108. Now coming to the merits, the Haj Pilgrimage is conducted annually in India, which is a subject matter of bilateral treaty between the two Countries. Admittedly, the MoCA *vide* its Tender Notice dated 19.02.2016, invited bids from designated Airlines of India and Kingdom of Saudi Arabia for transporting Haj Pilgrims sponsored by HCoI, to inform the India and Saudi Arabia during the Haj operations to be carried out between 04.08.2016 to 20.10.2016. The defendant was eventually allotted two locations *viz* Gaya and Indore.





109. Mr. Sohil Zaveri, the Director of 'Zavicare India Pvt. Ltd.' and authorised signatory of plaintiff No. 2, approached Mr. Manjiv Singh, Advisor to the Chairman of the defendant, through his e-mail dated 16.12.2015, Ex. PW-1/7, to partner with the defendant for conducting the Haj Operation in the year 2016.

110. To prove its demonstrated capacity, knowledge and experience coupled with an excellent track record in conducting Haj Operations, PW-1 deposed that it had many years of experience and had been issued Letters of Appreciation, dated 22.01.2009, 18.11.2013, and 17.01.2014, from various Authorities, namely, Air India pertaining to successful completion of Haj 2008-2009, Khidmat-e-Haj Committee, Aurangabad pertaining to successful completion of Haj 2013, Joint State Haj Committee pertaining to successful completion of Haj 2013 and Bihar State Haj Committee pertaining to successful completion of Haj 2014 which are Ex.PW1/2 to PW-1/5.

111. According to PW-1, the defendant, who had not been successful in his previous attempt to conduct Haj Operations in the year 2012 because of lack of experience and undertaking, sought the assistance of the plaintiff in their proposed bid for appointment as a Designated Haj Charter Operator, from India. The defendant was not successful in the year 2012 as it did not submit the requisite documents/No Objection Certificate' from DGCA because of which it was unsuccessful in getting the Tender for the year 2012.

112. This assertion of the plaintiff finds corroboration from the testimony of DW-1 Sh. Girraj Prashad Gupta who has admitted that NOC from DGCA is mandatory to be submitted in the bid by Haj Operations. It was suggested to him that they were unable to succeed in their bid for Haj Operations as



they did not submit the requisite NOC since it did not have the requisite expertise though it was denied by DW-1. He deposed that he was not aware that the Tender by the defendant was cancelled by MoCA *vide* Letter dated 16.07.2012 on this account. DW-1, Sh. Girraj Prashad Gupta has thus, essentially admitted all the correspondences and the attachment annexed therewith as stated above in his cross-examination.

113. PW-1 has further deposed that the defendant led it to believe that it requires the plaintiff's assistance in their proposed bid for qualifying as the designated Haj Charter Operator for Haj, 2016 and to discharge its obligations thereunder. Mr. Sohil Zaveri thus sent an e-mail, Ex.PW-1/8 attaching the proposed bid pricing to be submitted by the defendant, to MoCA. The defendant was awarded the Haj Operations 2016 for Gaya and Indore.

114. The plaintiff has thus, been able to establish that having been approached by the defendant because of its earlier failed attempt to be successful in the Haj,2012 as the complete formalities along with the Tender Document were not complied by the defendant. The plaintiff sent the proposed bid pricing Ex.PW-1/8 which worked and the defendant got successful in getting the Haj Charter Operator for Haj, 2016.

115. Thereafter, the plaintiff No. 1 and the defendant admittedly, entered into a ***Letter of Intent dated 16.03.2016, Ex.PW-1/6*** confirming their mutual understanding, which reads as under:-

- a) *The Defendant was to work within the Plaintiff No. 1 for Haj Tender 2016 released by MoCA.*
- b) *The Defendant was to operate the flights utilizing leased aircrafts provided by or sourced through the Plaintiff No. 1. The defendant was also free to operate its own*



*aircraft, (whether leased or owned) wherever possible, to the extent required.*

- c) Profits from Haj Operations were to be shared between the Defendant and the Plaintiff No. 1 in the ratio of 75% (Defendant) – 25% (Plaintiff No. 1) after all costs related to the Haj Operation as agreed mutually for all stations;*
- d) Defendant had appointed the Plaintiff No. 1 to set up and manage the entire operations on behalf of Defendant including but not limited to aircraft operations, ground supervision, ground support services, catering, hotels Saudi side manpower requirements and permissions and submission of tender document for Haj 2016.*

*This letter of intent does not create any legal binding between the Parties unless the Parties enter into a definitive agreement on or before March, 31/April, 30 2016 with regard to the matter mentioned herein.*

116. From the evidence adduced by both the parties, it can be easily concluded that LOI dated 16.03.2016, **Ex.P-1/6** was entered into between the parties for organizing Haj Operations, 2016 and pursuant thereto various services by way of documentation, sourcing, organizing the ground staff etc. had been undertaken by the plaintiff, till about 16.07.2016.

117. The defendant has taken only one defence that these were all pre-preparatory activities and Letter of Intent was merely an Intent Letter not intending to create any legal binding between the parties as was expressly mentioned therein.

118. The question, which thus arises, is whether LOI, Ex.PW-1/6 was only a Letter of Intent or whether it matured into a Contract.

119. In Wellman Hindustan Ltd. vs. N.C.R. Corporation; DRJ 1992 (24) the court while delving into meaning of 'Letter of Intent' referred to the **Blacks'**



*Law Dictionary*, which explains that “A letter of intent is customarily employed to reduce to writing a preliminary understanding of parties who intend to enter into contract, or who intend to take some other action.

120. Further, the court referred to ***Chitty on Contract*** (twenty-sixth Edn.) para 116 on page 114 described Letter of Intent to the following effect:-

**“Letter of intent:** There is as yet no clear authority on the legal effect of the practice whereby the parties to a transaction exchange “letters of intent” on which they act pending the preparation of formal contract. The terms of such letters may, of course, negative contractual intention. But where this is not the case, it would be open to the courts to hold the parties bound by the terms of such letters, especially if the parties had acted on those terms for a long period of time or if they had expended considerable sums of money in reliance on them.....”

121. Reference, was also made to *Turiff Construction Ltd. vs. Regalia Knitting Mills* (1971) 222 E.G. 169, letter of intent was subject matter of interpretation and it was held to be collateral contract to pay for the preliminary work. In *Wilson Smithett & Co. (Sugar) Co. v. Bangladesh Sugar Industries Ltd* [1986] 1 Lloyd’s Rep. 378, letter of intent was held to be having contractual significance.

122. Finally, the Principles of English law on this issue were summarised in the judgment of Parker J in *Hatzfeld Wildenburg vs. Alexander* reported in 1933 P. C. 29 (which also applies in India) Parker, J. stated:

*“It appears to be well settled by the authorities that if the documents of letters relied on as constituting a contract contemplate the execution of a further contract between the parties, it is a question of construction whether the execution of the further contract is a condition of term of the bargain or whether it is a mere expression of the desire of*



*the parties as to the manner in which the transaction already agreed to will in fact go through. In the former case there is no enforceable contract either because the condition is unfulfilled or because the law does not recognize a contract to enter into a contract. In the latter case there is a binding contract and the reference to the more formal document may be ignored.”*

123. The court in Wellman Hindustan (*Supra*) observed that “*the law as it stands is that a term of a letter of intent may of course negative the contractual intention but it would be open to the courts to hold the parties bound by the terms of such letters, especially if the parties had acted on these terms for a long period of time or if they had expended considerable sums of money I reliance on them.*”

124. In the case of Dresser Rand S.A. vs. Bindal Agro Chem Ltd., 2006 (1) SCC 751 the Supreme Court observed that it is no doubt true that a Letter of Intent may be construed as a Letter of Acceptance if such intention is evident from its terms. It is not uncommon in contracts involving detailed procedure, in order to save time, to issue a Letter of Intent communicating the acceptance of the offer and asking the contractor to start the work with the stipulation that the detailed contract would be drawn up later. If such a Letter is issued to the Contractor though it may be termed as a Letter of Intent, it may amount to acceptance of offer resulting in a concluded Contract between the parties. Whether a Letter of Intent is merely an expression of intention to place an Order in future or it is the final acceptance of the offer thereby leading to a Contract, is a matter which has to be decided with reference to the term of the Letter where the parties to a transaction exchanged Letters of Intent and where the language does not negative contractual intention, it is open for the Court to hold that the parties



are bound by the document.

125. The parties are entitled to look into the totality of circumstances surrounding the execution of a Letter of Intent to ascertain whether the parties entered into a binding Contract or not, as observed by Supreme Court in Rajasthan Coop. Federation Ltd. vs. Maha Laxmi Mingrate Marketing Service (P) Ltd., 4 (1996) 10 SCC 405.

126. In the absence of a signed agreement between the parties, it would be possible to infer from various documents duly approved and signed by the parties in the form of exchange of e-mails, letters, telex, telegrams and other means of communication, the true intent of the parties, as explained in the case of Trimax International FZE Ltd. vs. Vedanta Aluminium Ltd., 2010 (3) SCC 1. A reference was made to Section 8 of the Indian Contract Act, 1872 provides that “*performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with the proposal, is an acceptance of the proposal*”. It was observed that once a contract is concluded orally or in writing, the mere fact that a formal contract had to be prepared and initialled by the parties, would not affect either the acceptance of the contract so entered into or implementation thereof even if the formal contract had never been initiated.

127. From the aforesaid discussion, it emerges that if there is an offer for rendering the services, which is duly rendered by the party and such services are accepted by the other party, it amounts to a concluded and binding Agreement *inter se* the parties.

128. Therefore, even though in the LOI, Ex.P-1/6, it was mentioned that it would not be binding legally but the fact remains that the services as contemplated therein were rendered by the plaintiff and were duly accepted



and benefitted by the defendant, the details of which are discussed in Issue NO.2. The testimony of the defendant clearly reflects that all the ground work/paper work and the licencing, which were carried out by the plaintiffs, was availed and benefitted by the defendant. The fact that the transaction was performed on both sides, it makes it unrealistic to argue that there was no intention to enter into a legal relationship. It will often make it difficult to submit that the contract is void for vagueness or uncertainty. Specifically, the fact that the transaction is executed makes it easier to imply a term resolving any uncertainty, or, alternatively, it may make it possible to treat a matter not finalised in negotiations as inessential, as observed by Steyn J.in *First Energy (U.K.) Ltd. vs. Hungarian National Bank Ltd.*, (1993) BCC 533.

129. The next aspect which is pertinent is whether the *Service Agreement* and the *Engagement Agreement*, which were proposed to be entered into between the parties, did materialise. Admittedly, while all the services as envisaged under LOI, were duly rendered by the plaintiff and accepted by the defendant admittedly, no *Engagement Agreement* and *Service Agreement* were executed between the parties even though the Draft Agreements dated 07.07.2016 were duly exchanged between the parties *via* e-mail dated 10.07.2016 **Exhibit PW-1/25** . As per *recital C of the Draft*, Plaintiff No. 1 was, inter alia, required to arrange Leased Aircraft, set up ground handling services in India, Saudi Arabia and UAE, ground supervision, catering, hotel, and city check in services in Saudi Arabia etc. **Clause 9** of the Draft provided for the proposed Engagement Fee to be paid to Plaintiff No. 1 - 22.5% of the Net Revenue earned from the Haj Operation by the Defendant. **Schedule I** provided for the proposed payment schedule of the Engagement



Fee.

130. The parties may have contemplated entering into the Engagement Agreement and Service Agreement in future, but it was merely a formality, since practically all the work was being done by the Defendant under LoI. The focus has been on whether there were clear and unequivocal acts by one party to constitute acceptance by the other party. Where there is clear evidence of acceptance by conduct, it would result in a binding contract. Once the acceptance is accepted, it has to be concluded that there was a binding contract, as has been held in the case of *In the case of Reveille Independent LLC vs Anotech International (UK) Limited*: Case No. A3/2015/1099 Court of Appeal (Civil Division) [2016] EWCA Civ 443 2016 WL 01745166.

131. The Haj Operations were to be conducted from August, 2016 to October, 2016. Almost all the systems were put in place till July, 2016, the Agencies were finalized and the manpower was also mobilized, clearly reflecting that though termed as LoI, in fact it was a concluded contract under which the plaintiff discharged all its obligations to the satisfaction of the plaintiff. Moreover, though termed as LoI, Clause (d) clearly stated that the plaintiffs are appointed as the Agents of Defendant *to set up and manage the entire operations on behalf of Defendant including but not limited to aircraft operations, ground supervision, ground support services, catering, hotels Saudi side manpower requirements and permissions and submission of tender document for Haj 2016.*

132. This conclusion finds support from the observations of Christopher Clarke J. in the case of *MSM Consulting Ltd. vs. United Republic of Tanzania*, (2009) EWHC 121 (QB), at [119] that a draft Agreement can





have a contractual force if essentially all the terms have been agreed and their subsequent conduct indicates this *albeit* a Court will not reach this conclusion.

133. Not only from the language of LoI, but from the acts of the parties, there is not an iota of doubt that the parties had entered into a binding contract.

134. **Issue No.1 is decided in favour of the Plaintiff.**

*Issue No. 3 - Whether the plaintiff provided any services to the defendant and if so to what effect? OPP*

135. Admittedly, consequent to the said Letter of Intent, the plaintiff rendered various services, which are detailed by the PW-1 in his testimony and may be summed up as under:-

*(i) Providing Letter Drafts for the bid submission to the Defendant on 18<sup>th</sup> March 2016; as also Annexure with financial bid details for submission to MOCA. The email dated 18.03.2016 sent on behalf of the Plaintiffs to the Defendant, along with the Letter Drafts as Annexures is exhibited as Ex.PW1/9 (Colly.);*

*(ii) Deputing experienced personnel Mr. Ayub Khan (Station Manager, Saudi Arabia) under authority from Spicejet to attend the Tender Opening along with the Defendants personnel;*

*(iii) Providing the Defendant with a detailed analysis of Passenger Distribution on 19<sup>th</sup> March 2016. Copy of the Email dated 19.03.2016 sent by PW-1 on behalf of the Plaintiffs to the Defendant, along with the detailed analysis of Passenger Distribution is exhibited as Ex.PW 1/10 (Colly.);*

*(iv) Using Plaintiff's own existing network to appoint and Coordinate with its agents/contacts based in India, Saudi Arabia & UAE for and on behalf of the Defendant for*



*making the appropriate regulatory compliances and permissions, and complete operations setup for smooth operations for Haj 2016;*

*(v) Sketching the route plan for the most economical operation and selecting the low cost operational base at UAE and thereafter preparing detailed flight schedules from the various embarkation points in India to Saudi Arabia and back via Fujairah (UAE). The email dated 23.04.2016 sent by PW-1 on behalf of the Plaintiffs to the Defendant along with the attached Schedules for Gaya and Indore, is exhibited as **Ex.PW1/11 (Colly)**;*

*(vi) Analyzing the MoU entered into between Defendant and MOCA, after the scanned copy of signed MoU was attached to the Email sent by Debashis Saha- AVP- Network Planning (Marketing & Sales), Defendant on 3<sup>rd</sup> May 2016. The Email dated 03.05.2016 sent by Defendant along with the attached MoU is exhibited as **Ex.Pw1/12 (Colly)**;*

*(vii) Sourcing suitable Aircrafts on ACMI lease (Aircraft, Crew, Maintenance and Insurance) for the Defendant as apparent from Communication dated 4<sup>th</sup> May 2016, whereby the Plaintiffs attached a proposal it had received for taking Aircrafts on Lease. The email dated 04.05.2016 sent by PW-1 on behalf of the Plaintiffs to the Defendant along with the attached proposal for taking Aircrafts on Lease, is exhibited as **Ex.PW1/13 (colly)**;*

*(viii) Meeting with the team of Defendant and discussing the organisation and management of Haj Operations 2016, as would be clear from the Minutes of the Meeting held on 8<sup>th</sup> May 2016, during which:*

- a) An explanation on the Haj Operations was presented by PW-1.*
- b) The Haj Phases were discussed and the Lap's in the phases were explained.*



- c) *It was proposed to use Fujirah/RAK as the base of the operations with 2 X A320.*
- d) *Options were discussed on aircraft leasing front.*
- e) *It was decided that the Ground handling agents (GHA) at GAY/IDR will be Air India. As far as GHA at KSA is concerned, the Plaintiff No. 1 was granted the authority to speak to SGS (GHA at KSA).*
- f) *There were queries raised by the Defendant with regards fuelling, engineering, security, ground handling etc. which were addressed suitably by the Plaintiffs and the Security department of the Defendant shall advise on the presence of personnel if required other than the ground handling agents.*
- g) *Plaintiff informed that the DCS (Departure Control System) system shall be of Air India and it is preferred to use the boarding cards of Spicejet if compatible with the Air India system.*
- h) *It was also explained by Plaintiffs that the entire operations would be organized and managed by the Plaintiffs in coordination with relevant departments of the Defendant.*
- i) *It was noted that the Plaintiffs have and will deploy manpower on ground to manage the operations at stations in India, UAE and Saudi Arabia.*
- j) *It was noted that the Defendant may also deploy 1 or 2 people only for representational purposes in Saudi Arabia.*
- k) *The Defendant was to assist the Plaintiffs for BCAS Passes within Indian stations.*



- l) It was also noted that Plaintiffs have requested for authority on urgent basis to engage service providers on behalf of Defendant for the Haj Operations and will keep the Defendant in the loop.*
- m) The Defendant team requested the Plaintiffs for the Schedule and Rotation Plan to be sent to it for further evaluations and the Plaintiffs were to wait for comment, if any. It was noted that this exercise would enable the team members of the Defendant to evaluate the operational aspects and revert to the Plaintiffs.*
- n) It was noted that Mr. Debashish Saha will be Chief Coordinator from the Defendant and I will be from Plaintiffs for Haj Operations.*

*(ix) The email dated 08.05.2016 sent by PW-1 on behalf of the Plaintiffs to the Defendant containing the Minutes of Meeting along with attached Schedules for Gaya and Indore, is exhibited as **Ex.PW1/14**;*

*(x) Closely worked with the leased operator to perform detailed route studies and confirm the number of passengers to be carried as projected on each flight including selecting a suitable base in UAE for aircraft operations in the interest of a smooth, flawless and feasible operation;*

*(xi) Worked closely with the legal team of the Defendant to render advise, provided valuable input and help negotiate the wet lease agreement with the leased operator;\*

*(xii) Preparing Reports inter alia on Embarkation Point wise Airport Taxes per passenger to be sent to the Haj committee. The email dated 20.05.2016 sent by PW-1 on behalf of the Plaintiffs to the Defendant along with the attached PDF of Passenger Taxes which was to be sent to*



*HCoI as per its request, is exhibited as **Ex.PW1/15 (colly)**;  
(xiii) *Negotiating and executing the Ground Handling Agreements with concerned Agents for and on behalf of the Defendant pursuant to seeking the authority from the Defendant for the same, as would be demonstrable by the Communication dated 21<sup>st</sup> May 2016. The email dated 21.05.2016 sent by PW-1 on behalf of the Plaintiffs to the Defendant is exhibited as **Ex.PW1/16**;**

*(xiv) **Providing Documents for the Slot Allocation for the Haj Operations for and on behalf of the Defendant on 21<sup>st</sup> May 2016. The email dated 21.05.2016 sent by PW-1 on behalf of the Plaintiffs to the Defendant attaching Documents for the Slot Allocation for the Haj Operations for and on behalf of the Defendant is exhibited as **Ex.PW1/17**;***

*(xvii) **The Defendant appointed Plaintiff No. 2 on 26.05.2016 to provide ground supervision and support services for stations awarded in India, UAE and Saudi Arabia. The Defendant also authorized Plaintiff No. 2 to appoint a local agent on behalf of the Defendant in Saudi Arabia, vide letter **Exhibit PW-1/20**;***

*(xviii) **The Defendant informed GACA vide Letter dated 26.05.2016 **Exhibit PW-1/21** that it (in cooperation with Plaintiff No. 2) has appointed Airgate Logistics as its local agent in Saudi Arabia to provide liasoning and support services with all Saudi authorities;***

*(xix) **Sohil Zaveri issued an email dated 27.05.2016 **Exhibit Pw-1/23** to Mr. Hisham submitting the slot documents;***

*(xx) **Email from Sohil Zaveri to the Air Transport Director of General Authority of Civil Aviation, Saudi Arabia submitted Defendant's Slot Application;***

*(xxi) **Sohil Zaveri sent to the Defendant an e mail dated 28.05.2016 **Exhibit PW-1/18**, the complete paperwork for the Economic Regulations Department and also requested the Defendant to identify back up aircraft from its fleet which is;***



(xxii) *Conducting station visits in India, UAE and Saudi Arabia and organizing Haj Coordination meetings with all related agencies at all stations along with the Defendants' team.*

(xxiii) The Defendant created email addresses for representatives of the Plaintiffs' with Spicejet domain names on 12.06.2016 *vide Exhibit Pw-1/22;*

(xxiv) Sohil Zaveri informed the Defendant on 21.06.2016 that Spicejet has been issued the acceptance of 'Aircraft Operator Security Program' (AOSP) for a period of one year *vide Exhibit Pw-1/33; and*

(xxv) Sohil Zaveri sent a checklist of the Agreements to be executed with agencies in Saudi Arabia etc. on 06.07.2016, **Exhibit Pw-1/34.**

136. To sum up, PW-1 has deposed that to enable the defendant to successfully discharge its obligations by organizing a flawless Haj Charter Operation, the plaintiff assisted the defendant to mutually every aspect of the Haj Charter Process including *inter alia*:

- a) Sourcing Aircrafts for the defendant on lease;
- b) Introducing, setting up and organizing operations in India (at the embarkment stations i.e. Gaya and Indore), Saudi Arabia (Jeddah and Medina) and UAE (Fujirah Airport) for carrying out Haj Operations;
- c) Providing all the support, logistical and otherwise to the defendant in so far as strategizing and planning Flight Schedules, setting up Vendors and facilitating execution of various Agreements with Vendors for Ground Handling, Ground Supervision, Catering, Hotels, Fuelling of Aircrafts and;
- d) Ensuring all the Regulatory Compliances and preparing and supervising the paperwork for the same at almost every stage of the



actual flight take off.

137. PW-1 further deposed that on 28.06. 2016 Sohil Zaveri informed the Defendant that the Saudi authorities had still not been informed that the Defendant is one of the designated Indian carriers to carry pilgrims. A Meeting was held between the Plaintiffs and the Defendant on 01.07 2016 at the Defendant's Gurgaon office to discuss the Haj operations. On 02.07.2016, Sohil Zaveri requested Defendant to sign Authority Letters in favour of the Plaintiff for India, UAE and Saudi Arabia.

138. The plaintiff continued to work in collaboration with the defendant, without any demur, which even represented to their parties that the plaintiffs were its Agents with interest, till about 22.07.2016. From the comprehensive reading of the evidence, it is proved that all the aforesaid services were rendered on behalf of the plaintiff, till about 16.07.2016.

139. To all the aforesaid services as deposed by PW-1, Sh. Sohil Zaverie, there has been no challenge to all these services; none of the letters, emails or correspondences have been challenged, except a suggestion to assert that all the work was being done in the name of the defendant and was merely pre-preparatory in nature. The extensive work done over a period of time by the plaintiffs from preparing the tender documents to putting in place all the Agencies for execution of Work was done by the plaintiff, pursuant to the LoI.

140. In any case, the work done was definitely not intended to be gratuitous. To understand the same reference may be made to section 70 of the Contract Act, which provides as under:

*“70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so*



*gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.”*

141. The Supreme Court in State of West Bengal vs. B.K. Mondal And Sons, 1961 SCC OnLine SC 76 held that to invoke Section 70, three conditions must be satisfied and these are; firstly, that a person should *lawfully do something* for another person or deliver something to him; secondly, that in so doing or delivering the thing he must *not intend to act gratuitously*; and thirdly, that the other person for whom something is done or delivered must *enjoy the benefit* thereof.

142. In Suchand Ghosal vs. Balaram Mardana, (1911) ILR 38 Cal 1, in regards to the terms of Section 70, Jenkins C.J., observed that “*...are unquestionably wide, but applied with discretion they enable the courts to do substantial justice in cases where it would be difficult to impute to the persons concerned relations actually created by contract.*”

143. Further, in Pannalal vs. Dy. Commissioner, Bhandara And Anr., (1973) 1 SCC 639, the Supreme Court while upholding the view of the Bombay High Court on a claim under Section 70 observed that “*the real basis for a claim under Section 70 is not the terms of the contract but the quantum of the benefit actually derived.*” And in the absence of any material, it is the contract between the parties which is to be relied upon to calculate the benefit.

144. In the cross-examination of DW-1, Sh. Girraj Prashad Gupta, all the transactions and e-mails were put to the witness, to which he was evasive in his responses. When specifically confronted about appointment of Local agents in Saudi Arabia, DW1 clarified that the Defendant needed a local





agent in Saudi Arabia because as per International Convention all Foreign Airlines are required to appoint local agents in the relevant foreign jurisdictions to represent the foreign airline in that jurisdiction. He further clarified that brokers/intermediaries are prohibited.

145. In response to Paper Work done by the plaintiff, DW1 stated that the paper work for the Economic Regulations Department was a long drawn process and was carried out at various stages by the Defendant itself but everything was completed before the operation in August, 2016, though it was denied by him that all the paperwork was carried out by the Plaintiffs.

146. On being confronted with Ex.PW-1/17 i.e. Sohil Zaveri's email regarding slot Application, DW1 stated that he was not aware of any such Application as the Defendant had got information through the GoI that even till 12.07.2016 the Defendant's flight schedule had not been approved by GACA. This again is no denial of the Letter written by the plaintiffs.

147. When asked that Sohil Zaveri informed the Defendant of the work that has been executed till date and work yet to be completed by it vide email dated 08.06. 2016 **Exhibit PW-1/24**, DW1 stated that all the work have mentioned in email dated 08.06.2016, had been rendered void by various government agencies as the Plaintiffs were discredited operators, which again reflects that indeed work was done by the Plaintiffs, full advantage and utilization of the systems placed in order were utilized by the Defendant, albeit in his own name with no credit to the plaintiffs.

148. Further, undeniably defendant wrote a letter **Exhibit PW-1/21** to GACA informing about appointing Airgate Logistics i.e. Spicejet's local agent in Saudi Arabia. The defendant, however, tried to wriggle out by claiming that the Plaintiffs only forwarded this letter to the Defendant and



did not have any role in achieving the Acceptance letter. Admittedly, the defendants had shared e-mails as their Co-ordinates with various Agencies Jeddah, Medina, Fujirah and all other concerned agencies.

149. DW-1 also admitted that Spicejet appointed 'Airgate Logistics Group' to represent Spicejet in the Territory of Saudi Arabia but denied that the appointment of 'Airgate Logistics Group' as Saudi local Agents for providing liasoning and support services with all Saudi Authority, had been facilitated and materialised because of the co-operation extended by the plaintiff No. 2. He admitted the Letter, Ex.PW/1/21, as signed by Mr. Chandan Sand which mentioned of cooperation with Aircare Aviation Services Pvt. Ltd. Pertinent admission made by DW-1 is that the Spicejet representatives in Saudi Arabia remained the same after 20.07.2016 whereby reflecting that all these services had been organized and facilitated by the plaintiffs. He also admitted that the e-mail ID's were created by the defendant Company for the various officials of the plaintiffs to ensure smooth co-ordination with the concerned agents/local bodies/Government Agencies in the Kingdom of Saudi Arabia and portraying the partnership of the defendant with the plaintiffs as the one unit for the sole purpose of conducting Haj Operations, 2016. The SG Airline Flight Schedule Form for Haj 2016, Application for slot of SG-Haj Operations, LOI Spicejet Limited and AOP/AOC to Mr. Hisham Ansari *vide* e-mail Ex. PW-1/23 dated 27.05.2016 were also sent by the plaintiff on behalf of the defendant company for facilitating allotment of slots.

150. The DW-1 has admitted that a Meeting was held on 01.07.2016 in the Office of defendant Company at Gurgaon between the plaintiffs including Mr. Bharat Zaveri and Mr. Sohil Zaveri from the side of the plaintiff and



DW-1 on behalf of the defendant No. 1 along with his entire team on behalf of the defendant company, to discuss the entire project in detail. It is also not denied that Mr. Sohil Zaveri was asked to explain the entire Haj Operations Project in detail along with the nature of operations, pilgrim movement etc. phase-wise and how the schedule had been built by the plaintiff as a strategy to reduce the cost of operations and maximise the efficiency. It was also not denied that during this Meeting, it was discussed as to why Fujairah was chosen as the base of operations for the wet leased operator arranged by the plaintiff for the reasons relating to crewing, ATF costs, Hassel free movements and quick turnaround. It is not denied that the Fujairah was engaged, though it was claimed that it has been done independently by the defendant company. It was also admitted that the defendant had agreed that it would issue Authority Letter to the plaintiffs for the managing the on ground Operations at all stations including conducting initial visit in the first week of July, 2016. The overwhelming evidence adduced by way of exchange of Letters, e-mails and the services rendered which were accepted by the defendant proved extensively that the services undertaken to be provided under LOI were duly provided by the plaintiffs.

151. *To conclude*, the offer to render the services for organising the Haj Operation, 2016 that was made by Mr. Sohil Zaveri in December, 2015 to the defendant which was later formalised in the 'Letter of Intent' dated 16.03.2016, Ex.PW1/6 and the services agreed therein were duly rendered by the plaintiff and were accepted by the defendant. The defendant having availed the services under LOI, which was by no stretch intended to be gratuitous, it has to be held that LOI was not merely 'intent' but in fact was a contract under which the services were provided by the plaintiff to which it



is entitled to be reimbursed/paid.

**152. *Issue No.3 is decided in favour of the Plaintiff***

*Issue No. 2 - If the above issue is decided in favour of the plaintiffs, whether the defendant was absolved from its contractual obligations owing to/a/Committee of India 'and the Ministry of Civil' Aviation cautioning, the defendant against dealing with the, plaintiffs and/or owing to the plaintiff no. 1 having made the defendant enter into the contract by practising fraud and concealment? OPD*

153. The defendant has sought to explain the reason for not entering into the Service Agreement, on the pretext that it was kept in dark about its antecedents. On 16.07.2016, Haj Committee of India (HCoI) held a Meeting with its Members Council General of India, Jeddah and representatives of the selected Airlines wherein the defendant was instructed not to avail the services of plaintiff No. 1 as pursuant to the communication received from Council General of India, Jeddah, it was brought to the Notice of HCoI that the plaintiff No. 1 was a discredited Operator responsible for the collapse of Haj Operations by Air India in the year 2014. It was also informed that the Tender conditions specifically barred sub-contracting of the Operations. The Minutes of the Meeting dated 16.07.2017 of HCoI are Ex.PW-1/46. The defendant clarified in the Meeting that it shall be making all the necessary arrangements on its own and that the Operation shall be carried out within its own Crew and Aircraft and also to give an Undertaking to that effect.

154. The defendants because of the professional misconduct of Mr. Bharat Zaveri and the Organisations that he had represented, revoked Letter of Intent issued in favour of the plaintiff No. 1 and Appointment Letter in favour of plaintiff No. 2 by its Letter dated 22.07.2016, Ex.PW-1/42 and PW-1/43. The defendant further claimed that on 03.08.2016, they received a



Letter from MoCA stating that the HCoI had informed it that the defendant was engaging the services of the plaintiff, who are tainted and blacklisted Operators and warned the defendant against engaging their services.

155. The plaintiffs have explained that the defendant misrepresented in the Meeting held by HCoI on 16.07.2016 that all arrangements were being done by it and that it shall be carrying out the Operations with its own Aircraft and Crew, when in fact the ground reality was that they had signed the Agreement to Wet Lease Aircraft and crew and the readiness for Haj Operations, were solely because of the herculean work undertaken by the plaintiffs. The defendant failed to disclose the contribution made by the plaintiff as its partner in setting up and organising the Haj Charter Operations.

156. The defendant's witness DW-1, Mr. Giriraj Prasad Gupta has admitted that in the year 2013-2014, Mr. Bharat Zaveri and the plaintiff No. 1, were involved in Haj Operations. The defendant in its **Written Statement** had tried to discredit the plaintiff by asserting that it had failed miserably in successfully conducting the Haj Operations for Air India in the year 2012, 2013 and 2014.

157. To prove the assertions, DW-1 Mr. Giriraj Prasad Gupta, CAO, Account Manager of the defendant deposed that they came across the Letter dated 02.09.2013, issued by HCoI to MoCA stating that Mr. Bharat Zaveri had been involved in Haj Operations 1996 and 2012 but had failed to fulfil its commitments. It further requested MoCA to direct Air India, to not engage the services of Mr. Bharat Zaveri for its Haj Operations in the year 2013. Similar letters, Ex. D4 and D5 were issued by the Chairman of the Sub Committee on Air Charter of Haj Committee of India in the year 2014,



in respect of Haj Operations in the year 2014 wherein serious allegations were levelled against Air India, who had collaborated with Mr. Bharat Zaveri in conducting the Haj Operations in the year 2014.

158. It was further deposed by DW-1 that because of the warning given by the HCoI, regarding the demerits of the plaintiff and the Letters reflecting the consistent previous professional misconduct of Mr. Bharat Zaveri and the Organisations that it had been representing over the years, the defendant *vide* its Letter dated 22.07.2016, Ex.PW-1/41, Ex.PW-1/42 and Ex.PW-1/43, revoked the LOI in favour of the plaintiff No. 1 and the Appointment Letter in favour of the plaintiff No. 2 as both the plaintiffs were working in collaboration with each other and Mr. Bharat Zaveri was also the Director of the plaintiff No. 2 and father of Mr. Sohil Zaveri.

159. Further, the defendant also received Letter dated 03.08.2016, marked D-3 from MoCA stating that the HCoI had informed it that the defendant was engaging the services of the plaintiff, who are tainted and blacklisted Operators and therefore, warned the defendant against engaging their services. The various Letters dated 02.09.2013, 26.11.2014, 15.07.2016 and 21.07.2016 of HCoI and Letter dated 03.08.2016 of MoCA are marked D-4, D-5, D-6, D-7, D-1, D-2 and D-3 respectively. However, none of these letters have been proved by the defendant.

160. The plaintiff then *vide* separate Letters dated 29.07.2016 and 01.08.2016, Ex.PW-1/47, got Letters from two respected members of Parliament and also wrote to Chairman, HCoI asking him to issue necessary communication to the defendant, to clarify the misconception about the plaintiff and also that HCoI may not have any objection to the defendant engaging the services of the plaintiff, for ground support for Haj, 2016.



161. It has been rightly argued on behalf of the plaintiff that the allegations pertained to Air India and not to the plaintiffs. Reference to this, would be of no use to the defendants.

162. The Chairman, Haj Committee issued a Letter dated 01.08.2016, Ex.PW-1/47 directly to the Chairman of the defendant Company that HCoI Meeting dated 16.07.2016 was only concerned with the sub-contracting of Air Charter Operations aspect and that the defendant was free to engage the services of the plaintiff or anyone else for Haj as Service Providers. The defendant, however, overstepped by giving an Undertaking earlier on 21.07.2016 that it would not engage the services of the plaintiff rather than undertakes not to sub-contract, as asked by HCoI.

163. The plaintiff has deposed that from the conduct of the defendant, it is evident that it was not prevented by HCoI from entering into the Service Contract with the plaintiff but it had mischievously not entered into the Service and Engagement Agreements by using the HCoI objection as a fig leaf to deny the plaintiff its legitimate rights.

164. From the perusal of the documents and the testimony of the respective parties, there is no denying that HCoI had held in its Meeting on 16.07.2016 had merely raised an objection against the sub-contracting of the Air Services, *but had no objection to the engaging of the service provider for the ground services*. The objection was limited to subcontracting of the Airlines to the Plaintiffs, which admittedly did not happen. The defendant having been able to secure all the logistical support pursuant to its LoI for conducting the Haj Operation chose not to enter into the two Agreements despite there being no legal or contractual impediment.

165. The defendant had also asserted that the plaintiff acted fraudulently as



the plaintiff No. 1 through Bharat Zaveri clandestinely and under scandalous liaisons, tried inducement of the employees of the defendant so that they could persuade the defendant to formalise the Agreement between the parties and wrote a Letter dated 14.06.2016 to namely, Manjiv Singh and Debojo Maharshi, the employees of the defendant, whereby he promised to share with these employees 25% of its alleged profit share from the Haj Operations, 2016. The plaintiffs thus, indulged in gross professional misconduct and corrupt practices. Hence, the defendant *vide* its Letter dated 22.07.2016 revoked the LoI issued in favour of the plaintiff No. 1 and the Appointment Letter in favour of the plaintiff No. 2 since they were both working in collaboration with each other.

166. To corroborate the defence, the defendant had examined DW-2 Shri Manjiv Singh, Advisor to the Chairman of the defendant, who tendered his evidence by way of Affidavit, Ex.DW-2/A and deposed that he and Debojo Maharshi were lured by Bharat Zaveri, the plaintiff No. 1, to persuade the defendant to accept the formalisation of the Agreements between the parties. He has placed reliance on document exhibited as **DW 2/1 and Mark D-8**.

167. Pertinently, no business person engaged in the industry would write a Letter if the intention is to enter into any clandestine deal with the employees of the defendant. The very fact that the letters were written only indicate the intention neither of the plaintiffs to push for early finalization of the Agreements, Written letters can neither be secret nor with ulterior motives. Again, it needs no reiteration that these letters have been used as a ploy to avoid entering into the Agreements with the sole intent to avoid payment to the plaintiffs for the Services rendered by them.

168. It is proved from the admissions and the evidence that the defendant





had no reason to back track from signing the Agreements.

169. ***Issue No.3 is decided against the defendant.***

***Issue No. 4 - Whether the plaintiffs were ready and willing to perform their part of the contract and the defendant has breached the contract? OPP***

170. The overwhelming evidence and the admissions of defendant coupled with the testimony of PW-1, establish that plaintiff at no point of time filed or refused to discharge its duties under the LoI nor did it ever refuse to sign the Agreements.

171. It is proved that the plaintiffs were always ready and willing to perform their part of the Agreement.

172. ***Issue No.4 is decided in favour of Plaintiffs.***

***Issue No. 5 - If all the above issues are decided in favour of the plaintiffs, to what amount are the plaintiffs entitled to from the defendant towards compensation for breach of contract? OPP***

173. It is also not in dispute that the entire Ground services for successful Haj Operations, 2016 were made by the plaintiffs. It is also not in dispute that while under LoI the parties had agreed to the profit sharing in the ratio of 75%:25%; but at time of finalizing the terms of Agreements the defendant wanted to revise the profit sharing of the plaintiffs to 22.5% of the profits after deduction of all the expenses, over which there was no consensus.

174. Having held in detail that LoI in fact was a concluded Contract, under which plaintiffs were entitled to 25% share in profits, it needs to be fairly considered that because these two Agreements were not executed, the further services to be provided under the two Agreements for actual Haj Operations were not undertaken by the plaintiff. It also has to be kept in



mind that profit sharing was after meeting all the expenses of the Haj Operations. Therefore, even if the execution part of the Haj, 2016 was done by the defendant, all the systems had been put in place by the plaintiffs. Defendant cannot deny its liability of profit sharing with the plaintiff, which is held to be 22.5 % considering that the last leg was completed by the defendant alone. The Costs of execution were naturally deducted while calculating the profits.

175. Admittedly, the profits made by the defendant after deducting expenditure in conducting Haj Operations, was in the sum of Rs.31,70,00,000/-, as disclosed by the defendant on affidavit, dated 10.04.2017, of Mr. Shreejesh AC, s/o Sh. Harindranath AC – General Manager – FPA & Treasury, Spicejet Ltd, who had produced statements of accounts annexed as **Annexure A-1 to A-6**. This implies that all the executory costs were deducted while calculating the net profits which was the end result of all the preparations put in place by the plaintiffs. Therefore, the plaintiff is held entitled to a profit to the tune of 22.5% of the actual profits i.e. Rs.7,13,25,000/-.

176. ***Issue no.5 is accordingly, decided in favour of the Plaintiff.***

***Issue No. 6 - If the above issue is decided in favour of the plaintiffs, whether the plaintiffs are entitled to any interest and if so at what rate and for what period? OPP***

177. Considering it was a business transaction, interest is granted @ 8% p.a. from the date of institution of the Suit till the date of payment.

178. ***Issue no.6 is accordingly, decided in favour of the plaintiff.***

***Issue No. 7 – Relief.***

179. **In view of the finding above, the suit is hereby allowed.** The



2024:DHC:7893



plaintiff is held entitled to a profit to the tune of 22.5% of the actual profits i.e. Rs.31,70,00,000/- along with interest @ 8% p.a. from the date of institution of the Suit till the date of payment. Parties to bear their own costs.  
180. **Decree sheet be prepared accordingly.**

**(NEENA BANSAL KRISHNA)  
JUDGE**

**SEPTEMBER 30, 2024**  
*S.Sharma/RS*