

REVISED
EDITION

THE

AN INSIDER'S VIEW OF HOW

DESCENT

A ONCE GLOBALLY CHERISHED BRAND

OF

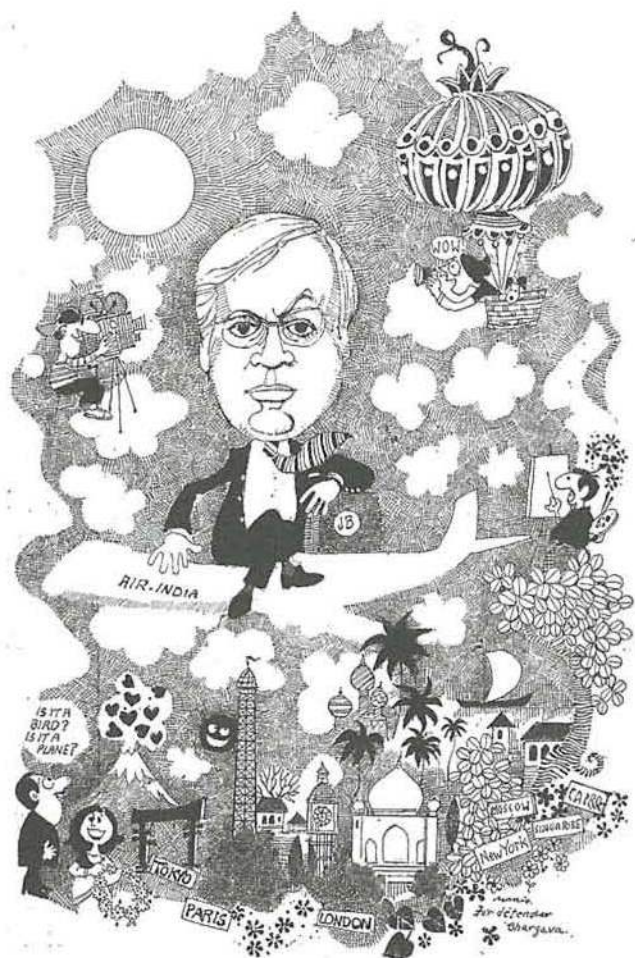
WAS GROUNDED BY THOSE ENTRUSTED

AIR INDIA

WITH THE TASK OF MAKING IT SOAR

JITENDER BHARGAVA

THE DESCENT OF AIR INDIA



JITENDER BHARGAVA

The CCI, which scrutinises all merger and acquisition proposals, appeared to be in a hurry and put its stamp of approval after a virtual farce. Whilst first, it did not seek views of the other stakeholders as required under the Competition Act, it later asked Air India to respond. Even as Air India's request for access to vital documents like Investment Agreement, Shareholder's Agreement and Commercial Cooperation Agreement were denied, the company, relying solely on media reports and press releases issued by Jet Airways and Etihad, opposed the deal on the ground that the deal, if permitted, would allow the combination to impact the competitive landscape of the India–Abu Dhabi route and more particularly Indian aviation and Air India itself.

In an interesting facet that needs to be clarified by CCI, though Air India submitted its comments on 8 November 2013, CCI granted its approval to the combination and uploaded the Order on its website on 12 November 2013—with a weekend in-between. The question that begs an answer: Did the CCI really consider the objections put in by the only stakeholder asked to comment? Perhaps, not!

As one who had been associated with the industry, I could foresee the adverse impact of the deal on Indian civil aviation sector, the airlines and the airports. I asked myself whether the deal could be opposed by alerting decision-makers to the adverse effects of the deal rather than have them rueing the decision after the damage has been done. With the able support of Srinivas Kotni, managing partner, LEXport, Advocates and Legal Consultants, and his team members Mukul Chandra, Ajay Yadav and Pradeep Chandel, I filed an appeal with the Competition Appellate Tribunal (COMPAT) on 11 December 2013, challenging the CCI order and seeking a judicial review of the way in which it had conveniently overlooked the anti-competitive effects of the combination.

The appeal provision i.e. Subsection (1) of Section 53B of the Competition Act reads: 'The Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order referred to in clause (a) of section 53A may prefer an appeal to the Appellate Tribunal.' However, after two to three hearings, the COMPAT bench headed by Justice V.S. Sirpurkar raised the issue of my *locus standi*. How was I an "aggrieved party", he wanted to know. Despite Ramji Srinivasan, senior advocate, making a case to the bench about my credentials with the industry, as an acknowledged analyst/commentator/columnist on the aviation industry, as well as an author of a book commenting on India's national carrier, the bench remained unmoved.