

UNIVERSITY NEGOTIATION SELECTION FINAL ROUNDS 2024-25

The Queen of Good Times

General Information

INTRODUCTORY FACTS¹

PinkFisher Airlines (“**the Company**”) started off as a commercial venture filling the void for a low-cost full-service Airlines in the country of Bangladesh. It was founded by Keerti Shiv in the year 2003, who successfully ran the Company. Despite being a low-cost airline, it established itself as a market leader by branding itself as the symbol of luxury with its famous tagline “PinkFisher: The Queen of Good Times,” an image bolstered by the lavish lifestyle and parties Keerti Shiv was known for. She passed over the baton to her son, Pukeshwar Kumar Vinod (“**Pookie Vinod**”), who became the CEO of the Company in 2016. The Board of Directors reposed their faith in him given his mother’s assurance regarding his ability to lead the Company. However, Pookie Vinod could not provide the brand of leadership his mother was known for. Soon after he took over the reins, the Company ran into financial distress and was temporarily grounded due to severe cash crunch.

Amir Ganesh (“**AG**”), along with a Hedge-Fund named All Dhaka Roadies (“**ADR**”), are the former promoters and majority shareholders, who jointly held 53.78% equity shares in the Company [AG and ADR together referred to as “**Investors**”]. In order to revive the Company, the Investors proposed a framework wherein they would give up their entire shareholding in the company for a nominal consideration of INR 1/- (Indian Rupee One only).

¹ All characters, organizations and references are completely fictitious. Any similarity to any persons/organizations living or dead is completely coincidental.

Additionally, the Company would issue Warrants² and Non-Convertible Cumulative Redeemable Preference Shares (“**CRPS**”)³ of the Company, in favour of the Investors which would be paid for by them, as per the agreement amongst the parties. By virtue of the issued Warrants and CRPS, the Investors would gain back 32% shareholding in the Company. Consequently, the Company would also survive the financial setback that it was facing by utilizing the funds infused by the Investors as payment for Warrants and CRPS.

Further, the Investors put forth an indispensable condition that they should be immune from liabilities arising from the non-payment of any Statutory Dues, that as per the applicable law was payable by the Company in the duration when the Investors were promoters and majority shareholders of the Company. This was specifically done to ensure that the Investors do not face any penal action on this account.

Accordingly, a Sale and Purchase Agreement (“**SPA**”) was executed amongst the Company, Pookie Vinod and the Investors. The relevant Terms of the SPA are attached herewith as **Annexure-I**. Pursuant to the SPA, the Investors transferred their entire shareholding in the Company to Pookie Vinod. Further, they also transferred a total sum of INR 642.62 crores to the Company for the issuance of Warrants and CRPS (INR 487.62 crores and INR 155 crores respectively), and the subsequent conversion of such Warrants into Equity Shares as per the SPA.

However, as for the Company, it did not stick to its end of the bargain. Breaching the terms of the SPA, the Company did not fulfil the requirement of obtaining the relevant statutory approvals mandatory for the issuance of Warrants and CRPS in favour of the Investors. Consequently, the Warrants and CRPS could not be issued

² A stock warrant gives the holder the right to purchase a company's stock at a specific price and at a specific date. A stock warrant is issued directly by the company concerned; when an investor exercises a stock warrant, the shares that fulfil the obligation are not received from another investor but directly from the company.

³ Cumulative Redeemable Preference Shares is a type of preferred stock with a provision that stipulates that if any dividend payments have been missed in the past, the dividends owed must be paid out to cumulative preferred shareholders first, which further allows for the repayment of the principal share capital to the shareholders.

to the Investors. Further, Pookie Vinod and the Company undertook no efforts to ensure that the Investors are held harmless from penal action resulting from the non-payment of the Company's statutory dues.

The Investors via an Email sent to the Company and Pookie Vinod expressed their disappointment over their breach of the SPA. The Investors asserted that the terms of the SPA should be strictly complied with, failing which they would be compelled to invoke Arbitration. A copy of the Email is attached herewith as **Annexure-II**. The Company and Pookie Vinod responded by way of a joint email denying the Investors' claim of contractual breach on their part. A copy of the email is attached herewith as **Annexure-III**.

Consequently, the Investors sent a Notice invoking Arbitration as per the SPA. Thereafter, on the sidelines of the Preliminary Arbitral hearings, the Counsels for the parties discussed the possibility of settling the dispute which formed the subject-matter of the existing Arbitration. The Parties agreed to hold talks on 11th November 2024 at the Allen & Overy Hall, National Law School of India University, Bengaluru. The Investors will be represented by their common Chief Negotiation Officer and the Head Counsel. Pookie Vinod and the Company will be represented by their Chief of Strategy and the Head Counsel.

ANNEXURE 1

This Sale and Purchase Agreement (“**SPA**”) is executed on this July 1, 2018 by and amongst:

1. **Amir Ganesh**, an individual residing at LC 208, Gnana Bharati Road and **All Dhaka Roadies**, a hedge fund having its registered office at Hostel Office, Gnana Bharati Road (hereinafter collectively referred to as the "Sellers" or "Investors", which expression shall, unless repugnant to the context or meaning thereof, include their respective successors and permitted assigns); and
2. **PinkFisher Airlines**, a company incorporated under the laws of Bangladesh, having its registered office at Himalaya 102, Gnana Bharati Road (hereinafter referred to as the "Company", which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns); and
3. **Pukeshwar Kumar Vinod**, son of Ms. Keerti Shiv, residing at Cauvery 102, Gnana Bharati Road (hereinafter referred to as the "Buyer", which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns).

WHEREAS:

A. The Sellers jointly own 53.78% (Fifty-Three point Seven Eight percent) of the total issued and paid-up equity share capital of the Company ("Sale Shares").

B. The Sellers have agreed to sell, and the Buyer has agreed to purchase, the Sale Shares on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein, the Parties hereby agree as follows:

1. DEFINITIONS

1.1 "Statutory Dues" means all taxes, duties, fees, levies, penalties or other charges imposed by any governmental authority, including but not limited to income tax, goods and services tax, customs duty, and any other statutory payments.

2. SALE AND PURCHASE OF SHARES

2.1 The Seller hereby agrees to sell, transfer, and convey to the Buyer, and the Buyer hereby agrees to purchase from the Sellers, all right, title, and interest in and to the Sale Shares.

2.2 The consideration for the Sale Shares shall be INR 1/- (Indian Rupee One only) ("**Purchase Consideration**").

3. ISSUANCE AND TERMS OF WARRANTS AND CRPS

3.1 As part of the transaction contemplated herein, the Company shall issue 3,78,000 Warrants and 1,78,430 Non-Convertible Cumulative Redeemable Preference Shares ("**CRPS**") of the Company to the Sellers. The Company shall perform all such actions as are required to give effect to such issue.

3.2 Each Warrant can be converted into an Equity Share of the Company at a conversion price of INR 12,900/- (Indian Rupees Twelve thousand Nine hundred only) per Equity Share ("**Conversion Price**"), payable to the Buyer.

3.3 The Warrants shall be convertible into equity shares at any time within a period of 18 months from the date of allotment of the Warrants ("**Exercise Period**").

3.4 Upon exercise of the conversion right, the Company shall issue and allot appropriate number of equity shares and perform all such actions as are required to give effect to such issue.

3.5 For the issuance of the total number of stipulated CRPS in Clause 3.1, the Seller shall pay an aggregate sum of INR 155,00,00,000 (Indian Rupees One hundred and Fifty-Five Crores) to the Company.

4. REPRESENTATION AND WARRANTIES

4.1 The Buyer shall ensure that the Company undertakes all steps to defend and hold harmless the Sellers and their Directors against and from any penal action, liabilities, claims, damages, costs, and expenses arising out of or relating to: (a) Any non-payment or default in payment of any Statutory Dues that became due during the period when the Sellers were promoters and majority shareholders of the Company; (b) Any penal proceedings, notices, or actions initiated by any governmental authority in relation to such Statutory Dues.

5. DISPUTE RESOLUTION

5.1 Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled by Arbitration in accordance with the Bangladesh Arbitration Act, 2001. The seat of the Arbitration shall be Dhaka.

ANNEXURE 2

From: <investors@yahoo.in>
Sent: 12 July 2023, 03:34 p.m.
To: <pukeshwarkumarvinod@nls.com>; <pinkfisherairlines@hotmail.com>
Re: Breach of SPA

Dear Mr. Vinod,

We entered into the SPA with you in good faith and honoured all the contractual obligations. However, we are deeply appalled by your and PinkFisher Airlines' conduct which has led to the breach of the contractual commitments. You have failed to undertake the necessary steps for attaining the statutory approvals for the issuance of Warrants and CRPS, which has caused us significant financial loss.

Further, there are no steps undertaken by you to clear the statutory dues of the Company, arising on account of non-payment of the applicable taxes. In the negotiations leading to the SPA, we informed you that our primary objective in designing this framework was to ensure that AG and ADR are held harmless from any penal action resulting from the non-payment of the Company's statutory dues. We were made to understand that pursuant to the SPA, you and the Company will undertake all the necessary steps to compound the alleged offences against AG and ADR. However, no measures appear to be undertaken by you to ensure the same.

We urge you to act strictly in compliance with the terms of the SPA, failing which we will be left with no choice but to invoke Arbitration as per the SPA.

Regards,
Rani Indrani,
Lead Counsel for Investors.
Debashish Chambers,
48A, Shining Street, Dhaka, 845418

ANNEXURE 3

From: <pinkfisherairlines@hotmail.com>

Sent: 14 July 2023, 01:13 p.m.

To: <investors@yahoo.in>

Re: Alleged breach of SPA

Dear Indrani,

Please consider this as the formal response on behalf of Mr. Pukeshwar Kumar Vinod and PinkFisher Airlines to your Email dated 12th July 2023. We categorically deny all the claims regarding the breach of SPA on our part. As a sophisticated business party, we have fulfilled all our contractual obligations in good faith. We assert that the claims made in the Email are baseless and require no explanation or justification from our end.

Regards,
Pukeshwar Kumar Vinod.

