

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
SETTLEMENT ORDER

(Application No. 4252/2020)

On the application submitted by

Interglobe Aviation Limited

(PAN: AABCI2726B)

Settlement Order No: Order/GR/KG/2020-21/6365

1. The Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had received several complaints from Mr. Rakesh Gangwal (hereinafter referred to as the “**Complainant**”), co-founder and director of Interglobe Aviations Limited (hereinafter referred to as the “**Noticee**”). The complaints have alleged several violations *inter alia* regarding the following:
 - a. compliance of corporate governance norms by the Noticee;
 - b. related party transactions (“**RPTs**”) between the Noticee and the ‘IGE Group’ (consisting of Mr. Rahul Bhatia, co-founder of the Noticee, along with his affiliates, holding approximately 38% shareholding in the Noticee);
 - c. timely intimation of important information to the board of directors of the Noticee;
 - d. misrepresentation made by the Noticee in its Red Herring Prospectus dated October 16, 2015

- e. the failure of the Noticee in making timely disclosure of material information which was likely to have significant market reaction, in contravention of Regulation 30(4)(i)(b) of the LODR Regulations, text of which is reproduced herein below:

(4) (i) The listed entity shall consider the following criteria for determination of materiality of events/ information:

*(a) ******

(b) the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date

2. The Competent Authority has, vide order dated May 5, 2020, appointed the undersigned as the Adjudicating Officer (hereinafter referred to as the “**AO**”) under section 15I(1) read with section 19 of the Securities and Exchange Board of India Act, 1992 and Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the “**Rules**”) to enquire into and adjudge under section 15HB of the SEBI Act, 1992 for the alleged violations by the Noticee.
3. Pursuant to the aforesaid complaints received from the complainant, SEBI had examined the issues raised in the said complaints. Based on the investigation conducted by SEBI, a notice to show cause dated November 10, 2020 was issued with respect to the Noticee, *inter alia* containing the following allegations:

- a. At the request of its Chairman, the Noticee had engaged Ernst & Young (“**EY**”) to conduct a review of the ongoing RPTs of the Noticee for past five years, in the first phase of review. Except for the Chairman of the Noticee, no other board member, including the Audit Committee, had access to the report submitted by EY (“**EY Report**”). The findings of the EY report was communicated to the board members by the Chairman in the board meeting dated March 4, 2019. The EY Report *inter alia* contained important information regarding an independent analysis of the RPTs undertaken by the Noticee. Such information was necessary for the board of directors in order to fulfill their responsibilities. The Noticee should have made the report available to the directors at the board meeting. Further, the Noticee should have provided the report to the complainant, when he requested for the same in his later emails to the Noticee. In any case, all directors, including the complainant should have been privy to such information in order to fulfill their responsibilities as directors under Regulation 4(2)(f)(iii)(13) of LODR Regulations. By not sharing such a critical information the Noticee had allegedly failed to consider the interest of the stakeholders as stipulated in Regulation 4(1)(h) of LODR Regulations. *Prima facie*, this was in violation of Regulations 4(1)(h) and 4(2)(f)(iii)(13) of LODR Regulations.
- b. On May 22, 2019, the complainant along with his related entities had submitted to the Board of the Noticee a requisition under Section 100 of the Companies Act, 2013 to convene an EGM, asking the shareholders to pass a resolution directing the directors and senior management of the Company to strictly adhere to the Code, and recommending certain new protocols that will reinforce and underscore

the Noticee's resolve towards good governance and transparency as well as protect the interests of all its shareholders and stakeholders.

In the board meeting on June 12, 2019, the Board of the Noticee however voted to not proceed with the EGM requisition on the basis of a legal opinion dated June 7, 2019 obtained by the Company from a former Judge of the Supreme Court of India opining that “...*the Board need not call an extraordinary general meeting of the Querist...*” However, the said legal opinion was allegedly shared only six minutes before the scheduled start of the board meeting via an email from the Company Secretary *inter alia* to the complainant with a copy to the Chairman of the Noticee. Further, the board did not take a break in the meeting to read the full legal opinion. In this regard Standard 1.3.7 under “*Secretarial Standard-1*” – *Secretarial Standard on Meetings of the board of directors* (which is mandatory as per Section 118(10) of the Companies Act) specifically stipulates that the agenda of the meeting and notes on the agenda shall be given to the directors at least seven days before the board meeting. On the other hand, Regulation 4(2)(f)(iii)(13) of LODR Regulations, prescribes timely access to information to the members of the board of directors in order to fulfill their responsibilities.

The legal opinion was received by the Company on June 7, 2019. However, it was shared with the board members six minutes before the board meeting on June 12, 2019. The legal opinion *prima facie* formed part of the important matter to be discussed in the board meeting; sharing it merely six minutes before the start of the meeting cannot be construed as ‘timely’. The legal opinion was the basis on which the requisition of the EGM was rejected and hence it had allegedly

undermined the interest of the stakeholders as stipulated in Regulation 4(1)(h) of LODR Regulations. *Prima facie*, this conduct of the Noticee was in violation of Regulations 4(1)(h) and 4(2)(f)(iii)(13) of LODR Regulations.

- c. At the time of its Initial Public Offering (“IPO”) of shares, the Noticee in its Red Herring Prospectus dated October 16, 2015 (“RHP”) disclosed to the investors that, except the rights related to the board nomination and control, other rights mentioned in the shareholders’ agreement dated April 23, 2015, between the two promoter groups and the Noticee (“**SHA**”), including rights related to transfer of equity shares (right to first refusal and tag along rights) and acquisition of equity shares (“**transfer and acquisition rights**”), will terminate. The transfer and acquisition rights expired from the SHA on November 10, 2019 (four years post IPO) and hence as per the disclosures made in the prospectus, should not be exercisable by the two promoter groups. The period of four years post the issue ended on November 10, 2019. On November 13, 2019, the complainant, who was a promoter and director of the Noticee, along with his affiliates, requisitioned an EGM for removal of certain rights related to transfer of equity shares and acquisition of equity shares from the Articles. The EGM was held on January 29, 2020 wherein the shareholders rejected the proposal to amend the Articles. The Noticee, by failing to remove these rights from the Articles, had allegedly not complied with the statement made in its prospectus and had thus misrepresented facts before its shareholders. This conduct of the Noticee was *prima facie* considered to be in violation of Regulations 4(1)(c) and 4(1)(h) of LODR Regulations.

- d. At the AGM of the Noticee held on September 21, 2016, the resolution passed was for alteration in the Articles of Association by deleting Part II from the existing Articles and there was no specific mention of approval of Part I of the Articles, which *inter alia* contained the rights of the IGE Group related to nomination of directors / Chairman and certain KMPs. Shareholder approval, post IPO, was not taken for inclusion of the said rights related to nomination of directors / Chairman and certain KMPs in its Articles, thereby allegedly violating Regulation 4(2)(c) of LODR Regulations.
- e. Several counts of violations of the Regulation 23(2) of the LODR Regulations pertaining to Related Party Transactions was alleged, which are detailed herein under:
- i. Lease agreement dated July 19, 2016 with Pegasus Buildtech Private Limited was entered into by the Company before seeking prior approval of the Audit Committee.
 - ii. Various sub-leasing agreements in 2017 and 2018 with Interglobe Air Transport Limited (“**IGAT**”) were entered into by the Company before seeking prior approval of the Audit Committee.
 - iii. Approval of the Audit Committee was not taken for renewed General Services Agency (GSA) agreement dated June 7, 2016
 - iv. Crew Accommodation contract dated January 5, 2016 with Caddie Hotels Private Limited for which *post facto* approval of the audit committee was

obtained on January 21, 2016. Since this contract was entered into before seeking prior approval of the Audit Committee, it is in violation of Regulation 23(2) of LODR Regulations.

- v. Crew Accommodation contract dated December 12, 2017, with Caddie Hotels Private Limited was entered on. It is noted that the omnibus approval by the Audit Committee in its meeting dated May 9, 2017 approved a maximum permissible amount of INR 5,720/-. However, the rate of this agreement includes INR 7,000 for single occupancy accommodation which is higher than the approved amount in the omnibus approval. Hence, it is alleged that the aforesaid omnibus approval is not applicable in this case. The agreement was entered into allegedly without taking approval of the Audit Committee and hence it was allegedly in violation of Regulation 23(2) of LODR Regulations.
- f. For renewal of the Crew Accommodation contract on March 20, 2018 with Caddie Hotels Private Limited, the authorization provided under the omnibus approval provided in the Audit Committee meeting held on May 9, 2017, was relied upon. However, the contract was allegedly not placed subsequently in the audit committee meeting for review. It was therefore alleged that the Noticee has accepted that the agreement was not placed before the Audit Committee for review which was purportedly in violation of Regulation 23(3)(d) of LODR Regulations.
- g. The announcement dated July 9, 2019 by the Noticee contained complaint dated July 8, 2019 by Mr. Rakesh Gangwal to SEBI along with various previous letters

by IGE Group to the board on the matters related to the complaints raised by Mr. Gangwal, including non-requisition of EGM and review of RPTs between IndiGo and the IGE Group. The announcement dated July 9, 2019, containing the said previous letters, led to significant market reaction, as indicated by NSE, and hence it had allegedly triggered the Regulation 30(4)(i)(b) on account of non-disclosure of these letters at the time of their receipt by the Company. In view of the above, it was alleged that the Noticee was in violation of Regulation 30(4)(i)(b) of LODR Regulations.

4. Pending Adjudication Proceedings, the Noticee (applicant) proposed to settle the instant proceedings initiated against it, without admitting or denying the findings of fact and conclusions of law, through a settlement order and filed a settlement application with SEBI bearing reference number 4252 / 2020 dated December 23, 2020, in terms of the provisions of SEBI (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as "Settlement Regulations").

5. Pursuant to the above mentioned settlement application filed by the applicant, the Authorized Representatives (ARs) of the applicant, attended a meeting with the Internal Committee on Consent (hereinafter referred to as 'IC') on December 28, 2020. During the aforesaid meeting, the settlement terms of 2,10,37,500/- (Rupees Two Crore Ten lakh Thirty Seven Thousand Five hundred Only) as settlement amount towards the alleged violation of the provisions of the Regulations 4(1)(c), 4(1)(h), 4(2)(c), 4(2)(f)(iii)(13), 23(2), 23(3)(d), 30(4)(i)(b) of LODR Regulations, was communicated to the ARs of the applicant. The applicant vide its letter dated January 7, 2021, proposed the payment of Rs.

2,10,37,500/-(Rupees Two Crore Ten Lakh Thirty Seven Thousand Five Hundred only) towards full and final settlement of all regulatory, civil or criminal proceedings in relation to the facts contained in the SCN without admitting or denying any violation on its part.

6. The settlement terms were placed before the High Powered Advisory Committee (hereinafter referred to as 'HPAC') on January 25, 2021, and the HPAC considered the facts and circumstances of the case, the proposed settlement terms offered by the applicant and other material made available before the HPAC by SEBI. The HPAC, after considering the facts and circumstances of the case, settlement terms offered by the applicant and also the material made available before it by SEBI, recommended that the aforesaid adjudication proceedings initiated against the applicant may be settled on payment of Rs. 2,10,37,500/-(Rupees Two Crore Ten Lakh Thirty Seven Thousand Five Hundred only) towards the settlement terms. The Panel of Whole Time Members of SEBI approved the said recommendation of HPAC on January 25, 2021 and the same was communicated to the applicant vide email dated February 5, 2021.

7. Subsequently, the applicant, vide its email dated February 8, 2021, informed SEBI that an amount of Rs. 2,10,37,500/-(Rupees Two Crore Ten Lakh Thirty Seven Thousand Five Hundred only) towards the settlement terms had been transferred via online payment (RTGS) to SEBI in its account bearing account number 012210210000007 on February 8, 2021 and also submitted the transaction details of the same.

8. In view of the above, and in terms of Regulation 23 (1) of the Settlement Regulations, it is hereby ordered that this settlement order disposes of the aforesaid adjudication

proceedings initiated against the applicant viz. Interglobe Aviation Ltd vide SCN ref. EAD-4/ADJ/GR/KG/OW/19142/2020 dated November 10, 2020.

9. This order is without prejudice to the right of SEBI to take enforcement actions, in terms of Regulation 28 of the Settlement Regulations, including restoring or initiating the proceedings in respect to which the settlement order was passed against the applicant, if:

- a. any representations made by the applicant in the settlement proceedings is subsequently found to be untrue; or
- b. the applicant breaches any of the clauses / conditions of undertakings / waivers filed during the current settlement proceedings.

10. This settlement order is passed on February 9, 2021 and shall come into force with immediate effect.

11. In terms of Regulation 25 of the Settlement Regulations, copies of this order are being sent to the applicant viz. Interglobe Aviation Ltd and also to the Securities and Exchange Board of India.

Place: Mumbai
Date: February 9, 2021

G. RAMAR
ADJUDICATING OFFICER