

MAHARASHTRA NATIONAL LAW
UNIVERSITY, NAGPUR

1ST MNLU-N NATIONAL COMMERCIAL MEDIATION COMPETITION, 2023

(VIRTUAL)

APRIL 14-16, 2023



PRELIMINARY ROUND - II COMPETITION PROBLEM

Organized by

Alternative Dispute Resolution Society

&

Centre for Intellectual Property Rights & DPIIT- IPR Chair

IN ASSOCIATION WITH



PAYMENTS PARTNER



EFFORT PARTNER



KNOWLEDGE PARTNER



MEDIA PARTNER

DISAPPEARED IN PLANE SIGHT

FlyEZ Airlines (hereinafter "FlyEZ") is a certified Airline operational worldwide and has its head office in Princetown. FlyEZ has a reputation for being an affordable and reliable medium for passengers to commute. FlyEZ has consistently upgraded its technological systems to keep up with changing needs, to ensure optimum safety and satisfaction to its passengers.

In line with its commitments to its passengers, FlyEZ decided on making provisions for e-ticket booking services. FlyEZ took this step to ensure a hassle-free and digital ticket booking experience for its passengers. Consequently, FlyEZ entered into an agreement with an established European software company called **Sherman Digital Services** (hereinafter "SDS") for providing it with technological solutions including but not limited to live-tracking, communications, etc. SDS was intrigued by FlyEZ's idea of the development of a worldwide digital platform for the management of e-ticket sales. SDS is a celebrated software company, which was founded by Ms. Lisa Smith, with the sole aim of creating and promoting cutting-edge, novel software technology and providing such software services to companies to promote the use of tech-based services in business establishments. FlyEZ and SDS, therefore, worked out a Professional Services Agreement (hereinafter "PSA"), which contained a more detailed description of the Project as well as the support services to be delivered by SDS in September 2021.

The Agreement included a GIPO (Global Intellectual Property Organisation) Mediation Clause followed by GIPO expedited Arbitration Clause.



The following are the relevant Clauses of the Professional Services Agreement:

Ownership of Intellectual Property Rights -

The Client shall own all rights, title, and interest in any and all intellectual property rights, including but not limited to patents, trademarks, copyrights, trade secrets, and other proprietary information, created or developed by the Service Provider in connection with the provision of the services under this Agreement.

Assignment of Intellectual Property Rights -

The Service Provider hereby irrevocably assigns and transfers to the Client all rights, title, and interest in and to any and all deliverables or work product created or developed by the Service Provider in connection with the provision of the services under this Agreement, including any and all intellectual property rights therein, subject to happening of a force majeure event.

License Grant -

The Service Provider grants to the Client a non-exclusive, non-transferable, royalty-free license to use any deliverables or work product created or developed by the Service Provider in connection with the provision of the services under this Agreement solely for the Client's internal business operations.

Confidentiality -

The Client shall maintain the confidentiality of any confidential or proprietary information provided by the Service Provider in connection with the services under this Agreement and shall not disclose such information to any third party without the prior written consent of the Service Provider.

Termination -

Upon termination of this Agreement, the Client shall immediately cease using the deliverables or work product created or developed by the Service Provider and shall return all copies thereof to the Service Provider.

Definition -

For the purposes of this Agreement, a "Force Majeure Event" means any event beyond the reasonable control of the affected party, including but not limited to acts of God, war, terrorism, civil unrest, strikes, lockouts, labour disputes, epidemics, pandemics, government restrictions, or any other similar events that prevent or delay the performance of this Agreement.

Notice -

In the event of a Force Majeure Event, the affected party shall promptly notify the other party of such event and provide all reasonably available information about the event and its likely duration.

Mediation -

Any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity thereof, shall be resolved by mediation in accordance with the GIPO Mediation Rules, which are deemed to be incorporated by reference to this Agreement. The mediation shall be conducted in accordance with the GIPO Mediation Rules, which shall include procedures for the appointment of the mediator, the conduct of the mediation, the termination of the mediation, and the costs of the mediation.

Pursuant to the Agreement, SDS started developing the e-ticketing system on a priority. It is noteworthy that the Airline paid several Million USD for the application to ensure a remarkable system for e-tickets.

On January 5th of 2022, one of the largest ferrying flights of FlyEZ Airline, namely, GR900 was on a scheduled flight from Princetown to Angeland. It is pertinent to note that in this flight, FlyEZ was using the newly developed GPS tracking technology provided by SDS. At 3:36 AM, the flight disappeared from the radar of the Air Traffic Controller (hereinafter "ATC"). This fact was noted by Ms. Raika Pahad, who was the ATC on duty at a town by the name of Brassland. At 3:42 AM, she tried to connect with the pilot. Ms. Pahad said "Come in GR900....do you copy?". There was no response to this message. At 3:44 AM, Ms. Pahad sent the following message "Repeat message, GR900.....do you copy." At 3:50 AM, Ms. Pahad informed Mr. Don Georgio, ATC at Angeland about the issue. The matter was discussed and the two ATCs tried to coordinate their course of action.

FlyEZ carried almost 350 passengers and 16 crew members on a regular 8-hour flight, which lost terminal contact as it hovered over the Ocean and no further communication from GR900 could be made. However, on January 5th 2022, at 6:15 AM it was officially declared that the plane was in an accident, while trying to make an emergency landing in an open field in a deserted area about 400 km from the Airport. FlyEZ made travel arrangements for passengers and crew by road. Post the public announcement of this information, the authorities decided to inform the relatives of the passengers and crew members about this incident. This caused widespread unrest among the relatives of the passengers on board flight GR900

There have been assertions made that the pilot deliberately caused the plane to crash. There were claims that the pilot had crashed the plane on purpose. However, these were expressly denied by FlyEZ officials. FlyEZ released a public statement after the incident that the GR900 crashed while making an emergency landing due to certain technical difficulties. They also declared that there was no loss of life in the incident. Furthermore, there was no evidence in the public domain to prove how the accident happened as it did. It is also noteworthy, that this was not the first time a FlyEZ Flight had to make an emergency landing due to technical difficulties as this had happened twice before. However, during this time, the number of passengers who got seriously injured was the highest.

To preserve its reputation and avoid any legal proceedings against it, FlyEZ invested huge sums of money to be able to compensate the families of the victims who were injured in the said crash and to be answerable to the public at large. Since FlyEZ faced huge losses and reputational damage in the wake of the GR900 incident, it was unable to manage enough funds to fuel the Research and Development costs for the e-tickets Project which was to be managed by SDS. Moreover, due to damage to its reputation, the air ticket sales of FlyEZ also went down, causing further losses. Hence, FlyEZ after some deliberation sent a 'notice' to SDS claiming that they are in a serious financial and reputational crisis because of which they are seriously considering a termination of the PSA.

This 'notice' had a major impact on SDS, who felt that FlyEZ sent this 'notice' very abruptly and also significantly delayed their obligation to pay the remaining tranche of the payment to SDS. Therefore, SDS asserted that in case FlyEZ terminates the PSA, FlyEZ's intellectual property rights in the software shall lapse. Resultantly, SDS requested the

e-ticket software to be duly returned to them.

FlyEZ was of the position that it had already invested huge sums of money in this software and was already undergoing a major financial crunch due to the crash of the GR900 flight and hence was entitled to retain the software application, if the termination takes place.

Additionally, just a few months before the issue of 'notice' by FlyEZ, SDS had applied for a patent for the e-ticket software, which got approved duly by the European Patent Office. Per the PSA, the license to the patent and allied rights such as copyright (since the website was curated in accordance with the requirements and ideas given by the executives at FlyEZ), to the patent were to be vested in the name of FlyEZ after the patent approval. However, it is pertinent to note that the Patent was approved only in Europe and was pending approval in other countries including Princetown. Considering this, SDS claimed their Intellectual Property in their software and suggested that since the patent happens to be approved in Europe, FlyEZ could operate their business from Europe and if that happens only then SDS can duly complete the license transfer procedure as per the PSA. But since FlyEZ had abruptly sent a 'notice' indicating that they may terminate the PSA, the transfer shall be subjected to the said termination. Hence, SDS asserted that all the patent rights shall vest with SDS.

This came as a shock to FlyEZ, which was already facing a myriad of challenges due to the ongoing fiasco. Owing to the ongoing circumstances and the fact that both parties were unable to amicably settle the disputes that ensued, SDS invoked the mediation clause under the Professional Services Agreement, to hold a mediation between the parties to constructively settle the disputes.