

## BACKGROUND INFORMATION

The Republic of Taurad is one of the fastest growing economies in the world which has massively invested in improvement of national infrastructure. As a consequence, the airline sector in Taurad witnessed 18% growth annually.

**High Fly Ltd.** (“**Airline**”), is the leading full service private airline carrier in the republic of Taurad. In around 2017, the airline started international operations to Singapore, Dubai and Bangkok which received positive response from its customer base. After purchasing long range wide bodied aircrafts in 2019, it was the first Tauradian airline to start direct flights to London and Tokyo. Its international network is growing at a rate of 6% per annum after it entered into a code sharing agreement with Qantas, KLM and Southwest Airlines to cater the increase in demand of international air travel of Tauradians to different parts of the world.

The inflight services of the airline include customized hot meals for every passenger, selection of fine liqueur, packed nuts and crackers in a collectable tin box, leading media streaming services for all passengers. As per the spokesperson of the Airline, the in-flight services are in fact the USP of the airline. The spokesperson mentioned that the Airline invests heavily on product development as the food menu is designed by leading chefs, the collectable items catalogue is refreshed regularly and the inflight entertainment services are crafted as per the requirements of business travellers who are the main customers of the airline. In 2018, the Airline won the award for the best in-flight services category by the Travelworld Magazine.

For the inflight services, the Airline executed a Master Services Agreement dated in January 2015 (“**Agreement**”) with **Concorde Hospitality Pvt. Ltd.** (“**Service Provider/Concorde**”). As per the terms of the Agreement, Concorde provided all in-flight services. The term of the Agreement was for 10 years which was to be automatically renewed unless one of the parties gave six months prior termination notice.

## THE AGREEMENT

As per the terms of the Agreement, the modalities were such that for the catering services provided on the particular flight route, the Airline had the obligation to inform and place provisional meal orders (“**Provisional Order**”) at least 12 hours before the flight departure time so that the customized meals could be prepared in time. Concorde offered a package price of Rs. 2000 per passenger for the in-flight

services which incorporated cost of meals, beverage and liquor, and entertainment services (“**Package Price**”). After the completion of the flight, it was also the obligation of the Airline to send the passenger data to Concorde along with the final purchase order to Concorde for preparing the final invoice. The Agreement also provided for a price escalation clause under which the Package Would increase by 3% per annum. Price Package for the first year would be taken as the base price for calculating the price escalation every year.

The Agreement also provided for a minimum commitment order clause under which it was mandatory for the airline to give a certain minimum number of Provisional Orders for every flight depending on the capacity of the aircraft. The minimum commitment order for the busy routes was 70% Provisional Orders per flight and 50% Provisional Orders per flight for the normal routes.

On the other hand, it was the obligation of the Concorde to ensure the strictest hygiene and quality standards of the meal prepared by it. Concorde had the obligation to keep 10% extra meal packets in each flight above the Provisional Order to ensure that there is no shortfall for the passengers, without any extra charges. Concorde was obligated to raise invoices on a monthly basis and the Airline was required to make timely payments to Concorde within a period of 7days from the issuance of the invoices.

As Concorde was providing the complete flight services package to the Airline, it had entered into several sub-contractor agreements with other vendors for supply for raw materials for meal preparation and had also entered into collaboration agreements with leading beverage and liquor brands, textile brands (for supply of blankets) and media streaming companies (for flight entertainment) for providing tailored packages.

Since the functions of Airline were on a daily basis, Concorde was required to make prior arrangements to collect and allocate raw material and supplies, preparation of food products, packaging and storing of food in the containers for ease of supply to the Airline.

### DISPUTED FACTS

While the Agreement was in subsistence, due to the outbreak of Covid-19 pandemic, the Government of Taurad (“**GOT**”) issued a lockdown order on 22 March 2020 (“**Lockdown**”). Accordingly, the flight operations of the Airline as well as all the other airlines were completely suspended till further notice.

The Airline informed the Concorde about the unprecedented Lockdown Order and the parties mutually decided to suspend each other's obligation under the Agreement till the time Lockdown is lifted.

On 16 May 2020, the Directorate General of Civil Aviation of Taurad ("DGCT") allowed flight operations in Taurad from 1 June 2020. Owing to the increase in Covid cases in Taurad, the DGCT issued interim guidelines for flight operators which *inter alia* stated that the flight operators shall ensure that the passengers occupy alternate seats. Accordingly, the flight carriers were allowed to operate on 70% occupancy. Further, DGCT also directed the airlines not to serve hot meals and beverages to the passengers.

The Airlines vide its email dated 22 May 2020 intimated Concorde about the interim guidelines and the change in its policy. The Airline communicated to Concorde that it would no longer require blanket, liquor and beverage services on the flights and further directed Concorde to prepare cold packaged meals consisting of sandwiches and crackers for the passengers instead of the hot meals. The Airline also called upon Concorde to revise the commercials of Package Price since the requirements have considerably reduced and it would also help the Airline to cut costing measures. In response, Concorde in its email dated 25 May 2020 stated that it can reduce the Package Price by 20% but continue to abide by the minimum commitment order in the Agreement.

On 2 July 2020, the Concorde issued its invoice for the month of June 2020 and further sought payment of the unpaid invoice of March 2020. The Airline disputed its obligation to make payment towards the said invoices and stated that the same were not in accordance with the Catering Agreement as well as the express understanding between the parties.

#### CURRENT STATUS OF THE DISPUTE

The Caterer invoked the mutual discussion clause under the Catering Agreement and requested the authorised representative to set up a meeting to amicably resolve the inter se disputes, before the same are submitted to arbitration.