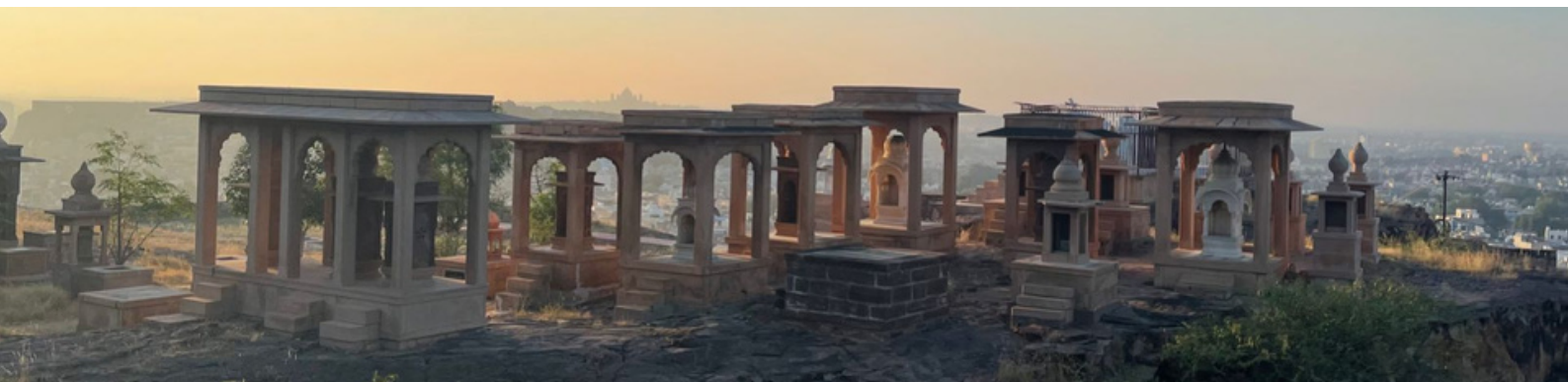


ALLEN & OVERY



PRELIMINARY PROPOSITION 2 TAKING RANDO AIR WHOLE

ALLEN & OVERY - NLU JODHPUR
INTERNATIONAL DEAL
NEGOTIATION COMPETITION
10TH - 12TH MARCH, 2023

SUPPORTING PARTNERS



**Swiss Arbitration
Centre**



WIPO | ADR
Arbitration
and Mediation
Center



ICSID

**International Centre for
Settlement of Investment Disputes**
WORLD BANK GROUP

BACKGROUND OF THE PARTIES

Whole Airways

Whole Airways Limited [“**Whole Airways**”] is an Indian ultra-low-cost airline that was founded in 2008 by Neeraj Gupta, a former top executive of certain hospitality corporations in the country. As of date, Whole Airways boasts a market share of 28% of the commercial aviation industry in India, flying over 1,200 daily flights from 40 destinations across the country.

Since its incorporation in 2008, Whole Airways has drastically evolved its business model and corporate structure. Neeraj Gupta and his team were quick to judge the potential of the growing middle-class population of India, and soon switched to a low-cost carrier [“**LCC**”] model airline. Within a span of 7 years, the airline placed an order for its 50th Airbus A320 aircraft, making it one of the fastest growing carriers in Asia. Soon thereafter in 2017, Whole Airways completed an initial public offering (IPO) which was oversubscribed 10 times and raised a total of approximately US\$400 million. The shares of Whole Airways were listed on the stock exchanges in India. Thereafter, in 2020, Whole Airways issued US\$500 million 5.950% unsecured notes due 2025, which are listed on an international stock exchange.

The success story of the airline has widely been attributed to the successful transition of the airline to the ultra low-cost carrier [“**ULCC**”] model. The business model of the airline involves employing a single type of fleet, a single type of class of travel, limited personnel costs, flying to secondary airports to avoid the high-cost primary airports and a focus on maximizing revenue from advertisements and add-on services, such as carry-on and check-in baggage. Further, in 2021, Whole Airways launched its cargo and freight operations based out of its four hubs across India. Whole Airways also announced in January 2023, that it has placed an order with Airbus for the purchase of up to 25 Airbus A320 aircraft, which will be delivered in Fiscal 2024.

Some key standings of Whole Airways include:

Ownership and Structure: Whole Airways is a publicly traded company on the National Stock Exchange: WAL, with a market capitalization of US\$4 Billion as of date.

Headquarters and Hubs: Whole Airways is headquartered and has its primary hub at Delhi International Airport located at Delhi, India. Further, the airline has regional hubs in the cities of Mumbai, Chennai and Kolkata.

Operations: Almost 65% of the aircrafts in service for Whole Airways have been leased on a medium-long term basis.

The airline also focuses on reducing personnel costs and so has entered into short term employment agreements with minimum insurance, benefits and security.

The airline is a party to favorable facilities agreements with most of the major airports, especially in the northern and eastern part of India. Terms of such agreements include

affordable landing fees and sufficient slots at airports. Whole Airways currently outsources in-flight catering to First Serve Sats.

Services: Being a ULCC, Whole Airways offers only economy class seating. To keep fares low, it does not provide complimentary meals on any of its flights, although it does have a buy-on-board in-flight meal programme. No in-flight entertainment is available.

Fleet:

| Aircraft | In Service | Passengers (per aircraft) |
|----------------------------------|-------------------|----------------------------------|
| Airbus A320 | 110 | 180 |
| Boeing 737 - 700 | 60 | 195 |
| Whole Airways Cargo Fleet | | |
| Airbus A321-200 | 10 | - |

Rando Air

Rando Air Private Limited [“**Rando Air**”] is an Indian regional luxury airline founded in 2018 by billionaire Kunal Garg, who was also the founder of one of the largest oil companies in Asia, Fando Oil. Rando Air, like Fando Oil, is headquartered in Bangalore, which is located in the state of Karnataka, India.

Kunal Garg was known to have strong ties with the government and business community of Karnataka, given the incomparable influence of Fando Oil on boosting the economic development of the once poor state. In fact, Rando Air was founded to set up an “iconic brand” within the state. It is also well known that various aspects of the employment policy and operations strategy of the airline are centered around hubs in Karnataka and the neighbouring southern states of India.

The scope of operations for Rando Air is limited to 50 daily flights between 25 destinations, which comprise primarily of tier 1 and 2 cities in the southern states of India.

Some key standings of Rando Air include:

Ownership and Structure: Rando Air is a private limited company. Kunal Garg held 70% of the equity shareholding in Rando Air before his unfortunate demise in 2022.

His shareholding has been passed on to his direct heirs – his 19-year old son and 21-year old daughter equally.

Headquarters and Hubs: Whole Airways is headquartered and has its primary hub at Brew International Airport located in Bangalore, India. Further, the airline has regional hubs in the cities of Chennai and Hyderabad.

Operations: All aircrafts in the service of Rando Air are owned by it. However, a portion of the debt for the purchase of these aircrafts is still outstanding.

The airline is a party to favourable facilities agreements with most of the major airports it operates in. Due to a strong presence in the southern part of the country, the airline holds almost 35% of the airport slots in 10 of the biggest cities in the region.

Rando Air entered into a 15 year outsourcing agreements for in-flight catering and hospitality with Aruba Hospitality, which is a recently incorporated company owned by the Aruba Group. Aruba Hospitality operates on a cook-to-order model wherein specific orders are prepared at the five-star Aruba Hotels across the country and sourced to the aircrafts.

Services: Rando Air offers a variety of seating options including Standard, Premium Economy, Business Class, First Class and Super Luxury. 15 of the 20 aircrafts in the fleet are customized to accommodate only Business Class and more premium seating options. Some of the facilities provided include a four-course

cooked-to-order meal, access to the various Rando lounges at the best locations within the airports, in-flight entertainment etc.

Indebtedness: In 2022, Rando Air issued unsecured non-convertible debentures which are listed on the stock exchanges in India, and which are due to mature in 2026.

Fleet:

| Aircraft | In Service | Passengers (per aircraft) |
|---|-------------------|--|
| Boeing 737 – 700 Quick Convertibles (QCs) | 20 | 195 (Depending on the passenger-to-freight conversion) |

GENERAL INFORMATION

2022 has been a decisive year for many of the players in the Indian aviation industry. Due to a sudden economic recovery and growth in the country post COVID-19, the disposable income of a large majority of the population has grown by 20%, which has been almost three times over the average annual growth of 5.2%. The domestic airline industry also witnessed a growth in passenger volumes of over 59% in Fiscal 2022, which is almost 10 points higher than even pre-COVID levels. A large majority of this growth can be traced to the low-cost carriers and budget airlines. For Whole Airways especially, the airline rose to become the second most profitable airline in the country by posting an annual profit of US\$15.7 Million.

In parallel, large parts of India have also witnessed a drastic transition in relation to the demand for air travel. The Indian Government made historic policy changes in the southern part of India, particularly by changing the status of Karnataka from a special state to a Union Territory. This has allowed for substantial liberalization of the economy through increased investment into the technological and tourism sectors. There has also been an expansion of the airport infrastructure in the major cities of Bangalore, Hyderabad, Chennai, Cochin and Pune and this opportunity has caught the

attention of Whole Air, which considers itself to be severely slacking in this market.

Conversely, Rando Air seemed to be left behind in 2022, in part due to the passing away of Kunal Garg. The airline was a passion project of the billionaire, and various aspects of the business were driven by the optimism of the founder. The fleet of Boeing 737-700 QC aircrafts for instance, were purchased specifically to allow for a possible and quick passenger-to-freight conversion in order to carry out commercial flights by day and freight carriage by night. The founder also urged the airline to engage the more recently set up Aruba Hospitality, simply because a greater dining experience would allow for the airline to be truly “luxurious”.

Further, the relationship shared between Kunal Garg, the Government of Karnataka and various stakeholders in the business community in the southern states allowed for greater benefits for Rando Air. The airline was given an exceptionally high number of slots at major airports in the region, with the airline holding almost 35% of the airport slots at the top 10 airports by volume. In exchange, the airline made special accommodation to ensure greater employment opportunities and investor interest in the southern states. Especially

during the COVID-19 period, the airline employed almost 2,000 persons and provided them with remuneration and benefits that were higher than the industry standard.

Due to a variety of factors ranging from increased competition due to the liberalization of the economy of Karnataka, the unsustainable costs associated with owning aircrafts and impractical personnel costs, the new leadership and senior management of Rando Air has made clear its interest in discussing a possible merger with or acquisition by a larger airline.

On behalf of Whole Airways, its Chief Executive Officer Joe Rajan has reached out to the leadership and senior management of Rando Air to discuss options, especially in the context of the following talking points:

Operations and Facilities Agreements: The demand for air travel in the southern states has grown exponentially due to the nationwide economic boom, the political transition of Karnataka and the increased investment in the technology sector, which is primarily concentrated in this part of the country. Rando Air's strong presence in this area, coupled with the fact that the airline held a large amount of airport slots at major airports, provides an opportunity for Whole

Airways to undertake a quick and efficient expansion.

Fleet: Although the costs associated with owning aircrafts as compared to leasing aircrafts are unsustainable for a regional airline like Rando Air, the scale of Whole Air's income and profits allows for the possibility of sustaining ownership of such aircrafts. Further, the possibility of passenger-to-freight conversion in less than one hour presents an opportunity to undertake freight operations on an experimental basis in case the demand for commercial flights does not appear immediately.

Brand Image: One of the primary reasons for the apparent downturn for Rando Air were the costs associated with the execution of the founder's vision to be super luxurious. Particularly, although Aruba Hospitality is newly set up and the price for in-flight catering was almost 150% of that charged by major catering services such as First Serve Sats, the model of customized meals prepared by five-star hotel facilities attracted the attention of the airline. Even though the costs associated with catering and hospitality turned out to be unsustainable, the in-flight

catering service increased the quality of service and the perception of the airline as a luxury airline. For Whole Airways, various incidents in early 2022 resulted in a number of complaints in regards to hygiene and the quality of the in-flight meals provided by First Serve Sats. Further, since the agreement between Whole Airways and First Serve Sats is approaching its end, the airline would be keen to explore opportunities with Aruba Hospitality, given the possibility for the company to adapt its business model to one suitable for an ultra low-cost carrier.

Transition of Employees: In early 2021, Rando Air entered into employment agreements with approximately 2,000 persons, primarily in order to protect its reputation and perception as a socially responsible airline in the region. These agreements included a job-security clause that precluded the airline or any future employers from taking adverse action against the employees for a period of 5 years. Further, Rando Air did not complete the payment of two months of overtime wages to a large majority of its ground staff. This has raised concerns of damage to reputation or legal liability, which has attracted the attention of the top management of Whole Air.