IN THE COURT DISTRICT JUDGE (COMMERCIAL COURT-02) :
SOUTH-EAST DISTRICT : SAKET COURTS : NEW DELHI

PRESIDED BY: LALIT KUMAR

In the matter of:

CS (COMM) 322/24

ABS Tour & Travels
Through its Proprietor
Mr. Pankaj Madan
Having office at:
F-7, First Floor,
Kalkaji, Delhi-110019 ….. **Plaintiff**

Versus

SNV Aviation Pvt Ltd.
Through its Authorized Representative
Having Office at:
12th Floor, Urmi Estate,
95, Ganpatrao Kadam Marg,
Lower Parel (West),
Mumbai, Maharashtra-400013

Also at:
Domestic Terminal Building
Indira Gandhi International Airport
Airport Road, New Delhi-110037 ….. **Defendant**

Date of Institution	:	**26.04.2024**
Arguments concluded on	:	**06.02.2026**
Date of Judgment	:	**24.02.2026**
Final Decision	:	**Decreed**

J U D G M E N T

1. Vide this judgement, this court shall dispose of the suit filed by the plaintiff against the defendant for recovery of Rs.1,08,80,000/- (Rupees One Crore Eight Lakhs Eighty Thousand only) alongwith pendent lite interest.

INTRODUCTION

a). The present commercial suit has been instituted by the plaintiff seeking recovery of Rs.1,08,80,000/- towards loss of profits arising out of cancellation of 8 Group PNRs (640 seats) for Delhi – Goa and Goa- Delhi sector for travel between 23.12.2023 and 13.01.2024.

b). The dispute lies in a narrow compass: whether the defendant airline unlawfully cancelled the group bookings after accepting advance consideration, and if so, whether the plaintiff is entitled to loss of profit under Section 73 of the Indian Contract Act, 1872.

Case of the plaintiff:

1.1 (a). Brief facts of the case are that plaintiff is a travel agency particularly engaged in the business of tours and travels which includes booking of air tickets and

ancillary business thereto. That the plaintiff's business is carried out based on the Business-To-Business (B2B) model wherein the plaintiff purchases air tickets in bulk and thereafter supplies the same to brokers who, in turn, supply such tickets to corporate and the end customer and also Business-to-Customer (B2C) model wherein the plaintiff supplies tickets directly to the end customers.

(b). It is further submitted that the plaintiff, having been engaged in the business for more than a decade, has garnered good market reputation among its customers and is well known for its services of providing hassle free experience for booking of air tickets and ancillary Services and Mr. Pankaj Madan i.e. plaintiff's sole proprietor has been duly authorized to contest the present suit on behalf of plaintiff company.

(c). It is further submitted that the Defendant is an airline company that flies under the brand name "Akasa Air" and is a Private Limited Indian Company incorporated in India on 24.11.2020 having its registered office is at 12th Floor, Urmi Estate, 95, Ganpatrao Kadam Marg, Lower Parel (West), Mumbai, Maharashtra - 400013. Further, as the defendant, through its website, claims to be India's fastest-growing and most dependable airline with 20 destinations and 40 routes in India, the plaintiff trusted such representation on Defendant's website and decided to enter into business relationship with the Defendant.

(d). It is further submitted that Defendant offers its services through its website www.akasair.com and in order to book air tickets with the Defendant, agents such as the plaintiff are required to register themselves through the agent login portal on the Defendant's website available at https://agents.akasaair.com/login to obtain the

login credentials. That, as the plaintiff registered as an agent on the Defendant's website, the plaintiff was provided with login credentials and organization code namely AKASA ID-QPDEL9754B vide an email dated 19.10.2022 sent by the Defendant to the Plaintiff. Such login credentials and organization code authorized and enabled the Plaintiff to book PNRs in bulk in order to sell to its customers as per the plaintiff's discretion, business parameters and market demand. That, as a result, the plaintiff entered into an agreement with the Defendant for purchasing Passenger Name Record ("PNR") in bulk for air travel through Akasa Air and, accordingly, the Defendant consented to such an agreement with the Plaintiff.

(e). It is further submitted that as per the set standard procedure of the Defendant, in order to generate PNRs and successfully book air tickets from the Defendant's website, the Defendant mandated payment of 25% of the total booking amount as an advance for generation of PNRs and payment of the remaining 75% of the total booking amount to be made before 21 days prior to the date of scheduled departure of the flight. The Plaintiff had an contract with the Defendant wherein failure to pay 25% of total booking amount as an advance would result in failure to generate the PNRs. That, as a matter of fact, the Plaintiff itself has had successful bookings with the Defendant after following the said 25%-75% payment mechanism.

(f). It is further submitted that on 11.04.2023 and 12.04.2023, the Plaintiff bought 8 PNRs. As each PNR comprised 80 seats, the Plaintiff booked a total of 640 seats through 8 PNRs for flights scheduled on various dates starting from 23.12.2023 to 13.01.2024 on the Delhi-Goa (DEL-GOX) and Goa-Delhi (GOX-DEL) sector. It is further submitted that, for purchase of PRs by agents on the Defendant's website,

payment takes place through an online agency wallet integrated into the Defendant's website from which the amount gets deducted. It is further submitted that the PRs were generated after accepting 25% of the total booking amount towards total consideration amount for the contract entered for these 8 PNRs.

(g). It is further submitted that the plaintiff promptly paid Rs. 4,82,640/- to the Defendant as total 25% advance payment for the 8 PNRs and that the Plaintiff was always ready and willing to make the rest of the payment (75% of the booking amount) as and when such payments became due. However, all of a sudden, on 29.05.2023, after passage of more than 45 days from the date of purchase of the 8 PNRs, the Defendant abruptly cancelled the entire booking of the Plaintiff without giving them any prior intimation which caused huge losses to the Plaintiff such as loss of market reputation, loss of customers, monetary loss, loss of profits/gains, wrongful loss, etc. along with mental agony and harassment. In view of the aforesaid facts, it is clear that the Defendant was guilty of breach of the contract entered into between the Plaintiff and Defendant inasmuch as the same was cancelled after accepting part consideration from the Plaintiff and generation of PNRs. The Plaintiff specifically bought the PNRs near the dates of Christmas and New Year from Delhi to Goa and vice-versa keeping in view the well-known fact in the travel industry that there would be high demand during that time and ticket rates skyrocket when its nearing these occasions.

(h). It is further submitted that it is apparent on the face of the record that the Defendant, for this very reason, cancelled all the 8 PNRS purchased by the Plaintiff in order to sell the tickets themselves at these soaring rates at the relevant time. In

view of the same, as and when the Defendant realized the aforementioned fact, they abruptly cancelled all 8 PNRs booked by the Plaintiff without any explanation given to the Plaintiff in order to earn all the higher profits at the cost of the Plaintiff. That, due to the unwarranted and abrupt cancellation of the Plaintiff's 8 PNRs by the Defendant, the Plaintiff lost the opportunity to earn the profits/gains that it otherwise could have earned if the Defendant had not cancelled the Plaintiff's booking and if the commercial transaction was allowed to be completed. Therefore, the Defendant is liable to make good the loss caused to the Plaintiff due to their abrupt cancellation of the subject 8 PNRs.

(i). It is further submitted that there is no difference between B2B model and B2C model to the extent that fares if both the models get determined on the basis of demand and supply/market forces. That the plaintiff made calls to the officials of the defendant company and had sent emails questioning its abrupt cancellation of all 8 PNRs of the plaintiff and the plaintiff repeatedly requested the Defendant for restoration of its PNRs. However, the officials of the Defendant company chose not to reply to the said emails and phone calls of the Plaintiff or even to inform the Plaintiff of the reason for such cancellation. It is further submitted that on 25.08.2023, the Defendant refunded the 25% advance amount paid by the Plaintiff towards booking of each of the 8 PNRs without there being any request for the same from the Plaintiff. That the refund amounts were in the form of separate transactions as per the respective PRs which were eight in number.

(j). It is further submitted that as the Plaintiff suffered huge loss due to the abrupt cancellation by the Defendant, such refund was not acceptable by the Plaintiff

and the entire refund amount continued to lie unused in the online agency wallet of the Plaintiff on the Defendant's website up to the last date of scheduled flights, i.e., 13.01.2024. It is further submitted that the Plaintiff added funds depending upon its requirement and used the same, thereby leaving the refunded amount untouched. It is further submitted that post cancellation of the PNRs by the Defendant, the Plaintiff got in touch with Mr. Udai Tandon, Sales Head in Defendant company, on 06.06.2023 and 18.06.2023 through his mobile number 91-9717000264 and made him aware about the cancellation of the PNRs. Furthermore, on 06.06.2023 and 18.06.2023, the Plaintiff also intimated about the cancellation of the PNRs to one Ms. Divya Ahuja, Sales Executive in Defendant company, through her mobile number 91-9810755553. After repeated requests and a meeting in the first week of June 2023, Defendant, through an email dated 21.06.2023, offered fares/rates which ranged to approximately Rs.9,000/- (Rupees Nine Thousand) per seat for the 8 PNRs. Moreover, in its offer, the Defendant reduced the seats per PNR 40 seats instead of 80 seats.

(k). It is further submitted that the fares/rates given were now subject to terms and conditions and therefore, the new PNRs were not business-friendly to the Plaintiff and, thus, the offer was not accepted by the Plaintiff. That as a result of the Defendant's failure to resolve the Plaintiff's grievances, the Plaintiff was constrained to issue a legal notice dated 31.07.2023 to the Defendant demanding the aforementioned amount of profits, i.e., Rs. 1,08,80,000/- (Rupees One Crore Eight Lakhs Eighty Thousand) along with legal fees of Rs.55,000/- (Rupees Fifty-Five Thousand) from the Defendant. That, while the Defendant sent its reply dated

01.09.2023 to the legal notice, the Defendant, however, failed to comply with the demands of the Plaintiff in the legal notice. Since the Plaintiff booked a total of 640 seats, the abrupt cancellation of the entire booking by the Defendant costed the Plaintiff the opportunity to earn Rs. 1,08,80,000/- (Rupees One Crore Eight Lakhs Eighty Thousand) in total which is the amount of profits claimed by the plaintiff from the Defendant.

Case of the defendant;

2 (a). Written Statement has been filed on behalf of defendant wherein the defendant has denied each and every averment in the plaint. It is submitted by defendant that plaintiff has presented false and convoluted facts in its petition with a view to make unsustainable claims before this court. Moreover, the Plaintiff's claims cannot be sustained under law. Each of the objections or submissions are made in the alternative and without prejudice to one-another.

(b). It is further submitted that the Defendant, which operates the scheduled commercial carrier, Akasa Air, cancelled 8 PNRs comprising 80 seats each, issued to it for tickets on the Delhi - Goa and Goa - Delhi sectors for travel between December 2023 and January 2024. Further, it has been alleged that the Defendant itself sold these tickets, thus depriving the Plaintiff of the profit it could have made. It is not in dispute that the Plaintiff had paid only 25% of the total sale consideration of the tickets at the time of booking, amounting to Rs. 4,82,280/- (Rupees Four Lakhs Eighty-Two Thousand Two Hundred and Eighty). It is further not in dispute that this amount was refunded to the Plaintiff on 25.08.2023, following the cancellation of the

PNRs.

(c). It is further submitted that the present Suit seeking damages against the Defendant is not maintainable as the Plaintiff has failed to show actual loss suffered due to the alleged breach of contract by the Defendant. It is a cardinal principle of contract law that damages can only be claimed for breach of contract if the breach resulted in or caused any actual loss or damage to the Plaintiff. However, in this case, even when the facts in the Plaint are taken at face value, the Plaintiff has failed to show any loss or damage due to the alleged cancellation of PNRs. The Plaintiff has failed to demonstrate that it sold even a single ticket of the lot comprising 640 tickets to a *bona fide* passenger. Thus, the Plaintiff has failed in demonstrating any actual loss suffered resulting from the cancellation of the PNRs. Further, the Plaintiff has admitted in the plaint that the initial payment made by it at the time of booking was already refunded by the Defendant on 25.08.2023. Therefore, no valid claim is said to be made against the Defendant. Consequently, it is submitted that the present Suit deserves to be dismissed by this Court in *limine*.

(d). It is further submitted that there was no breach of contract on the part of defendant and the defendant has strictly adhere to all the terms and conditions. It is further submitted that plaintiff has failed to show any loss by the alleged breach of contract as the initial amount paid by it has already been refunded by the defendant as the goodwill gesture. Therefore, the refund has put the plaintiff in a situation akin to had there been no contract between the parties, thus, amounting to restitution. For any damages to be sustained, there has to be a showing of actual loss suffered. Further, the plaintiff also failed to show that there was any reasonable certainty, instead of

mere speculation, of gaining the claimed amount as profits in case the PNRs were not cancelled.

(e). It is further submitted that plaintiff's claim for damages does not sustain as it failed to mitigate its alleged loss of profits. It is further submitted that as a prudent businessperson, the plaintiff must have taken reasonable efforts to limit its loss of profits, however, despite having ample opportunity to make profits, the plaintiff has intentionally wasted the same and acted negligently to capitalize on them.

It is further submitted that plaintiff's conduct has been unjustified from the outset, as evidenced by the following instances. Initially, the plaintiff insisted on the restoration of the cancelled PNRs after rejecting the defendant's offer of fresh bookings at reasonable rates. The plaintiff's continued insistence on the restoration of seats prevented any fruitful resolution. Furthermore, the plaintiff's failure to promptly institute the suit was unjustified in view of the fact that the plaintiff desired to claim back the cancelled PNRs. It is further submitted that after the cancellation of the PNRs, the representative of the defendant made various attempts to resolve the issues faced by the plaintiff, however, they have clearly stated that since the seats could not be held after the cancellation of PNRs, the seats reverted to the sale inventory and were made available for booking. As a matter of fact, the defendant was justified to offer the seats to its customers. Being an airline, the defendant could not afford to fly with 640 vacant seats to suffer loss for the faults and breaches of the plaintiff. However, the plaintiff without any reasonable justification kept on with its demand of restoring the seats, some of which were already sold to passengers, thereby, harassing

the defendant. It is further submitted that the plaintiff was well aware that the seats have already been booked by other passengers and therefore, this demand can never be met by the defendant.

(f). It is further submitted that there was a significant delay in the institution of the present suit following the conclusion of pre-institution of the present suit following the conclusion of pre-institution mediation conduced by the Delhi Legal Services Authority. The mediation failure report is dated 01.12.2023, whereas, the suit was filed only on 09.04.2024 i.e. after over four months from the failure of mediation. This delay, in itself, calls into question the plaintiff's conduct. Given the fact that the cancelled PNRs were admittedly booked for dates between 23.12.2023 to 13.01.2023, the plaintiff should have been prompt to institute the present suit following the failure of mediation. However, an inference can be drawn that the plaintiff was not genuinely interested in the restoration of the PNRs. Moreover, after the alleged cancellation of PNRs in June, 2023 and before the institution of the present suit, the plaintiff has admittedly booked several group bookings in accordance with the terms and conditions. It is further submitted that the plaintiff has failed to show any injury or loss suffered by it due to the alleged cancellation of the PNRs. The plaintiff's claim seeking damages for the loss of profits is based on far-fetched speculations which cannot be sustained under law. Hence, the plaintiff has nothing to show that the PNRs were cancelled by the defendant. Therefore, the present suit is liable to be dismissed with cost.

Defendant has also denied all the para wise contents of the suit.

3. Replication to the Written Statement of defendant has been filed on behalf of plaintiff, reiterating the submissions made in the plaint.

4. The present suit was instituted on 26.04.2024 and defendant was ordered to be served on 22.05.2024. Defendant has been duly served on 26.06.2024 and on 24.07.2024, fresh vakalatnama has been filed on behalf of defendant. Defendant was directed to file WS. However, the same was not filed within stipulated period and therefore, filed the WS alongwith an application for condonation of delay under order VIII Rule 1 CPC. However, vide order dated 16.05.2025, the application of defendant was allowed by Ld. Predecessor, subject to cost of Rs. 5,000/- to be paid to the plaintiff and WS filed on behalf of defendant has been taken on record. Thereafter, replication alongwith affidavit of admission/denial of documents have been filed on behalf of plaintiff and on completion of pleadings following issues were framed vide order dated 09.07.2025 by Ld. Predecessor of this court.

1. **Whether the plaintiff is entitled to the damages to the tune of Rs. 1,08,80000/- as loss of profits, on account of the cancellation of PNR by the defendant? OPP**
2. **Whether the plaintiff is entitled to interest @ 18% per annum on the damages? OPP**
3. **Whether the plaintiff is entitled to damages on account of mental agony and harassment, as prayed for? OPP**
4. **Whether the cancellation of the PNR is in line with the agreement between the parties? OPD**
5. **Whether the court has territorial jurisdiction to try and entertain the present suit? OPP**
6. **Whether the plaintiff has complied with section 12A of the Commercial Courts Act? OPP**
7. **Whether no cause of action is accrued to the plaintiff for filing the**

present suit? OPD

8. Whether the plaintiff is estopped from claiming damages on account of principle of mitigation and damages? OPD
9. Whether the claim of the plaintiff for damages is based on speculation and is not substantiated by any concrete ground? OPD
10. Relief.

Thereafter, matter was fixed for PE.

5 (a). The matter then was kept for evidence. In order to prove the case plaintiff has examined AR for plaintiff company Sh. Pankaj Madan, as PW-1, who has tendered his evidence by way of affidavit Ex. PW1/A on similar line as mentioned in the plaint. He also relied upon exhibiting following documents:

1) *Screenshot of email dated 19.10.2022 sent by the defendant to the plaintiff as Ex.PW-1/1.*
2) *Screenshot of booking history showing details of 8 PNRs booked by plaintiff on 11.04.2023 and 12.04.2023 as Ex.P-1 (colly.).*
3) *Printout of tax invoices dated 11.04.2023 and 12.04.2023 generated and downloaded from defendant's website as Ex.P-2 (colly.).*
4) *Printout of screenshot of WhatsApp communication dated 06.06.2023 and 18.06.2023 between the plaintiff and Mr. Udai Tandon, Sales Head of Defendant Company and Ms. Divya Ahuja, Sales Executive in defendant company as Ex.P-3 (colly.).*
5) *Printout of email dated 29.06.2023 sent by plaintiff at 06:22 PM to defendant as Ex.P-4.*
6) *Printout of email dated 21.06.2023 sent by Ms. Divya Ahuja to plaintiff as Ex.P-5 (colly.).*

7) *Printout of email dated 02.07.2023 and 10.07.2023 sent by plaintiff to defendant company as Ex.P-6 (colly.).*

8) *Printout of weekly ledger statements downloaded by plaintiff from defendant's website from 24.08.2023 till 15.09.2023, from 08.10.2023 till 07.11.2023, from 01.12.2023 till 07.01.2024 and from 10.01.2024 till 17.01.2024 as Ex.P-7 (colly.).*

9) *Office copy of legal notice dated 31.07.2023 issued on behalf of plaintiff to defendant as Ex.P-8.*

10) *Original postal receipts dated 01.08.2023 through which legal notice dated 31.07.2023 was issued to the defendant as Ex.P-9.*

11) *Office copy of reply dated 01.09.2023 issued by defendant to plaintiff as Ex.P-10.*

12) *Printout of screenshots from defendants website showing fares of flights as Ex.PW-1/2 (colly.).*

13) *Office copy of mediation application dated 15.09.2023 as Ex.P-11.*

14) *Printout of screenshot of payment of mediation fees of Rs. 25,000/- by plaintiff dated 11.10.2023 as Ex.PW-1/3.*

15) *Original mediation failure report as Ex.P-12.*

16) *Original affidavit filed by plaintiff under Order 11 Rule 6 of Commercial Courts Act as Ex.PW-1/4.*

17) *Original certificate filed by plaintiff under Section 65 B of Indian Evidence Act, 1872 as Ex.PW-1/5.*

6. PW-1 was duly cross examined by Ld. Counsel for defendant and his cross examination is reproduced as under:

> Ques 1. Is it correct that the plaintiff is a sole proprietorship. operating for the last 10 years?
> Ans. Yes.
> Ques 2. I put it to you that the plaintiff has multiple employees who have access to the system where group bookings are generated and cancelled. What do you have to say?
> Ans. Yes, I have multiple employees however they all have no access to the system for group bookings.
> At this stage, witness is shown screen shots from the Facebook page of the plaintiff.
> Ques 3. Is it correct that these are screen shots of the plaintiff's Facebook page?
> Ans. As far as page no. 1 Ex. PW1/D1 is concerned, the same is correct print out of the portion of the Facebook account of the plaintiff however, I cannot say the same about Mark A to Mark C.
> Witness is shown the plaintiff's Facebook page on my iPad, currently active on the Internet.
> Ques 4. Is it correct that this is the plaintiff's Facebook page?
> Ans. Yes.
> Ques 5. Is it correct that Mark A and Mark B of Ex. PW1/D1 are also available on the plaintiff's Facebook page?
> Ans. Yes.
> Ques 6. Since Mark A clearly shows that multiple employees were accepting bookings on behalf of the plaintiff, I put it to you that you have deliberately given a false answer to question no. 2. What do you have to say?
> Ans. The three mobile numbers given in Mark A, one of which is my number were only for the purposes of booking the six pending tickets as mentioned in Mark A.
> Ques 7. I put it to you that Mark B clearly shows the plaintiff had multiple bookings from other Airlines for the Delhi-Goa sector and were being offered for sale during Christmas, New Year and Republic Day. What do you have to say?
> Ans. It is correct. (Vol. It is correct that these are tickets from other Airlines. We are B2B purchaser / seller and B2C purchaser / seller and therefore, we have group bookings from other Airlines also.

Ques 8. Who made the group bookings in question from the plaintiff's side?
Ans. Till 2024, I was the one who did the bookings. After 2024, we have hired more staff to undertake bookings.
Ques 9. I put it to you that as per terms and conditions of all Airlines, the entire amount is never paid at the time of making the bookings and some amount is paid later. What do you have to say? Ans. For every Airlines, payment is made as per 'the system' on each website. 25% payment is taken by Airlines at the time of accepting the group bookings.
Ques 10. Can you explain what do you mean by 'the system'?
Ans. By system I mean the policy being adopted by the Airline, as mentioned there in the website.
Ques 11. I put it to you that in the present case also no demand was ever made by the defendant from the plaintiff for making 25% payment at the time of booking and the said payment was made only as per the policy/terms of the defendant. What do you have to say?
(The witness has requested that this question to be explained to him in Hindi language)
Ans. It is correct. (Vol. We have paid 25% as per the demand of the system).
Ques 12. I put it to you that the booking amount/percentage, at the time of making the booking may vary, depending on the Airline and the lot size. What do you have to say?
Ans. Normally it is 25% i.e. maximum amount at the time of booking in case of group booking. It is upto 30% in case of international travel ticket booking.
Ques 13. I put it to you that the plaintiff has never booked a lot size of 71 tickets or more, either before the bookings in question or any time thereafter. What do you have to say?
Ans. I do not recall.
Ques 14. I put it to you that as per terms/policy of each Airline, the time to make the balance payment is fixed and can never be unspecified or vague. What do you have to say?
Ans. There is always a fixed date and time by which the balance amount has to be paid.
Ques 15. In this case also, the policy of the defendant required payment of the balance amount within a specific time. What do you have to say?

Ans. It is correct.
Ques 16. I put it to you that the list of passengers is not provided upfront at the time of making the booking, and as per the policy of Airlines, including the defendant's Airline the list of passengers are to be provided few days before the flight. What do you have to say?
Ans. It is correct. The details have to be provided atleast seven days before the departure.
Ques 17. I put it to you that the plaintiff could not have proceeded to the payment page on the defendant's website by using the agent portal, without accepting the terms and conditions of the bookings. What do you have to say?
Ans. It is incorrect. (Vol. there was no such option available on the website of the defendant).
(The witness is once again shown Mark C of Ex. PW1/D1 which is the screen shot of the agent booking portal for group bookings on the defendant's website).
Ques 18. 1 put it to you that the said document clearly shows that the terms and conditions need to be accepted by the agent before making the payment. What do you have to say?
Ans. It is correct that it is being seen from this document. However, I will have to check the records of the case and my own records.
Q. I put it to you that you paid 25% of total fair amount for a booking size larger than 71. What have you to say?
Ans. Yes, I paid 25%. Vol. There was a demand of 25% on the system for PNR generation that is what I paid.
Q. I put it to you that that every time to make a booking on the travel agent portal of Akasa Air, you are required to tick the box for compliance with the airline's terms and conditions without which you cannot proceed with the booking. What have you to say?
Ans. When I made the booking, I was not required to click terms and conditions.
Q. Do you vividly remember the booking process for booking made in April, 2023. What have you to say?
Ans. Yes, I remember the booking process.
Q. I put it to you that fares change constantly depending on various factors and fares might even decrease closer to departure date. What have you to say?

Ans. Yes, fares do change and they do at times decrease closure to departure. Vol. However, in the month of December they do not decrease.
Q. I put it to you that due to its dynamic nature airfare pricing follows no define metric and may be speculative. What have you to say?
Ans. Yes.
Q. Is it correct that on 21.06.2023 Akasa Air made an offer of SPNR comprising 40 tickets at approximately Rs.9,000/- per ticket?
Ans. Yes. Vol. They offered me 40 tickets per PNR lot at 9000 whereas the initial booking was for 80 tickets per PNR lot at an average of Rs.3000 per ticket.
Q. I put it to you that even by accepting Akasa Air's offer, going by your calculation you would have still made a profit of roughly Rs.8000 per ticket (17000-9000). What have you to say?
Ans. Yes. Vol. They offered me 40 tickets per PNR lot at 9000 whereas the initial booking was for 80 tickets per PNR lot at an average of Rs.3000 per ticket.
Q. I put it to you that you did not accept this because you were unsure of how profitable the deal would be as prices are speculative. What have you to say?
Ans. Yes.
Q. I put it to you that you made several other booking for this December-January period with Akasa Air and other Air Lines, so you would have made profits there as well. What have you to say?
Ans. Yes. Vol. But not with Akasa
Q. I put it to you that out of the 640 tickets you did not sell a single ticket in all the months that you held on to it. What have you to say?
Ans. Yes I did not sell a single ticket. Vol. I had ongoing discussion regarding these tickets.
Q. You had paid Rs.4,82,280/- for these tickets for corresponding to 25% of total airfare. Is that correct?
Ans. Yes, it is correct.
Q. I put it to you that Akasa Air refunded this entire amount on 25th August, 2023, so you suffered no loss as you received the entire amount back without forfeiture. What have you to say?
Ans. Yes. Vol. The refund was offered after a legal notice was sent.

Q. I put it to you that even using the refunded money you could have made alternate booking perhaps with other airlines and still made a profit. What have you to say?
Ans. Yes. Vol. I chose not to due to ongoing discussion with the airline, the amount was refunded in the portal and not in the bank account.
Q. 1 put it to you that besides these discussions you undertook no other measure to mitigate alleged loss. What have you to say?
Ans. It is correct.
Q. I put it to you that considering your long experience as a travel agent the typical profit margin for such travel agent bookings is around or less than 20%. What have you to say?
Ans. I will not be able to answer. (Objection by Ld. Counsel for the plaintiff to the document Mark-C) We object to the admissibility and relevancy of this document. Plaintiff cannot be confronted with this document"

Thereafter, vide separate statement evidence of plaintiff was closed.

7. Thereafter, matter was kept for defence evidence. In order to prove the case defendant has examined Sh. Tushar Sharma as DW-1, who has tendered his evidence by way of affidavit Ex.DW1/A on similar line as mentioned in Written Statement. He also relied upon his Authorization Letter by way of Board Resolution dated 28.05.2024 as Mark A. However, it is pertinent to mention that during the course of tendering the affidavit the plaintiff has objected to the para no.4, 5, 7 and part of para no.10 of the affidavit being beyond the amended written statement filed by the defendant.

DW-1 was duly cross examined by Ld. Counsel for plaintiff and his cross examination is reproduced as under:

"The Ex. DW1/A filed as per my understanding of the records

maintained by the company. I have been working with the defendant company for around 2½ years. At the time of the booking of subject PNRs, I was not working with the defendant company. I am aware that a reply to the legal notice sent by the plaintiff was sent on behalf of the defendant company to the plaintiff. It is correct that one Mr. Bharat Vansh Bahadur is my Senior in the defendant company. I am aware about the e-mail dated 21.06.2023 was sent on behalf of the defendant company to the plaintiff. There was no cancellation fee demanded by the defendant company from the plaintiff. Vol. Later, the differentiation between the cancellation fee versus forfeiture of an advance payment. There is no document on record to show that the terms and conditions attached with the e-mail dated 21.06.2023 were applicable at the time of the booking. Vol. The terms and conditions available at the website. The said email contains certain terms and conditions applicable to the offer place on record on 21.06.2023. The terms and conditions available on the web-site would have been applicable to the subject PNR at the time of booking".

8. Final arguments heard at length.

During the course of arguments, Ld. Counsel for plaintiff has relied upon following judgments:

(i) **A.T. Brij Paul Singh Vs. State of Gujarat, (1984) 4 SCC 59.**

(ii) **MSK Projects (I) (JV) Ltd. Vs. State of Rajasthan, (2011) 10 SCC 573.**

(iii) **J.G Engineers (P) Ltd. Vs. Union of India, (2011) 5 SCC 758.**

(iv) **Mohd. Salamutuallah Vs. Govt. of A.P., (1977) 3 SCC 590.**

(v) **Cobra Instalaciones Y Servicios, S.A. & Shyam Indus Power Solution (P) Ltd. Vs. Haryana Vidyut Prasaran Nigam Ltd., 2024 SCC OnLine Del 2755.**

(vi) **Deo Kumar Saraf Vs. Union of India, 1988 SCC OnLine Cal 24.**

(vii) State of West Bengal & Ors. Vs. S.K. Maji, 2025 SCC OnLine Cal 3945.

(viii) Union of India Vs. Ibrahim Uddin & Anr., (2012) 8 SCC 148.

Ld. Counsel for defendant has relied upon following judgments:

(i) National Projects Construction Corporation Limited Vs. M/s Ambika Engineers & Consultants O.M.P. 59/2009.

(ii) Batliboi Environment Engineers Ltd. Vs. Hindustan Petroleum Corporation Ltd. & Anr. Civil Appeal No. 1968 of 2012.

(iii) M/s Unibros Vs. All India Radio SLP (Civil) No. 8791/2020.

(iv) Union of India VS. Ahluwalia Contracts (India) Ltd. FAO(OS)(COMM) 108/2023.

(v) Ahluwalia Contracts (India) Ltd. Vs. The Union of India FAO (OS) (COMM) 143/2017.

(vi) Marsons Electrical Industries Vs. FEDDERS LLOYD CORPORATION LTD. O.M.P (COMM) No. 2/2020.

(vii) Kanchan Udyog Ltd. Vs. United Spirits Ltd. 2017 SCC OnLine SC 670.

(viii) M/s Divyam Real Estate Pvt Ltd. Vs. M/s M2K Entertainment Pvt Ltd. O.M.P (COMM) 162/2020.

(ix) Payzu, Limited Vs. Saunders, [1919] KB 581.

(x) Hadley Vs. Baxendel, (1854) 9 Exch 341.

9. Having heard that arguments and perused the record carefully. This court has

gone through the testimonies of witnesses of both the parties and on the basis of documents and pleadings, the issue wise findings are as follows:

ISSUE NO.1: Whether the plaintiff is entitled to damages to the tune of Rs.1,08,80,000/- as loss of profits on account of cancellation of PNR by the defendant? OPP and
ISSUE NO.2: Whether the plaintiff is entitled to interest @ 18% per annum on the damages? OPP

Both the issues i.e. Issue no.1 and 2 are taken up together being interlinked. The onus to prove those issues was upon the plaintiff in terms of Sections 101 to 103 of the Bharatiya Sakshya Adhiniyam, 2023.

The plaintiff has pleaded and proved that it is a registered travel agent of the defendant airline and was duly allotted login credentials and organization code vide email dated 19.10.2022 (Ex.PW1/1). The evidence on record, particularly the booking history (Ex.P-1 colly.) and tax invoices generated from the defendant's portal (Ex.P-2 colly.), establishes that on 11.04.2023 and 12.04.2023 the plaintiff booked 8 PNRs comprising 80 seats each, totaling 640 seats, for travel during the period 23.12.2023 to 13.01.2024 on the Delhi - Goa sector. It is an admitted position that 25% of the total booking amount, i.e. Rs.4,82,280/- was paid by the plaintiff through the defendant's agency wallet and the PNRs were generated.

The generation of PNRs upon receipt of part consideration constitutes acceptance of the offer and completion of a binding commercial contract within the meaning of Sections 2(a), 2(b), 2(d) and 10 of the Indian Contract Act, 1872. The defendant has not disputed receipt of the said amount nor the generation of the PNRs.

The principal defence of the defendant is that for group bookings exceeding 70

passengers, 50% of the fare was required to be paid at the time of booking in terms of the Group Booking Terms and Conditions. However, the defendant has failed to place on record any contemporaneous document to demonstrate that such a stipulation was in force and applicable at the time the bookings were made. DW-1, in cross-examination, admitted that there is no document on record to show that the terms and conditions attached with the email dated 21.06.2023 were applicable at the time of booking. The said email (Ex.P-5 colly.) was admittedly issued subsequent to the cancellation of the PNRs. If 50% advance payment was mandatory, the system would not have generated the PNRs upon payment of 25%. Further, no notice demanding the balance 25% was ever issued to the plaintiff prior to cancellation, nor was the amount forfeited in terms of the alleged clause. The conduct of the defendant is inconsistent with the defence now taken.

In the absence of proof of such contractual stipulation, and in view of Sections 91 and 92 of the Bharatiya Sakshya Adhiniyam, 2023, the plea of non-payment of 50% advance is held to be unsubstantiated and is rejected.

The plaintiff has categorically deposed that the PNRs were abruptly cancelled on 29.05.2023 without notice. The defendant has sought to suggest that the plaintiff could have cancelled the bookings using the PNR credentials. However, no system logs, cancellation records or electronic audit trail have been produced by the defendant. No certificate in terms of Section 63 of the Bharatiya Sakshya Adhiniyam, 2023 has been filed by the defendant in support of such plea. In these circumstances, an adverse inference under Section 114 illustration (g) of the said Act is liable to be drawn against the defendant for withholding the best evidence in its possession. The

cancellation is therefore attributable to the defendant.

Under Section 37 of the Indian Contract Act, parties are bound to perform their respective promises, and under Section 39, a refusal to perform or disabling oneself from performing the promise amounts to breach. By unilaterally cancelling the PNRs several months prior to the scheduled departure without notice or lawful justification, the defendant committed breach of contract.

The next question is whether the plaintiff has established loss of profits to the extent claimed.

The travel period in question covered the Christmas and New Year season, which is judicially noticeable as a peak travel period. The plaintiff has placed on record screenshots of fares prevailing for the said period (Ex.PW1/2 colly.), reflecting ticket prices approximately in the range of Rs.17,000/- per seat and higher as the departure date approached. It may be seen that defendant by putting a suggestion to the plaintiff by comparing the purchase price of Rs.9000/- with the selling price of Rs.17,000/- instead of comparing the purchase price of Rs.9000/- with the original purchase price of approximately Rs.3,000/- at which the plaintiff had bought the PNRs as admitted the calculation so done by the plaintiff. Moreover, no evidence has been brought on record by the defendant. The prices was different from what have been shown by the plaintiff in its document being Ex.PW1/2. Further, DW-1 has admitted in cross-examination that airfares are dynamic and may increase closer to the departure date. The alternative offer made by the defendant on 21.06.2023 at Rs.9,000/- per ticket further demonstrates the escalation in fare.

The claim of the plaintiff is computed on the basis of Rs.17,000/- per seat for

640 seats, amounting to Rs.1,08,80,000/-. The calculation is as follows:

- Number of PNR: 8
- Seats per PNR: 80
- Total seats: 8 × 80 = 640
- Seasonal market fare per seat (as per Ex. PW1/2): Rs.17,000/-
- Total expected revenue: 640 × Rs.17,000/- = Rs.1,08,80,000/-

The said computation is founded upon documentary evidence and admitted market practice and price which were prevalent for the same flights, same date and same route. The law does not require mathematical precision in assessing damages for loss of profit. In **A.T. Brij Paul Singh v. State of Gujarat, (1984) 4 SCC 59**, the Hon'ble Supreme Court held that where performance of a contract is wrongfully prevented, loss of expected profit is recoverable and need not be proved with exactitude. Similarly, in **MSK Projects (I) (JV) Ltd. v. State of Rajasthan, (2011) 10 SCC 573**, it was held that reasonable estimation based on evidence suffices. In **J.G. Engineers (P) Ltd. v. Union of India, (2011) 5 SCC 758**, the Supreme Court reiterated that when a party is prevented from performing a contract, it is entitled to claim profit which it would have earned.

The defendant's contention that no ticket had been sold by the plaintiff prior to cancellation does not defeat the claim. The cancellation occurred several months prior to the travel dates. The opportunity to sell the tickets during the peak season stood extinguished by the defendant's unilateral act. The law does not mandate proof of concluded onward contracts in order to claim loss of profit.

The plea of mitigation is also without merit. The alternative offer made by the defendant materially altered the original contract in terms of seat quantity and pricing. The plaintiff was not bound to accept an inferior or commercially altered offer in order to mitigate loss. Mitigation does not require acceptance of substituted contractual terms.

The refund of the advance amount on 25.08.2023 does not absolve the defendant of liability for breach. Restitution of advance consideration does not extinguish the statutory right to damages under Section 73 of the Contract Act.

This Court is satisfied that the plaintiff has established, on a preponderance of probabilities as required under civil jurisprudence and the Commercial Courts Act, 2015, that the defendant's wrongful cancellation deprived the plaintiff of a real and foreseeable commercial opportunity to earn profit during the peak festive season, and that the quantum claimed is supported by documentary evidence and reasonable commercial assessment.

So far as the Issue no.2 is concerned. The plaintiff has claimed interest @ 18% per annum on the amount of damages allegedly suffered on account of cancellation of 8 PNRs comprising 640 seats. The said claim is consequential to the principal claim of loss of profits quantified at Rs.1,08,80,000/-.

At the outset, it is pertinent to note that the plaintiff has not placed on record any contractual stipulation between the parties providing for payment of interest at the rate of 18% per annum. The documents exhibited by the plaintiff, including the email granting login credentials (Ex.PW1/1), booking history (Ex.P-1 colly), invoices (Ex.P-2 colly), legal notice (Ex.P-8) and reply thereto (Ex.P-10), do not contain any

clause entitling the plaintiff to interest at the claimed rate. There is also no evidence of any trade usage or mercantile custom to substantiate the said rate.

Under Section 34 of the Code of Civil Procedure, 1908, the Court is vested with discretion to award interest on the principal sum adjudged. In commercial transactions, interest exceeding 6% per annum may be awarded, but such rate cannot exceed the contractual rate or the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions. In the present case, neither any contractual rate nor any evidence of prevailing commercial lending rate has been proved.

Further, interest is ordinarily awarded either on a liquidated sum or on a sum wrongfully withheld. In the present matter, the amount of Rs.4,82,640/- admittedly paid by the plaintiff as 25% advance stood refunded on 25.08.2023. The plaintiff has admitted receipt of the said refund. Therefore, there is no subsisting principal amount retained by the defendant on which interest could be claimed as of right.

In the present case, the damages claimed are unliquidated and contested. In such circumstances, the claim for interest at the rate of 18% per annum cannot be sustained as a matter of right.

Even otherwise, the rate of 18% per annum appears excessive and unsupported by any documentary or expert evidence. The plaintiff has not discharged the burden of proof under the law of evidence to establish entitlement to the said rate.

In view of the above discussion, this Court is of the considered opinion that the plaintiff has failed to prove its entitlement to interest @ 18% per annum on the claimed damages.

Accordingly, Issue No.1 is decided in favour of plaintiff and plaintiff is held entitled for Rs.1,08,80,000/- (Rupees One Crore Eight Lakhs Eighty Thousand Only), whereas Issue No.2 is decided against the plaintiff, therefore, the plaintiff is not entitled for interest towards loss of profits.

10. ISSUE NO. 3 : "Whether the plaintiff is entitled to damages on account of mental agony and harassment, as prayed for? OPP."

The onus to prove this issue was upon the plaintiff.

The plaintiff has pleaded that the abrupt cancellation of 8 PNRs comprising 640 seats by the defendant on 29.05.2023, without prior intimation, caused not only pecuniary loss but also loss of market reputation, harassment and mental agony to the sole proprietor.

Under Section 73 of the Indian Contract Act, 1872, compensation is awarded for loss or damage caused by breach of contract which naturally arose in the usual course of things or which the parties knew to be likely at the time of contract. The law is well settled that damages in contract are compensatory and not punitive. The Hon'ble Supreme Court in **A.T. Brij Paul Singh v. State of Gujarat, (1984) 4 SCC 59**, has held that compensation must be based on actual loss proved and not on conjecture. Similarly, in **Kanchan Udyog Ltd. v. United Spirits Ltd., 2017 SCC OnLine SC 670**, it has been reiterated that speculative and remote damages are not recoverable.

As regards compensation for mental agony, it is ordinarily granted in cases involving personal injury, consumer disputes affecting individual rights, or tortious

conduct causing harassment. In purely commercial transactions between business entities, courts have consistently exercised restraint in awarding non-pecuniary damages unless there is cogent and independent evidence of harassment beyond the ordinary incidents of commercial breach.

In the present case, the dispute arises out of a commercial B2B transaction between a travel agency and an airline. The plaintiff has not led any independent evidence to substantiate mental agony or harassment apart from his own oral assertion. No material has been placed on record to demonstrate public humiliation, defamation, coercion, or any conduct amounting to an independent tort. The claim for mental agony is neither separately quantified nor supported by documentary or medical evidence. Mere assertion in affidavit evidence, without corroboration, does not discharge the burden under Section 101 of the Bharatiya Sakshya Adhiniyam, 2023.

Even assuming *arguendo* that cancellation was unjustified, the remedy in a commercial contract lies in pecuniary compensation for proved financial loss and not in award of damages for mental distress, unless exceptional circumstances are demonstrated. Such exceptional circumstances are conspicuously absent in the present case.

In view of the aforesaid discussion, this Court is of the considered opinion that the plaintiff has failed to establish, by cogent and reliable evidence, that he is entitled to damages on account of mental agony and harassment arising out of the subject commercial transaction.

Accordingly, Issue No. 3 is decided against the plaintiff.

11. ISSUE NO.4 : Whether the cancellation of the PNR is in line with the agreement between the parties? OPD

1. The onus to prove this issue was upon the Defendant. The Defendant has pleaded that the cancellation of 8 PNRs comprising 640 seats was strictly in accordance with the "Group Booking Terms and Conditions" governing bookings of lot size exceeding 70 passengers, which allegedly mandated payment of 50% of the total fare at the time of booking. It is contended that since the Plaintiff paid only 25% of the total fare amount, no valid contract subsisted and the cancellation was justified.

2. It is not in dispute that the Plaintiff was a registered agent on the defendant's portal and was issued login credentials vide email dated 19.10.2022 (Ex.PW-1/1). It is further admitted that on 11.04.2023 and 12.04.2023, the plaintiff generated 8 PNRs of 80 seats each (Ex.P-1 colly; Ex. P-2 colly) and paid Rs.4,82,640/- towards 25% of the total booking amount. The PNRs were successfully generated and tax invoices were issued by the defendant. These facts clearly establish that a concluded contract came into existence between the parties within the meaning of Sections 2(h) and 10 of the Indian Contract Act, 1872.

3. The principal defence of the defendant is that for group bookings exceeding 70 seats, 50% advance was mandatory. However, the defendant has failed to produce any contemporaneous document to establish that such a condition was part of the contractual framework at the time of booking in April 2023. During cross-

examination, DW-1 candidly admitted that there is no document on record to show that the terms and conditions attached with the email dated 21.06.2023 were applicable at the time of booking of the subject PNRs. DW-1 further admitted that he was not in employment with the defendant at the time of the booking and had no personal knowledge of the system configuration in April 2023.

4. No system log, digital acceptance record, server extract, or contemporaneous terms governing the April 2023 booking have been placed on record to substantiate the plea of mandatory 50% advance. The burden of proof under Sections 101 to 103 of the Bharatiya Sakshya Adhiniyam, 2023 squarely lay upon the defendant, and the same has not been discharged.

5. It is further noteworthy that the defendant never issued any notice or communication to the plaintiff demanding payment of the alleged shortfall of 25% prior to cancellation. The scheduled flights were between 23.12.2023 and 13.01.2024, whereas the cancellation occurred on 29.05.2023, several months prior to the date when the balance amount admittedly became payable. Even assuming arguendo that 50% advance was required, elementary principles of contractual fairness and commercial prudence required the defendant to call upon the plaintiff to cure the alleged default before resorting to cancellation.

6. Instead of invoking any forfeiture clause, the defendant refunded the entire advance amount on 25.08.2023. Such conduct is inconsistent with the plea that cancellation was effected strictly under a binding forfeiture provision. If the plaintiff had indeed committed a contractual breach justifying cancellation, the defendant would have acted in accordance with the alleged clause permitting forfeiture rather

than refund.

7. The Hon'ble Supreme Court in **A.T. Brij Paul Singh v. State of Gujarat, (1984) 4 SCC 59**, and **J.G. Engineers (P) Ltd. v. Union of India, (2011) 5 SCC 758**, has held that termination or rescission of a contract must strictly conform to the contractual stipulations, failing which it amounts to wrongful termination. In the present case, the defendant has failed to establish strict compliance with any enforceable contractual term authorizing cancellation.

8. The generation of PNRs upon acceptance of 25% advance, issuance of tax invoices, and absence of any contemporaneous objection by the defendant demonstrate that the contractual arrangement proceeded on the basis of the 25%-75% payment structure as asserted by the plaintiff. The defendant's subsequent reliance upon an unproven 50% condition appears to be an afterthought.

9. In view of the foregoing discussion, this Court holds that the defendant has failed to prove that the cancellation of the 8 PNRs dated 29.05.2023 was in accordance with the agreement between the parties. On the contrary, the evidence on record establishes that the cancellation was unilateral and not in conformity with the contractual framework proved before this Court.

10. Accordingly, Issue No. 4 is decided against the defendant.

12. ISSUE NO. 5: Whether this Court has territorial jurisdiction to try and entertain the present suit? OPP

The onus to prove this issue was upon the plaintiff. The plaintiff has pleaded that it carries on business from its office situated at F-7, First Floor, Kalkaji, New

Delhi-110019 and that the part payment of 25% advance amounting to Rs.4,82,640/- for booking of 8 PNRs was made from the said Delhi office through the defendant's online agent portal. It is further pleaded that upon such payment, the PNRs were generated; that subsequent cancellation of the PNRs was communicated to and accessed by the plaintiff at its Delhi office; that refund was credited in the agency wallet which was accessed in Delhi; that all emails and communications were sent from and received at Delhi; and that pre-institution mediation under Section 12A of the Commercial Courts Act, 2015 was conducted at Saket Courts, Delhi.

PW-1, in his affidavit Ex.PW1/A, has categorically deposed to the aforesaid facts. In his examination-in-chief, he specifically stated that the part payment was made from the Delhi office; that the PNRs were generated upon acceptance of payment; that cancellation and refund were accessed from the desktop computer at the Delhi office; and that communications were exchanged from Delhi. This testimony remained unshaken in cross-examination. No suggestion was put to PW-1 disputing that the plaintiff operates from Delhi or that the impugned transactions were accessed and acted upon from Delhi.

The documentary evidence on record supports the said position. The email granting login credentials (Ex.PW1/1), booking screenshots and invoices (Ex.P-1 colly, Ex.P-2 colly), WhatsApp and email communications (Ex.P-3 to Ex.P-6), ledger statements reflecting refund (Ex.P-7 colly), legal notice and reply (Ex.P-8 to Ex.P-10), and mediation documents (Ex.P-11 and Ex.P-12) collectively demonstrate that material events forming part of the cause of action were acted upon and communicated at Delhi. The electronic records are supported by a certificate under

Section 65B of the Evidence Act (Ex.PW1/5).

On the other hand, the defendant has not produced any document to establish that the parties agreed to confer exclusive jurisdiction on any court outside Delhi. DW-1, in his cross-examination, admitted that there is no document on record to show that the terms and conditions attached with the email dated 21.06.2023 were applicable at the time of booking. No jurisdiction ouster clause has been proved in accordance with law.

In terms of Section 20 (c) of C.P.C, a suit may be instituted in a court within whose jurisdiction the cause of action, wholly or in part, arises. It is a settled proposition of law that even if a part of the cause of action arises within the territorial limits of a court, such court would have jurisdiction to entertain the suit. The Hon'ble Supreme Court in **A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies (1989) 2 SCC 163** has held that cause of action arises at the place where the contract is made, performed, or where payment is to be made. Further, in **Kusum Ingots & Alloys Ltd. v. Union of India (2004) 6 SCC 254**, it has been observed that even a fraction of cause of action is sufficient to confer jurisdiction.

In the present case, the advance payment was made from Delhi; acceptance of such payment resulted in generation of PNRs; communications regarding cancellation were received and responded to from Delhi; refund entries were accessed in Delhi; and pre-institution mediation proceedings were conducted in Delhi. These facts constitute integral and material parts of the cause of action.

The mere fact that the defendant has its registered office at Mumbai does not divest this Court of jurisdiction when a substantial part of the cause of action has

arisen within Delhi. In the absence of a valid and proved exclusive jurisdiction clause, the general provisions of Section 20 of CPC would govern.

Accordingly, this Court holds that a substantial and material part of the cause of action arose within the territorial jurisdiction of this Court. The objection of the defendant regarding territorial jurisdiction is without merit and is rejected.

Hence, Issue no.5 is decided in favour of the plaintiff and against the defendant. It is held that this Court has the territorial jurisdiction to try and entertain the present suit.

13. ISSUE NO.6 : Whether the plaintiff has complied with Section 12A of the commercial courts act? OPP

The onus to prove this issue was upon the plaintiff. Section 12A of the Commercial Courts Act, 2015 mandates that a commercial suit which does not contemplate any urgent interim relief shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in the manner prescribed. The said provision has been held to be mandatory in nature by the Hon'ble Supreme Court in **Patil Automation Pvt. Ltd. & Ors. v. Rakheja Engineers Pvt. Ltd., (2022) 10 SCC 1**, wherein it has been authoritatively declared that compliance with Section 12A is a condition precedent to the institution of a commercial suit, except where urgent interim relief is sought. The said position has been reiterated in **Yamini Manohar v. T.K.D. Keerthi, (2023) 6 SCC 191**.

In the present case, the suit is one for recovery of damages and does not

contemplate any urgent interim relief. Therefore, compliance with Section 12A was mandatory.

The plaintiff, through PW-1 (Sh. Pankaj Madan), has specifically deposed in his affidavit Ex.PW1/A that prior to institution of the present suit, pre-institution mediation was initiated before the Delhi Legal Services Authority (DLSA), Saket, vide Mediation Application No. 1057/09/SE/MED/DLSA/2023. It has further been deposed that notice of the said proceedings was issued to the defendant; that the defendant participated in the mediation proceedings; that mediation sessions were conducted; and that ultimately the mediation failed and proceedings were closed on 01.12.2023.

To substantiate the said averments, the plaintiff has proved on record:

- Ex. P-11 – Office copy of mediation application dated 15.09.2023;
- Ex. PW-1/3 – Proof of payment of mediation fees of Rs.25,000/- dated 11.10.2023;
- Ex. P-12 – Original Mediation Failure Report dated 01.12.2023 issued by the competent authority.

The Mediation Failure Report (Ex.P-12) clearly records that the matter was not settled and that the proceedings stood closed on 01.12.2023.

During cross-examination of PW-1, no suggestion was put disputing the institution of mediation proceedings, the participation of the defendant therein, or the issuance of the failure report. The authenticity of Ex.P-11, Ex.PW-1/3 and Ex.P-12 was not challenged. The defendant has not led any evidence to rebut the existence or

validity of the mediation proceedings.

DW-1, in his examination-in-chief as well as cross-examination, has not denied that mediation proceedings were conducted. There is no material on record to show that the mediation was not in accordance with law or that the failure report is defective.

The contention raised by the defendant regarding delay between the date of mediation failure (01.12.2023) and filing of the present suit is legally untenable. Section 12A merely requires exhaustion of the remedy of pre-institution mediation prior to institution of the suit. The statute does not prescribe any limitation period within which the suit must be filed after failure of mediation. The requirement is one of prior compliance, not immediate institution.

From the documentary evidence led by the plaintiff, particularly Ex.P-11, Ex. PW-1/3 and Ex.P-12, this Court is satisfied that:

1. The plaintiff duly invoked the mechanism of pre-institution mediation under Section 12A;
2. The defendant was served and participated in the mediation process;
3. The mediation proceedings culminated in a failure report dated 01.12.2023; and
4. The present suit was instituted thereafter.

Thus, the mandatory requirement under Section 12A of the Commercial Courts Act, 2015 stands fully complied with.

Accordingly, Issue No. 6 is decided in favour of the plaintiff and against the

defendant.

14. ISSUE NO.7 : "Whether no cause of action has accrued to the plaintiff for filing the present suit? OPD"

The onus to prove this issue was upon the defendant. The defendant has pleaded that the present suit is devoid of cause of action and is liable to be dismissed. It is contended that since the advance amount of Rs.4,82,280/- was refunded and no actual loss was suffered, the plaintiff had no enforceable right to sue.

At the outset, it is settled law that "cause of action" comprises a bundle of material facts which are required to be proved for obtaining a decree. It is equally settled that while determining existence of cause of action, the plaint must be read as a whole and the defence taken in the written statement is immaterial for such determination. Reference in this regard may be made to the judgments of the Hon'ble Supreme Court in **A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Salem, (1989) 2 SCC 163** and **Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706**.

In the present case, the plaintiff has specifically pleaded and proved that:

1. The plaintiff was registered as an authorised agent of the defendant and was allotted login credentials vide email dated 19.10.2022 (Ex. PW1/1).
2. The plaintiff booked 8 PNRs comprising 640 seats on 11.04.2023 and 12.04.2023 (Ex. P-1 colly; Ex. P-2 colly).
3. An amount of Rs.4,82,640/- towards 25% advance was paid by the

plaintiff through the defendant's portal.

4. The said PNRs were allegedly cancelled on 29.05.2023 without prior notice.
5. Subsequent communications were exchanged (Ex.P-3, Ex.P-4, Ex.P-6 colly).
6. Legal notice dated 31.07.2023 was issued (Ex.P-8) and replied to by the defendant (Ex.P-10).
7. Pre-institution mediation under Section 12A of the Commercial Courts Act, 2015 was undertaken and failed vide report dated 01.12.2023 (Ex. P-12).

The plaintiff has categorically deposed that cause of action first arose on 29.05.2023 when the PNRs were cancelled and continued thereafter upon failure of the defendant to restore the bookings or compensate the plaintiff.

The defendant, in its written statement and through DW-1, has admitted booking of 8 PNRs, receipt of 25% advance, refund of the said amount on 25.08.2023, and exchange of legal notice and mediation proceedings.

The defence taken is that the plaintiff failed to comply with the alleged requirement of 50% advance for group bookings exceeding 70 seats and therefore no valid contract subsisted. However, DW-1 in cross-examination admitted that he was not employed with the defendant at the time of booking and further admitted that there is no document on record to conclusively establish that the specific terms and conditions relied upon were made applicable to the plaintiff at the time of booking.

Thus, the existence of a commercial transaction, payment of advance consideration, and subsequent cancellation are not in dispute. Whether such cancellation was justified or whether damages are ultimately payable are matters pertaining to merits and quantum. However, the existence of a dispute arising out of cancellation of PNRs after receipt of consideration unmistakably constitutes a bundle of material facts giving rise to a civil right to sue.

Under Section 10 and Section 73 of the Indian Contract Act, 1872, where breach of contract is alleged, a corresponding right to seek compensation accrues. Under Section 101 of the Bharatiya Sakshya Adhiniyam, 2023, the burden to establish absence of cause of action lay upon the defendant, which has not been discharged.

The refund of advance amount does not extinguish the plaintiff's claim for damages, if otherwise maintainable. The question whether damages are speculative or mitigated pertains to Issues No.1, 8 and 9, and cannot negate the accrual of cause of action.

Accordingly, this Court is satisfied that the plaint discloses clear and specific material facts constituting cause of action and the same have been substantiated by documentary and oral evidence.

In view of the above discussion, Issue No.7 is decided against the defendant. It is held that a valid and subsisting cause of action accrued in favour of the plaintiff for filing the present suit.

15. ISSUE NO.8 : "Whether the plaintiff is estopped from claiming damages on account of principle of mitigation of damages? OPD"

The onus to prove this issue was upon the defendant. The defendant has contended that the plaintiff failed to mitigate the alleged loss of profits on account of cancellation of 8 PNRs comprising 640 seats, inasmuch as the plaintiff did not accept the alternative offer dated 21.06.2023 and did not utilise the refunded amount of Rs.4,82,280/- for making alternate bookings. It is further contended that the plaintiff admitted in cross-examination that no other steps were undertaken to mitigate the alleged loss and, therefore, the claim for damages is barred by the principle of mitigation.

Per contra, the plaintiff has asserted that the alternative offer was materially different from the original booking, imposed fresh terms and conditions, reduced the number of seats from 80 per PNR to 40 per PNR and substantially altered the commercial parameters. It is further contended that refund of advance payment does not absolve the defendant of liability for breach nor does it extinguish the plaintiff's claim for loss of profits.

It is an admitted position on record that the plaintiff booked 8 PNRs comprising 640 seats on 11.04.2023 and 12.04.2023 (Ex.P-1 colly, Ex.P-2 colly). The defendant accepted 25% advance amounting to Rs.4,82,640/-. The said PNRs were cancelled on 29.05.2023 and the refund of the advance amount was processed on 25.08.2023.

The alternative offer dated 21.06.2023 (Ex.P-5 colly) offered 8 PNRs with only 40 seats per PNR at approximately Rs.9,000/- per seat, subject to fresh terms and

conditions. PW-1 has deposed that the original booking was for 80 seats per PNR at an average of approximately Rs.3,000/- per seat. The cross-examination of DW-1 reveals that there is no document on record to demonstrate that the terms and conditions attached with the email dated 21.06.2023 were applicable at the time of the original booking.

Thus, the so-called alternative offer was not restoration of the earlier booking but a fresh commercial proposal, altering both seat capacity and fare structure.

Section 73 of the Indian Contract Act, 1872 contemplates compensation for loss arising naturally from breach. The Explanation embodies the principle that the aggrieved party must take reasonable steps to mitigate loss. However, it is equally settled that the burden to prove failure to mitigate lies upon the party raising such defence.

The Hon'ble Supreme Court in **A.T. Brij Paul Singh v. State of Gujarat, (1984) 4 SCC 59**, has held that once breach is established, loss of profit flowing naturally therefrom is recoverable, and precise mathematical proof is not indispensable. In **MSK Projects (I) (JV) Ltd. v. State of Rajasthan, (2011) 10 SCC 573**, it has been held that the burden to show that reasonable steps to mitigate were available lies upon the party alleging failure. Further, in **J.G. Engineers (P) Ltd. v. Union of India, (2011) 5 SCC 758**, the Hon'ble Supreme Court held that an aggrieved party is not bound to accept a fundamentally altered or disadvantageous substitute contract.

In view of the aforesaid settled propositions, mitigation does not compel the injured party to accept a materially altered commercial arrangement or to enter into speculative substitute transactions to protect the party in breach.

The defendant has failed to produce any cogent evidence to demonstrate that the offer dated 21.06.2023 was commercially equivalent to the original contract, that identical or substantially similar inventory was available in the market enabling the plaintiff to secure 640 seats on comparable commercial terms. That the plaintiff deliberately avoided a reasonable opportunity to mitigate loss.

The mere fact that the plaintiff did not accept the fresh proposal or did not utilise the refunded amount for alternative bookings does not, *ipso facto*, establish failure to mitigate. The refund was processed nearly three months after cancellation and subsequent to issuance of legal notice. Restitution of advance payment does not extinguish the right to claim consequential damages arising from breach.

The admission of PW-1 in cross-examination that no other steps were undertaken must be read in the context of ongoing negotiations and the altered commercial terms offered by the defendant. In absence of proof that reasonable and commercially viable alternatives were available, the defence of mitigation cannot be sustained.

The burden cast upon the defendant under Sections 101 to 103 of the Evidence Act (now Bharatiya Sakshya Adhiniyam) has not been discharged.

Accordingly, this Court holds that the defendant has failed to establish that the plaintiff neglected to take reasonable steps to mitigate the alleged loss or that the plaintiff is estopped from claiming damages on that account.

Issue No.8 is decided against the defendant and the defence of estoppel on the ground of failure to mitigate damages is hereby rejected.

16. ISSUE NO. 9: "Whether the claim of the plaintiff for damages is based on speculation and is not substantiated by any concrete ground? OPD."

Onus to prove this issue was upon the defendant.

1. The defendant has contended that the plaintiff's claim for damages to the tune of Rs.1,08,80,000/- is speculative, hypothetical and not supported by any concrete material, inasmuch as the plaintiff admittedly did not sell even a single ticket out of the 640 seats booked; the 25% advance amount stood refunded; airfare pricing is dynamic and uncertain; and the plaintiff failed to mitigate the alleged loss.

2. Per contra, the plaintiff has asserted that 8 PNRs comprising 640 seats were validly generated on 11.04.2023 and 12.04.2023 upon payment of 25% advance amounting to Rs.4,82,640/-, as reflected from Ex. P-1 (colly) and Ex. P-2 (colly). It is the case of the plaintiff that the defendant unilaterally cancelled the said PNRs on 29.05.2023 without notice, despite the plaintiff being ready and willing to pay the balance 75% within the stipulated time. The plaintiff has relied upon screenshots of the defendant's website (Ex.PW1/2 colly) to demonstrate that fares for the relevant period (23.12.2023 to 13.01.2024) were being sold at rates ranging from Rs.17,000/- to Rs.26,667/- per seat.

3. From the evidence on record, it stands established that the PNRs were generated after acceptance of 25% advance. The defendant has not disputed generation of the PNRs. DW-1, in cross-examination, admitted that there is no document on record to show that the alleged requirement of 50% advance payment was specifically applicable and communicated at the time of booking. It is further

admitted that no cancellation fee was levied and that the amount was refunded subsequently on 25.08.2023.

4. Once PNRs were generated and consideration partly accepted, a concluded contract came into existence within the meaning of Sections 10 and 37 of the Indian Contract Act, 1872. The unilateral cancellation thereafter amounts to breach, unless justified strictly in terms of the governing conditions, which justification has not been satisfactorily proved.

5. The core question under this issue is whether the claim for loss of profits is speculative.

6. Section 73 of the Indian Contract Act, 1872 provides that when a contract is broken, the party who suffers by such breach is entitled to receive compensation for any loss which naturally arose in the usual course of things from such breach. It is settled law that loss of profit is a permissible head of damages provided there is reasonable certainty of its occurrence.

7. In **A.T. Brij Paul Singh v. State of Gujarat, (1984) 4 SCC 59**, the Hon'ble Supreme Court held that loss of expected profit can be awarded where breach is established and the nature of the contract indicates that profit would have been earned in the ordinary course. Similarly, in **MSK Projects (I) (JV) Ltd. v. State of Rajasthan, (2011) 10 SCC 573**, it was held that damages need not be proved with mathematical precision and a reasonable estimate based on material on record is permissible. Further, in **J.G. Engineers (P) Ltd. v. Union of India, (2011) 5 SCC 758**, it was reiterated that once breach is established, the aggrieved party is entitled to compensation for loss which is the natural consequence of such breach.

8. In the present case, the plaintiff has proved through Ex.PW1/2 (colly) that during the relevant festive season of December - January, the fares on the same sector were being displayed at approximately Rs.17,000/- per ticket and at times even higher. The defendant has not placed any contemporaneous fare data to rebut the said assertion. Mere suggestion in cross-examination that airfares are dynamic or speculative is insufficient to discharge the burden cast upon the defendant under Sections 101 - 103 of the Bhartiya Sakshya Adhiniyam, 2023.

9. The contention that the plaintiff did not sell any ticket is also not determinative. The loss claimed is loss of opportunity arising from cancellation of a confirmed group inventory during peak season. In commercial transactions, especially in the travel industry, group bookings for festive periods are made precisely to capitalize on predictable seasonal demand. The defendant itself, through email dated 21.06.2023 (Ex.P-5 colly), offered fresh PNRs at Rs.9,000/- per seat, thereby implicitly acknowledging the commercial viability of the sector and the period in question.

10. The argument that refund of the advance amount restored the parties to their original position is legally untenable. Refund of principal does not extinguish the claim for consequential damages flowing from breach. Section 73 of the Contract Act permits compensation in addition to restitution. The refund merely neutralized the advance; it did not compensate for the lost commercial advantage.

11. As regards mitigation, the plaintiff has admitted that no alternate booking was made using the refunded amount. However, the doctrine of mitigation does not oblige an aggrieved party to accept altered contractual terms or reduced

inventory under fresh conditions. The defendant's alternative offer involved reduction of seats from 80 to 40 per PNR and imposition of new terms. Refusal thereof cannot, in the facts of the present case, render the claim speculative.

12. The defendant has failed to lead cogent evidence to show that the claimed rate of Rs.17,000/- per seat was unrealistic or improbable. No expert evidence, no system logs, and no backend records have been produced to demonstrate otherwise. An adverse inference is liable to be drawn against the defendant for withholding the best evidence within its possession.

13. On cumulative appreciation of documentary exhibits, oral testimony, and admissions in cross-examination, this Court is of the considered view that the plaintiff's claim is founded upon contemporaneous fare data, industry practice, and a calculable differential between booking cost and prevailing market rate. The quantification may be subject to scrutiny under Issue No.1; however, it cannot be said that the claim *per se* is speculative or devoid of concrete foundation.

In view of the foregoing discussion, and applying the settled principles governing award of damages for breach of contract, this Court holds that the defendant has failed to discharge the onus cast upon it.

Accordingly, Issue No.9 is decided against the defendant and in favour of the plaintiff.

Distinguish of Case Laws:

17. The defendant has relied upon various judgements in support of its contentions

regarding absence of breach, speculative nature of damages, requirement of proof of actual loss, and duty to mitigate. The propositions of law laid down in the said authorities are well settled and unexceptionable. However, upon careful scrutiny of the factual matrix of the present case, this Court finds that the said judgments are clearly distinguishable on facts and do not advance the case of the defendant.

1. **National Projects Construction Corporation Ltd. (Supra)** - The said judgment pertains to interference with arbitral awards and reiterates the limited scope of judicial review in arbitral matters, particularly in relation to claims of loss of profits. The present proceedings are not in the nature of objections to an arbitral award but a civil suit seeking adjudication of breach and consequential damages on the basis of pleadings and evidence led before this Court. The evidentiary appreciation in the present case is *de novo* and not circumscribed by the parameters under Section 34 of the Arbitration and Conciliation Act. Hence, the ratio of the said judgment is inapplicable to the controversy at hand.

2. **In Batliboi (supra)**, the Hon'ble Supreme Court dealt with speculative claims of loss of profit in the context of a terminated works contract, where there was insufficient material to substantiate the quantum claimed. In the present case, the cancellation of 8 confirmed PNRs after acceptance of part consideration and generation of booking records is an admitted fact. The plaintiff has led documentary evidence including booking records, invoices and screenshots (Ex.P-1, Ex.P-2, Ex.PW1/2), and has established the prevailing fare trends during the peak season period. The claim is founded upon identifiable seats, specified travel dates, and contemporaneous market rates. Therefore, unlike **Batliboi (supra)**, the claim herein is

not a hypothetical projection detached from contractual substratum but arises from a specific commercial transaction which stood frustrated by unilateral cancellation.

3. **In M/s Unibros (supra)**, the Court reiterated that damages for loss of profit must be proved and cannot be granted mechanically. The said proposition is unexceptionable. However, in the present case, the defendant's own conduct of issuing fresh offer dated 21.06.2023 at substantially enhanced rates (Rs. 9,000/- per seat for reduced lot size), coupled with evidence that fares subsequently rose up to Rs. 17,000/- and beyond (Ex.PW1/2), substantiates the commercial value of the cancelled inventory. The defendant's offer itself demonstrates the margin potential embedded in the original booking. Thus, the present case stands on materially different footing where the probability of profit is demonstrated through contemporaneous evidence.

4. **Union of India Vs. Ahluwalia Contracts (India) Ltd. (supra)** and **Ahluwalia Contracts (India) Ltd. Vs. Union of India (supra)** - These decisions relate to construction contracts and emphasize strict proof of loss of profits, generally computed as percentage of contract value in infrastructure projects. The contractual matrix therein involved long-term execution contracts, variation clauses and complex performance obligations. In contrast, the present case concerns specific, time-bound airline seat inventory for a peak seasonal window, where price escalation is a matter of industry knowledge and contemporaneous data. The analogy to infrastructure contract jurisprudence is misplaced. The present dispute concerns cancellation of confirmed commercial inventory in a dynamic pricing market, and the evidentiary standard applicable must be viewed in that commercial context.

5. **In Marsons Electrical Industries (Supra)** - This authority again concerns arbitral adjudication and emphasizes that loss of profit cannot be presumed in absence of proof. In the case at hand, the plaintiff has not relied upon presumption alone. The record demonstrates generation of PNRs upon receipt of consideration, absence of prior notice before cancellation, and post-cancellation re-offer at substantially higher rates. Moreover, the defendant has not produced any documentary proof to establish that the applicable Terms and Conditions mandating 50% advance were in force at the time of booking. Even DW-1 admitted in cross-examination that no document on record evidences applicability of such revised terms at the relevant time. Thus, the factual foundation materially differs.

6. **In Kanchan Udyog Ltd (Supra)** - The said decision reiterates that speculative and remote damages are not recoverable. There is no quarrel with this principle. However, the loss claimed herein flows directly from the cancellation of identified PNRs during a defined travel window of 23.12.2023 to 13.01.2024, which is demonstrably a peak demand period. The nexus between breach and loss is direct and proximate, not remote. Therefore, the principle in Kanchan Udyog (supra) does not defeat the plaintiff's claim.

7. **In M/s Divyam Real Estate Pvt. Ltd.(Supra) -** The judgment relates to commercial real estate disputes and arbitral standards of proof. The present case arises from a distinct commercial sector and aviation inventory, where price fluctuation and yield management are intrinsic features. The factual canvas is entirely different, and the ratio concerning real estate development contracts cannot be transplanted mechanically.

8. **In Payzu Ltd. (Supra) -** This English authority enunciates the principle of mitigation of damages and duty to act reasonably. The defendant has invoked this principle on the ground that the plaintiff did not accept the alternative offer dated 21.06.2023. However, the alternative offer reduced the lot size from 80 seats per PNR to 40 seats per PNR and introduced fresh terms and conditions, as admitted by DW-1. The plaintiff cannot be compelled to accept a fundamentally altered commercial arrangement in order to mitigate loss. Mitigation requires reasonable conduct, not surrender of contractual rights. Hence, the factual premise in **Payzu (supra)**, where a commercially comparable offer was made, is distinguishable.

9. **In Hadley Vs. Baxendale (Supra) -** The classic rule of remoteness laid down in **Hadley (supra)** restricts damages to those arising naturally or within contemplation of parties. In the present case, both parties are commercial entities operating in the travel industry. It is within common commercial contemplation that cancellation of bulk festive-season seat inventory would entail loss of anticipated margin. Therefore, the claim squarely falls within the first limb of **Hadley (supra)**, rather than being excluded by it.

In view of the foregoing discussion, this Court holds that though the judgments relied upon by the defendant correctly state settled principles of law relating to proof of damages, speculative claims, and mitigation, the factual matrix of the present case is materially distinguishable. The plaintiff's claim arises from cancellation of specific, confirmed PNRs after acceptance of part consideration, during a peak seasonal window, and is supported by documentary and circumstantial commercial evidence.

Accordingly, the precedents relied upon by the defendant do not come to its aid and are respectfully distinguished on facts.

18. **RELIEF:**

Thus, as a net result of the aforesaid, the suit of the plaintiff is decreed for an amount of **Rs.1,08,80,000/- (Rupees One Crore Eight Lakhs Eighty Thousand Only)**.

19. The Suit of the Plaintiff is decreed with cost accordingly.

20. Decree sheet be drawn by the Reader of this Court and file be consigned to Record Room.

Announced & dictated in the open Court on 24.02.2026

lalit kumar
Digitally signed by lalit kumar
Date: 2026.02.24 17:46:53 +0530

(LALIT KUMAR)
District Judge (Commercial)-02
South-East, Saket Court