

**Record note of discussion of the All Members Interactive Meeting held on 3<sup>rd</sup> October 2020 at 1600 Hrs.**

**An interactive meeting of all members was organised on Saturday, 3<sup>rd</sup> October 2020 via Zoom Video Conferencing**

Hony Secretary, Mr. Rajesh Mudgill, called the house to order, welcomed all and said you must have received our circular about the IATO activities of the last week, Mrs Anjana Gosain is our special guest today and will tell us about the supreme court judgement on case of IATO regarding airlines refund which was long awaited and it seems that a lot of it is in our favour and Mrs Gosain will update if we have missed out anything. EC has unanimously decided on Mr. Homa Mistry to be the new Returning Officer. A request was sent to him and he has kindly sent his acceptance. Mr Homa Mistry will be our new Returning Officer. Soon a meeting will be called to take it forward.

He requested Mr Najeeb to welcome the members.

Mr. Najeeb informed the members about the Supreme Court Judgement and the appointment of the new Returning Officer. Representations from IATO have been made to the DG Tourism and other ministries regarding the problem faced by the tourism industry and our members. He looked forward to a fruitful deliberation.

Mr. Mudgill requested Mr. Mehra to address the members

Mr Mehra informed the members that Secretary Tourism of Uttarakhand will not be able to join the meeting today as they have all been sent to different places because of the rush. On the 8<sup>th</sup> of October there will be Press Conference of FAITH where the Presidents of all the 10 member associations will address the media. Members are requested to join the virtual press conference. We will be sending the circular and the link. Sending physical post cards to the PMO is being worked out and once cleared by the EC it will be sent to the members. We are following up with everyone to get the desired success. On the SEIS issue we have been assured that it will come through. He then requested the new RO Mr. Homa Mistry to address the members.

Mr. Homa Mistry said he very humbly accepts to become the RO and looks forward to the support of IATO.

Mr. Mudgill said that he will have full support and requested Mrs Anjana Gosain to please update us on the judgement.

**Mrs Anjana Gosain said** that she would like to share few important features before coming to the judgement. All the concerns of IATO were taken

into account in the petition. There are two types of litigations one is if the association had its own cause and it would have been titled simply Indian association to our operators versus so and so. But the petition, which was filed in the Supreme Court was by Pravasi legal in the form of public interest litigation and here there is a provision for any other party to join in as interveners if one has the same or similar cause. So first petition by Pravasi, second by TAFI and third as intervention by IATO. Total 8 to 9 petitions were filed with the leading petition of Pravasi Legal. Here the strategy, the format of the argument, and decision of the court is totally different than if the litigation is filed by one individual association or corporate sector. When the petitions came up for hearing, the court wanted to know the stand of the Airlines. In addition, we had 5 more petitions were filed by Vistara, Go Air, Indigo, Air India and Spice Jet. So there were 13 contesting parties with their team of lawyers. It was a case fought by full involvement of IATO through their key members and always reporting back to the EC. DGCA had filed 3 affidavits. First order of the supreme court was to have a joint meeting and take it forward as to how to resolve the issue

The first affidavit of DGCA was that as far as we're concerned there is a civil aviation requirement which regulates the system of refunds issuance of tickets and everything. The main feature of that civil aviation requirement was that whenever you see any cancellation or you see refund, if it is a cash payment the refund will go back to the account from where the cash was paid, if it is through credit card then the refund will go back to the credit card holder, wherever the booking is made the refund will go to that source. The court wanted to know what happens in a situation where the passenger has not paid the money to the travel agent and you still say that the refund will go directly to the passenger.

The second affidavit filed by DGCA carried certain formulations. The formulations which was connected to our situation was that as far as the refunds are concerned, they will be in the name of passenger, but at that particular stage it was said it will go back into the account of the travel agent, but there was not much of clarification with regard to the status of those passengers who had booked at one stage because the opening sentence of DGCA was that during the lockdown the refund has to made in full. The court thought that this refund is only available from the date of 24<sup>th</sup> of March till 25<sup>th</sup> of May 2020. In the remaining period it will be Credit Shell. They were not happy with the situation and directed to come back with some clarification.

Airlines said they will issue credit shell that shall be valid till 31<sup>st</sup> of March 2021. If not utilised, it shall be refunded. By 31<sup>st</sup> March the money will be

refunded into the account of the travel agent who will further give it to the passenger. This was the update then now with the judgment.

Finally, there are **7 different directions issued by the Supreme Court.**

*The first is that if a passenger has booked a ticket during the lockdown period (from 25th March, 2020 to 24th May, 2020) for travel during lockdown period and the airline has received payment for booking of air ticket for travel during the same period, for both domestic and international air travel and the refund is sought by the passenger against that booking being cancelled, the airline shall refund the full amount collected without any cancellation charges. The refund shall be made within a period of three weeks from the date of cancellation.*

So the members of IATO who had booked for a group for an individual under the above circumstances will get the full refund if the same is sought by the passenger. The method will be that if you had paid the money on behalf of those passengers, the refund will come to your account.

*The second direction is that if the tickets have been booked during the lockdown period through a travel agent for a travel within the lockdown period, in all such cases full refund shall be given by the airlines immediately. On such refund, the amount shall be passed on immediately by the agent to the passengers*

Mrs Gosain said that these two clauses / directions are to be read together.

*The third is that passengers who booked tickets at any period of time but for travel after 24th May, 2020 – refund of fares to the passengers covered under this category shall be governed by the provisions of Civil Aviation Requirements (CAR).*

Mrs Gosain said that CAR says that the cancellation and seeking refund is the prerogative of the passenger and the refund shall go into the account of the passenger.

*The fourth is that even for international travel, when the tickets have been booked on an Indian carrier and the booking is ex-India, if the tickets have been booked during the lockdown period for travel within the lockdown period, immediate refund shall be made.*

Mrs Gosain said that this is in relation to Air India where there are many issues

*The fifth is that if the tickets are booked for international travel on a foreign carrier and the booking is ex –India during the lockdown period for travel within the lockdown period, full refund shall be given by the airlines and said amount shall be passed on immediately by the agent to the passengers, wherever such tickets are booked through agents. In all other cases airline shall refund the collected amount to the passenger within a period of three weeks*

Mrs Gosain said that now she will come to **the most important part of the clause/order.**

*The sixth states that in all other cases, the airlines shall make all endeavours to refund the collected amount to the passenger within 15 days from today. If on account of financial distress, any airline / airlines are not able to do so, they shall provide credit shell, equal to the amount of fare collected, in the name of passenger when the booking is done either directly by the passenger or through travel agent so as to consume the same on or before 31st March, 2021.*

Mrs Gosain analysed here that in all other cases, any time booking made, it may be Feb 2020/ Dec 2019/ prior to 25<sup>th</sup> of March. But if you say that the credit shell is of no use to me and the passenger is not interested to use it by 31<sup>st</sup> March 2021 then the mandate is that it will remain a credit shell only up to 31<sup>st</sup> March 2021 and that amount will be given as refund to the account from where the booking was made by 1<sup>st</sup> April 2021, thus the credit shell culminates into actual refund by 1<sup>st</sup> April 2021.

*It is open to the passenger either to utilize such credit shell up to 31st March, 2021 on any route of his choice or the passenger can transfer the credit shell to any person including the travel agent through whom he / she has booked the ticket and the airlines shall honour such a transfer.*

Mrs Gosain said that thus the passenger who does not want to use the credit shell can transfer it in the name of the travel agent which the airline has to honour. The passenger shall settle the financials with the travel agent. Airline cannot question such transfer of the credit shell.

*The credit shell issued in the name of the passenger shall be transferable which can be utilized up to 31st March, 2021 and the concerned airline shall honour such a transfer by devising a mechanism to facilitate such a transfer. It is also made clear that such credit shell can be utilized by the*

concerned agent through whom the ticket is booked, for third party use. It is also made clear that even in cases where credit shell is transferred to the third party, same is to be utilized only through the agent who has booked the ticket at the first instance

Mrs Gosain said that it means that the process and the source is not changed it remains you and only you- the travel agent.

***In another situation the direction seven states that in cases where passengers have purchased the ticket through an agent, and credit shell is issued in the name of passenger, such credit shell is to be utilized only through the agent who has booked the ticket. In cases where tickets are booked through agent, credit shell as issued in the name of the passenger which is not utilized by 31st March, 2021, refund of the fare collected shall be made to the same account from which account the amount was received by the airline.***

Mrs Gosain said it means source to source, and there is no disturbance in the chain of transaction.

*The next direction is that in all cases where credit shell is issued there shall be an incentive to compensate the passenger from the date of cancellation up to 30th June, 2020 in which event the credit shell shall be enhanced by 0.5% of the face value (the amount of fare collected) for every month or part thereof between the date of cancellation and 30th June, 2020. Thereafter the value of the credit shell shall be enhanced by 0.75% of the face value per month up to 31st March, 2021. Further, the second respondent – the DGCA, shall ensure strict compliance of the directions*

Mrs Gosain said that in a nut shell Direction of the court is there is no disturbance in the chain of the booking from wherever the source the ticket has been booked and if the airline is unable to refund it within a period of two weeks, credit shell shall be issued in the name of the passenger, into the source from where it has been booked, if it is booked in the name of A, it will go to A, the credit shell shall remain up to 31<sup>st</sup> March 2021 depending upon what the passenger wants. If the passenger wants to transfer it in the name of the travel

agent, no problem, the travel agent can transfer it to the third party, but only the same agent will handle it. Most importantly, is this if this credit shell is only valid up to 31st March 2021 and the amount of that credit shell has to be refunded in the form of actual refund and that is the money will get into the same account from the booking is where the booking has been made by 31st March 2021. No visas, MHA restrictions, passengers are unable to come, exceptional situation, all these are something which are transactional which are something which has to be dealt with by the agent and the airlines and the airline said in the open court, even in their affidavit that we are refunding and we accept this system and we would honour it. In domestic no distinction between LCC and the full scheduled airlines. Refund is the mantra and if they are unable to do so first offer is credit shell culminating into refund.

Mr Mehra informed that Tickets which have been issued in India for travel abroad that the Court has said no to that and will not intervene into that.

Mr Mudgill said that we had gone to court because we wanted the refund of the tickets, which we had issued for passengers to travel within India coming from abroad but then due to last minute cancellation by China and then cancelling of visa, money stuck. Now, if the ticket was issued in 1<sup>st</sup> week of February we wanted that refund also.

Mr Mudgill opened the house for questions.

**Mr. Amaresh Tiwari** wanted to know 1. who is the passenger, the end user or the FTO or the corporate 2. Is this applicable to only carrier who are registered in India or the carrier who are operating in India as well. 3. Based on this can we also tell our customers, who are asking the refund, that we are extending your credit line to 31st March and when we will get the refund we will pass it on to you. Otherwise, whatever the guideline, as explained in the judgement we shall follow the same guideline.

Mrs Gosain said that DGCA has made it very clear that the manifested passenger in the list is the passenger. A passenger comes and asks the agent to book the ticket with the airline and you make the payment to the airline, bulk / advance amount paid by the agent to the airline is an arrangement between the agent and the airline, the court does not recognise that, applicable to the airlines which are registered and operating in India, for foreign airlines DGCA has said that they have to refund, flights in India with the domestic range are covered, if a group starting from a country abroad want go to Nepal, Bhutan while visiting India, in India they want to go various domestic sectors, that refund

that is covered within the domestic sector is covered in the form of credit shell, the court says you can transfer the credit shell, with the permission of the passenger to a third party, that credit shell in the name of the passenger you can transfer in your name and the passenger can get the refund only after 31<sup>st</sup> March 2021 when the airline is going to convert the credit shell into refund.

Replying to a query from Mr. Sanjay Razdan, Mrs Gosain said that the consent of the passenger has to be taken by the agent to transfer the credit shell to a third party. Mr Razdan said that the flight ticket is inbuilt in the package, there is no separate billing, so how can we ask our foreign agent to send us the consent of the passenger, it is not possible and the airlines can take the benefit from this. Here Mrs Gosain said that the agent can come to an understanding with the airline the way the agent wants. Mr Razdan said that with the choice of Credit Shell till 31<sup>st</sup> March 2021, the airlines will go for that and tell the agent that he may take the refund on the 1<sup>st</sup> of April 2021. So most of the airlines will offer us the credit shell which we can utilise as provided by the court. Regarding the refund of ITB Berlin tickets Mrs Gosain said that the court says if the tickets are booked for international travel on a foreign carrier and the booking is ex -India during the lockdown period for travel within the lockdown period, full refund shall be given by the airlines. To this Mr Razdan said that in the case of ITB Berlin the ticket was booked before lockdown and the travel was also before lockdown, how do we get the refund? Mrs Gosain said that in probability Del – Berlin – Delhi ticket should get the refund as per the policy, Mr Mehra said that it is covered by DGCA also in their affidavit.

**Mr. Vishal Yadav** said Tickets booked through wholeseller, airline refunds to the wholeseller, the wholeseller says he would not refund. Here Mrs Gosain and Mr Mehra said that the wholeseller has to refund. To another question by Mr. Yadav, Mrs Gosain said that the credit shell will equal the value of the ticket. Money back will be only on 1<sup>st</sup> April 2021.

**Mr Jaswant** asked that if a ticket is booked before the lockdown period that is in the month of February and the travel was during the lockdown period, can the passenger directly contact the airline for the refund. Mrs Gosain said If the ticket booked directly, then direct refund, if through agent then agent will get the refund. If the passenger wants the refund and has told the agent, the agent will seek the refund on behalf of the passenger.

**Mr Rajnish Kaistha** asked that group advance for a series made in Oct/Nov/Dec for travel in April/May/June, 30% non-refundable advance given, now all

cancelled due to lockdown, ticket not issued, what happens to the 30% advance given, is it refundable? Mrs Gosain said that DGCA has clearly said that the advance money given is between the airlines and the agent, the agent can continue to request the airline for refund, the mechanism has to be worked out between the agent and the airline, we only recognises the manifested passenger. Mr. Mehra said that there is a clause in any other case, this is not specified in the order, the order does not specify that the airline will not give it. So our point here is that let us fight keeping the *any other case* clause in the forefront, this is our escape point to get our money back. No specific direction is given by the court.

**Mr. Manoj Matta** asked that airlines operating from India going out of India. If we purchase tickets before the lockdown for travel during the lockdown, what is the deadline for getting the refund from the airlines? It is not from the Indian carriers, but from those airlines which are operating from India going abroad, the international airlines, say Druk Air, did the court give any direction that by this specific date the refund has to be given to the passengers or to the agents by these airlines? Mrs Gosain said that as far as these foreign airlines are concerned. they are governed by their own refund and cancellation policies. Refund of tickets say from Delhi to Paro by an international airline is not a part of the directions given by the court. Refund can be made if the tickets are booked for an International travel on a foreign carrier and the booking is Ex India during the lockdown period for travel within the lockdown period. Equal status has been given to booking of domestic as well as international carrier for the booking during lockdown and travel during lockdown. Further to a query by Mr Matta, Mrs Gosain said Air India will only issue credit shell.

**Mr. Homa Mistry** said that FIT bookings done on GDS, we went ahead, cancelled on our own and received the refund, but the issue is as per cancellation clause one loses money as the full refund has to be made to the agent. Mrs Gosain said that there is no harm in trying and claiming the full refund in view of these directions, but full refund is only for bookings made during the lockdown.

A representative of **Shibani Ahuja Kapoor** asked that if a group booking has been done through a travel agent, then post lockdown, when the refund comes to the travel agent from the airline will the travel agent refund us with the commission. Mrs Gosain said that refund includes commission plus taxes as per CAR.



**Mr. Anil Dwivedi** said that for tickets booked in Dec or Jan 2020, travelling date is supposed to be during the lockdown period. With the cancellation of visa we cancelled the ticket in the lockdown period, would we receive the full amount or pay the cancellation amount. Mrs Gosain said that this case is covered under directive 6 in all other case, your travel is during lockdown but your booking is prior to that. In fact, you will be covered even if the cancellation is done before the lock down.

The aviation sector is still under lockdown in unlock 5 said Mrs Gosain. The manifested passenger has to give the permission for the credit shell to be utilised by the travel agent elsewhere.

Mr. Mehra said that the rebooking of the credit shell will be done only through the travel agent and any excess or short amount will be adjusted by the airline.

**Mr. Goyal** wanted to know the definition of lockdown. Our lock down started from the day the Chinese visa were cancelled till the day the visas are going to be reissued and further the advance given, in the spirit of the judgement and viewing the force majour, to be adjusted against a credit shell till 31<sup>st</sup> March 2021. A letter to this effect can go the AAI, IATO can take it up with DGCA so that it gives a proper directive to the AAI.

Mrs Gosain said that MHA has recognised it (the lockdown) as a force majour for all commercial transaction. This is one aspect, but regarding the advance payment, the court says we cannot treat it as a process of refund for tickets. We continue to book the tickets against that amount.

Mr. Mehra said that he has just been informed that Indigo has refunded all group reservation amount to the account of the travel agents, if not they can contact the sales staff or IATO office and we shall take it up with the airline. Air India is expecting for refund, the travel agent to produce a copy of the passport to prove that the client was a foreigner and could not come. How can they ask our members to do so? This has been taken up and reply is expected next week. Go Air is not listening to anyone.

Mrs Gosain said that if there is no refund after 31<sup>st</sup> March 2021, as per the directives of the supreme court, we have to start reminding them by mid of March

Mr Mehra said that if no refund by 1<sup>st</sup> of April it is a contempt of court

Mrs Gosain said yes covering the situation as mandated by the Supreme court. You have to understand clause 6 that advanced booking you have made, which is not manifested has to be read in conjunction with the definition given by the DGCA in the affidavit. Let us keep it as a separate business practice.

**Mr. Razdan** said practically for foreign clients it is not possible to take their consent as desired for the refund.

Mrs Gosain said the manifested passenger must be told that if he wants the money to be transferred to the credit shell by the airline he has to give his consent as per policy.

Mr Razdan said that at times the foreign agent refunds the money to the client and I as the Indian agent has to refund to the foreign client, what do we then?

Mrs Gosain said that What you can do is you can apply. You can tell the airline that this is the situation either you are refunding me the money, if not, transfer it to the credit shell which the court has allowed and they will refund after 31<sup>st</sup> March irrespective of the consent of the client

**Mr. Parthiban** said as per the other cases, we still need to get a clarification in writing, firstly about the clients who were booked to travel, even before the official lockdown of 25th of March because most of the European visas have been stopped from 3<sup>rd</sup> of March onwards. Secondly there were many cases where the airline did not even operate in those days out, so how they can claim cancellation? Thirdly there are certain cases where we have already claimed cancellation because we had to cancel the tickets, some airlines have given the refund after deducting the cancellation charges, can we claim full refund without cancellation charges as per the new regulation of the DGCA? Fourthly

With respect to the first point Mrs Gosain said that will be covered under clause 6 and even otherwise the principle of CAR will be applicable.

Mr. Parthiban said the travel agent has booked on behalf of the client, not the client directly, how can we then seek permission in the form a letter from the client for the refund?

Mrs Gosain said that wherever the money has not been paid to the passenger the refund will come to the source from where the payment has been made, so the travel agent is protected.

On the second point Mrs Gosain said that during that period it will be full refund.

Mr. Mudgill thanked Mrs Gosain for the valuable session and her inputs.

Mrs Gosain requested that if there are any further queries that are unanswered they can be sent to her which she shall endeavour to clarify.

Mr Sarkar also conveyed his thanks to Mr Shishodia for taking up the IATO case so seriously and take our cause to the court and we have got very satisfactory results and we hope that in future, also we will win.

Mr. Mudgill opened up the discussion to the house and informed Mr Sarkar that as he was busy in the earlier part of the session, he had announced the name of Mr. Homa Mistry as the new RO for IATO Elections.

Mr Sarkar said that he is sorry for being late as he was addressing the students of IITTM at Noida. Mrs Gosain has clarified the court orders very clearly and now it is our turn to take it up with the individual airlines, if something still unclear IATO is available and we can seek clarification from Mrs Gosain. He thanked the members for their support in filing the case which was very much needed and thanks to the EC for taking the immediate decision on the issue and we shall continue to do like this.

We are sure that something more can be announced by the government very soon, let us hope for the best. He added that the other day he was attending the SEIS meeting and there it was very loudly expressed by the chairman that they have taken up this issue and cleared from Ministry of Commerce on SEIS and it is now with the finance minister and it is on her table, but one thing very clearly mentioned by the chairman that there was the case of MEIS, which is manufacturing and under manufacturing, there is some restrictions which they have put and it is up to December they have extended and maximum of 2 crores of the allowance/ scripts that have allowed. Now situation is that if for the manufacturing, which is so important for the country and MEIS is allowed only up to the maximum of 2 crores then how we can ask for more than 2 crores (for 2019-2020) for SEIS for other sectors and in other prominent sectors, he very clearly mentioned that it is tourism and medical tourism services sector. So now the SEIS when it comes cannot be more than 2 crores, if anybody is to get more than 2 crores there may be some cap. So this is the presumption. The chairman said it is the need of the hour, the tourism industry in the services sector is very badly impacted, as tourism is suffering hence anything has to be done first then

for SEIS for the tourism sector should first get it. The Chairman also mentioned that 90% of our SEIS members are small tour operators, so only 10% of the tour operators will be impacted. Under manufacturing, there is some restrictions, they have put and it is up to December, they have extended and maximum of 2 crores of the allowance/script they have allowed. The Chairman said that if for Manufacturing, which is so important for the country the maximum limit is 2 crores ( for 19-20) then how can we ask for more than 2 crores ( for 19-20) for other sectors? Manufacturing may be discontinued after December but for services sector on SEIS they have asked for some points and in a different shape, they will like to introduce and how they want to get it introduced they have sought for suggestions from the industry and the date has been extended till 12<sup>th</sup> of October 2020. I have spoken to E&Y and they have kindly consented to come back to us with their suggestions by the 6<sup>th</sup> of October. If anyone has any suggestions, please forward to IATO office by the 5<sup>th</sup> of October so that it can be forwarded to E&Y for their consideration.

**Mr. James** felt it unfair and IATO should take it up, fight and challenge it as Rs 2 Crore is nothing for a big agent.

Mr Sarkar reiterated that he has just shared what they have discussed, it is not a decision. He participated in the discussion. on behalf of his company. We cannot fight as it is just a discussion and not a decision.

Mr Goyal said that one cannot challenge a decision which has not been taken. He requested all the members to attend the Shiv Khera session on the 7<sup>th</sup> and the FAITH Conference on the 8<sup>th</sup> where all member association Presidents will address.

Mr Sarkar requested all the members to read all the meeting circulars that are being sent more than once. IATO is working hard for the membership and on the other hand they are not joining in large numbers. He requested all members to join the Shiv Khera session of IATO at 11.30 am on the 7<sup>th</sup> and the FAITH virtual conference on the 8<sup>th</sup> at 11 am.

Mr. Mudgill added that even the minutes of the meeting that we had today are circulated among all the members, if they read they will be updated. He thanked the members for joining and if they still have any queries they can send it to IATO office, it will be forwarded to Mrs Gosain so that you can get the reply.

The meeting ended with thanks to the chair

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