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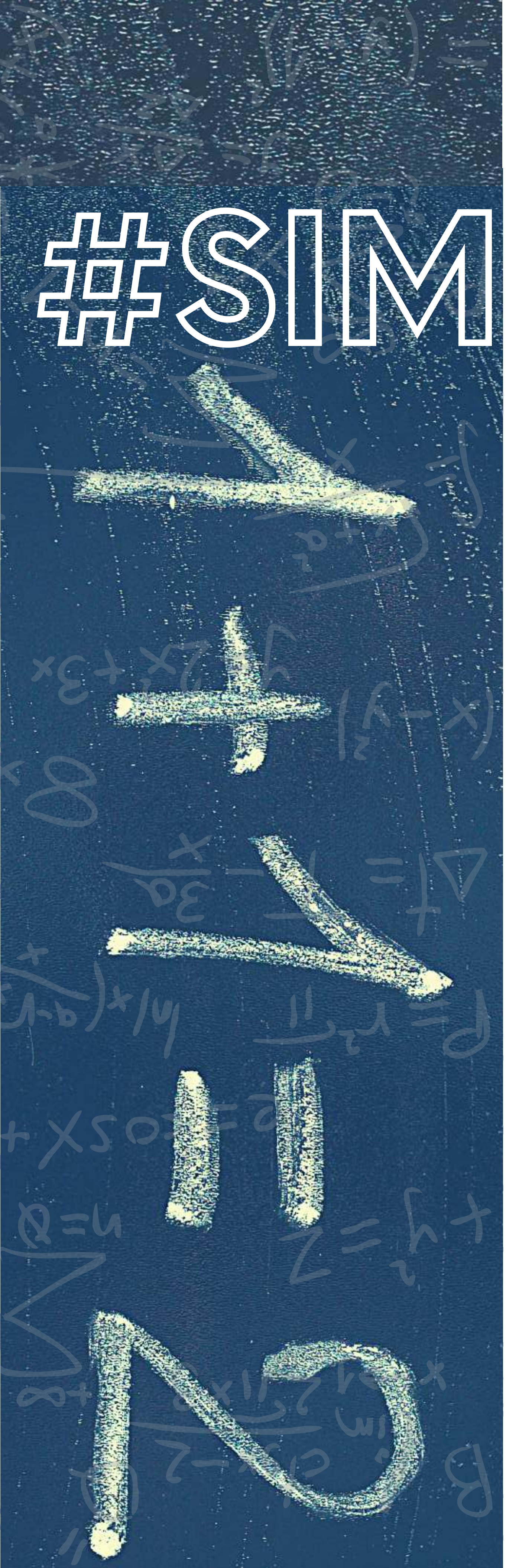

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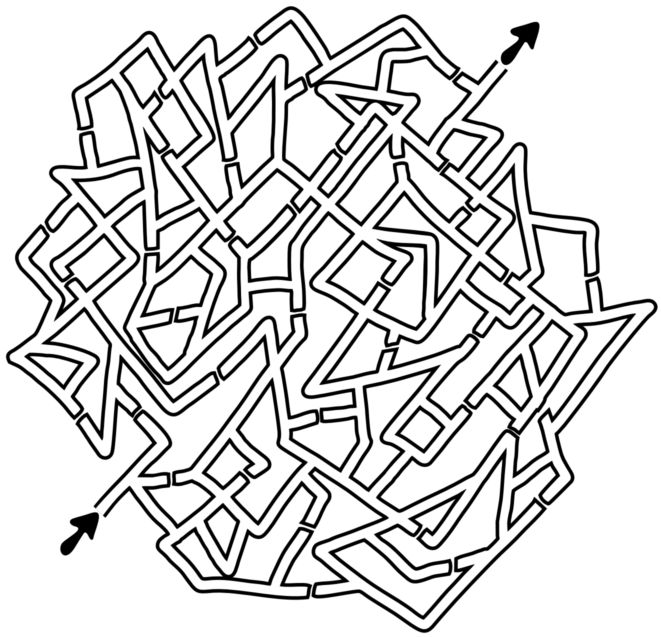

INDIGO PROMOTERS' TUSSLE

WHAT'S GOING ON WITH INDIGO?

THE PROMOTERS' TUSSLE

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HOW THE CONFLICT TOOK OFF

Promoters of giant corporations, of late, have not seen eye to eye. Whether it be the case of Mindtree and L&T or the promoters of Yes Bank, the story of conflict between promoters repeats itself time and again. As trust and communication is crucial to sustain business relations, clarity on roles and responsibilities helps curb conflict. However, the promoters of Indigo Airlines have managed to untick all these boxes.

To give you some context, at the inception of the airline, Mr. Rahul Bhatia of the InterGlobe Aviation Group ("IGA"/ Indigo Airlines) was tasked to oversee the capital requirements. Meanwhile, Mr. Rakesh Gangwal brought his decades' worth of aviation experience to the table. On those lines, the friends-turned-promoters of IndiGo entered into a Shareholders' Agreement ("SHA").

Now, Bhatia owns around 38% stake in the airline. Along with it comes certain controlling rights over key managerial appointments and a voting arrangement that mandated Gangwal to vote alongside Bhatia on these appointments. Putting faith in their relationship, Gangwal let go of substantial control in the management which left him with around 37% stake in the airline.

Little did both of the promoters know that a skewed agreement entered in good faith would prove to be a recipe for disaster.

INFOGRAPHIC

IndiGo Promoters' Tussle: **A Timeline**

2005
Rahul Bhatia and Rakesh Gangwal launch IndiGo Airlines.

23.04.15
The Shareholder's Agreement **("SHA")** signed by promoters.

08.07.19
Rakesh Gangwal complains to SEBI.

12.07.19
Rakesh Gangwal's request for Extraordinary General Meeting **("EGM")** to turned down.

01.10.19
Rahul Bhatia requests for arbitration in the London Court of International Arbitration **("LICA")**.

2020
Gangwal's Special Resolution to amend the **AOA** fails.

23.09.21
LICA Arbitral award is in favor of Gangwal.

07.10.21
Gangwal moved the Delhi High Court **("DHC")** to enforce the arbitration award.

30.12.21
Indigo calls an **EGM** to amend its **AoA**.

BRACE FOR TURBULENCE

Along the years, Bhatia and Gangwal differed on several issues such as governance, key appointments and the growth strategy for IndiGo. However, their conflict became public in 2019 when Gangwal wrote to the Securities Exchange Board of India ("SEBI"). He raised two major concerns. First, the rights that gave Bhatia substantial control over the Board resulting in corporate governance issues. Second, unapproved related party transactions that were carried out by Bhatia and the IGA group.

Further, in the past Gangwal has also indicated his discomfort with giving all powers to Bhatia. He has also subsequently been withdrawing from the operations of the airline. Bhatia, on the other hand, maintained that these allegations were made by Gangwal to dilute his controlling stake in the airline. It appears as if the current fued is based on Gangwal's regret of enabling Bhatia to have more control over the airline. At the same time, Bhatia also seems to have a desire of keeping the control of the company in is hand.

As the promoters continue to spar over control, Bhatia and the IGA Group requested arbitration with the London Court of International Arbitration ("LCIA") in 2019. They sought certain reliefs against Gangwal to remove share transfer restriction provisions from the company's Articles of Association ("AoA").

SIGNIFICANCE OF TRANSFER RESTRICTIONS

Simply put, a restriction on the transfer of shares means that shares cannot be bought and sold to just about anyone. This is often preferred in private companies to control who becomes a shareholder.

So, how does IndiGo restrict share transfer? According to its SHA, both the promoters had a right to first refusal ("RoFR") on each other's shares. What the RoFR does is create a pre-emptive contractual entitlement. Essentially, if Bhatia were to sell his shares to a third party, the non-selling shareholder i.e Gangwal is entitled to the same offer first. Only upon his refusal, Bhatia can offer his stake to the third party. Additionally, the RoFR is clubbed with a Tag Along clause. This clause allows a minority shareholder to sell their stake along with a major shareholder.

It's interesting to note that these transfer restrictions also found a place in the company's AoA. While the SHA was to remain valid for four years till 2019, these restrictions will continue to persist in the AoA until it is amended. This contractual technicality fuelled the fire further as neither Bhatia and Gangwal could continue together in conflict nor could they easily exit the airline because of these transfer restrictions.

Now, a question might arise in the minds of the readers as to how IndiGo kept these restrictions since shares must be freely transferable in public companies. Well, judicial precedents have clarified that pre-emptive rights on shares of a public company will not be considered as a restriction on their transferability.

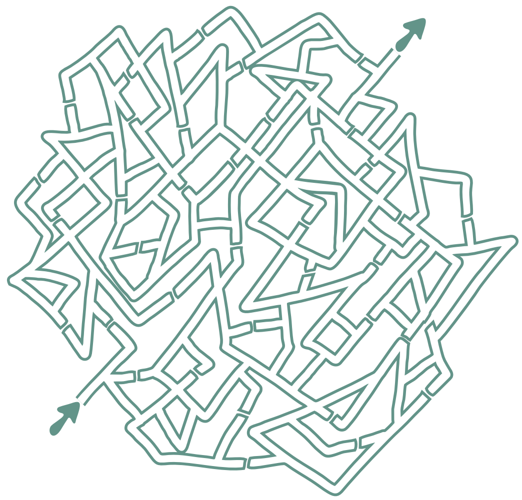
The existence of such private agreements between parties on share transfer does not hamper the rights of public shareholders to freely deal in the shares of a public company. The restrictions of ROFR or tag along rights survive only as a part of the independent contract. (See Bajaj Auto Ltd vs Western Maharashtra Development). It is possible that these restrictions were not done away with to keep competitors from having any stake in the airline.

READY FOR DEPARTURE?

The LCIA gave its arbitral award in September this year. It directed both the parties to remove the share transfer restrictions from the AoA.

Therefore, an Extraordinary General Meeting ("EGM") has been called by both of the promoters on 30th December 2021 to amend the AoA as a possible way out. This meeting is being expedited keeping in mind the brewing competition in the domestic civil aviation industry and the high valuation that the IndiGo stock currently enjoys in the market. With Tata's existing stake in Indigo's rival airlines Vistara and Air Asia and its recent acquisition of Air India, IndiGo simply cannot afford remain entangled in infighting.

Once the transfer restrictions are removed, both the promoters could sell or transfer shares to a third entity without giving each other a notice. While neither Bhatia nor Gangwal have publicly expressed that they intend to sell their shares in IndiGo, the removal of such a clause would give both promoters a viable exit option. Though this proactive move by the company's management sends a right signal to the market, it is yet to see whether the EGM would discernibly resolve the differences between the promoters of IndiGo.



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