

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**I.A. 1011 OF 2024**

Under Section 60(5) of Insolvency &  
Bankruptcy Code, 2016 r/w Rule 11 of  
NCLT Rules, 2016

**Mr. Ashish Chhawchharia,**  
The Resolution Professional  
...Applicant

Vs.

**Klaatu Aircraft Leasing Private Limited  
& Others**  
...Respondents

In the matter of

C.P.(IB) No. 2205/MB/2019

State Bank of India

**Financial Creditor**

Vs.

Jet Airways (India) Limited

**Corporate Debtor**

*Order delivered on: 09.05.2024*

*Coram:*

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice V.G. Bisht (Retd.)**  
Hon'ble Member (Judicial)

*Appearances:*

For the SRA : Mr. Saurabh Bachhawat,  
Advocate i/b Chandhiok &  
Mahajan

For the Respondent No. 1 : Mr. Ankur Mahindro,  
Advocate a/w Mr. Tejas  
Vijaykumar Dhoke, Advocate

For the Respondent No. 3 : Mr. M. S. Bhardwaj,  
Advocate

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This Application IA 1011/2024 is filed by Mr. Ashish Chhawchharia erstwhile Resolution Professional ("RP") of Jet Airways (India) ("Corporate Debtor") (now the authorized representative of the Monitoring Committee of the Corporate Debtor) ("Applicant") in the Corporate Insolvency Resolution Process ("CIRP") for under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC"/ "Code") read with section Rule 11 of the National Company Law Tribunal Rules, 2016 ("NCLT Rules") for recall ("Recall Application") of the Order dated December 4, 2023 ("Order") passed by this Tribunal, in the Application, being I.A. No. 615 of 2021 ("IA"), filed by the Applicant under Section 60(5) of the Code read with Rule 11 of the NCLT Rules before Tribunal in the captioned Company Petition, being C.P. No. 2205/MB/2019.

2. The Applicant seeks recall of the Order inter alia on the ground that the same appears to have inadvertently been passed on the erroneous basis that the subject matter of the dispute between the Corporate Debtor and Respondent No. 1 involved Jet Lite (a wholly owned subsidiary of the Corporate Debtor) instead of Spice Jet Limited, who has been arrayed as Respondent No. 2 in the proceedings and is an unrelated party of the Corporate Debtor.

2.1. The IA had been filed by the Applicant inter alia under Section 18 and 25 of the Code seeking a direction from this Hon'ble Tribunal, against Respondent Nos. 1 (Klaatu Aircraft Leasing Ireland Limited) and 2 (SpiceJet Limited) to return the engine bearing number ESN 803473 and an auxiliary power unit bearing number APU P-5121, which belong to the Corporate Debtor, to the Applicant's custody and control, in the Corporate Insolvency Resolution Process ("CIRP") of Jet Airways ("Corporate Debtor").

2.2. The Corporate Debtor entered into two Lease Agreements dated June 25, 2019, and December 22, 2016, for the lease of two aircrafts from Respondent No. 1 ("Agreements"), first, bearing Serial Number MSN 34799 and Registration Mark VT-JGR ("Aircraft 1"), and second, bearing Serial Number MSN 30410 and Registration Mark VT-JGA ("Aircraft 2") (Aircraft 1 and Aircraft 2 are collectively referred as "Aircrafts").

2.3. The Corporate Debtor was required to replace parts that were worn out, damaged beyond repair or permanently rendered unfit for use, etc. (Clause 1.3 in Schedule 3). Per the Agreements, an auxiliary power unit would fall within the definition of "Parts". As regards ownership of "Parts", the Agreements provided that, if replaced per the Agreement, (a) title to such replaced part was to vest in the

Respondent No. 1; and (b) title to the removed part would vest with the Corporate Debtor.

2.4. Further, while the definition of "Engine" includes any "Replacement Engine", an engine does not fall within the definition of "Parts".

2.5. At the time, (i) an engine being Engine No. ESN 962829 ("Original Engine") was fitted on Aircraft band (ii) an auxiliary power unit being APU P-7243 ("Original API") was fitted in Aircraft 2.

2.6. On February 20, 2019 an engine bearing number ESN 803473 ("CD's Engine") was installed on the Aircraft 1, in replacement of the Original Engine. Further, the Original APU was replaced from time to time inter alia with (i) an auxiliary power unit bearing number APU E-7440 and then (ii) on August 04, 2017, an auxiliary power unit bearing number APU P-5121 ("CD's APU"), belonging to the Corporate Debtor, by the Corporate Debtor.

2.7. On July 24, 2018, the Original APU was sent by the Corporate Debtor to M/s Honeywell for repairs ("Honeywell"). A copy of the repair order of the Original APU, which was inadvertently not annexed to the original Application. Around April 2019, on account of the financial crisis faced by the Corporate Debtor, various aircrafts operated by the Corporate Debtor were grounded and consequently, returned to the respective lessors and accordingly Respondent No. 1 also repossessed both its leased Aircrafts. When Respondent No. 1 repossessed its Aircrafts, the CD's Engine and CD's APU remained attached to the Aircrafts. Subsequently, Respondent No. 1 leased these Aircrafts to Respondent No. 2 who has been operating the same with the CD's Engine and CD's APU fitted thereon.

- 2.8. On June 20, 2019, the CIRP of the Corporate Debtor 2 commenced; the Applicant was appointed as the IRP; and the moratorium under section 14 of the code came to effect qua the Corporate Debtor vide an Order of this Hon'ble Tribunal in the captioned Petition ("ICD").
- 2.9. Around January 2020, although Aircraft 2 had the CD's APU installed in it, the Applicant learnt from M/s Honeywell that Aircraft 1 (i.e. sister concern of Respondent No. 1) had repossessed the Original APU from Honeywell. A copy of The email dated January 22, 2020.
- 2.10. Thus, Respondent No. 1 came to be in possession of the CD's Engine, the CD's APU and the Original APU. The Original Engine is presently at the Delhi Hangar of Jet Airways in possession of the Corporate Debtor.
- 2.11. Pertinently, it is important to note that that the Original Engine removed from Aircraft 1 was in a completely unserviceable condition. At the same time, CD's Engine that was installed on Aircraft 1, was a fully serviceable engine with a higher value compared to the Original Engine. The Applicant understands that the CD's Engine has been used by Respondent No. 1 and/or Respondent No. 2 since 2019 and is likely to have been rendered unserviceable Accordingly, in the application, in addition to return of the CD's Engine, the Applicant also sought for appropriate usage charges towards the same.
- 2.12. As detailed in the Application, the Applicant and Respondent No. 1 exchanged several letters and also participated in without prejudice settlement talks in relation to the return of the CD's

Engine and CD's APU to the custody and control of the Applicant, to no avail.

- 2.13. On February 22, 2021, the RP of the Corporate Debtor was compelled to file the IA, seeking return of the CD's Engine and CD's APU per Section 18(f) of the Code inter alia since these are recorded as assets in the balance sheet of the Corporate Debtor
- 2.14. Further, since the CD's Engine and CD's APU have not been returned despite numerous requests, the RP sought lease rentals for the use thereof for the period of June 20, 2019 (ICD) to February 22, 2021 and during the pendency of the IA.
- 2.15. On January 18, 2022, the Respondent No. 1 filed its Affidavit in Reply to the IA inter alia admitting that the CD's Engine and CD's APU are in its possession and have been fitted onto aircrafts leased by it to Respondent No. 2. and contending that the Original Engine remained with the Corporate Debtor.
- 2.16. The Applicant and Respondent No. 1 also filed their respective written submissions in the IA before the final hearing, on March 28, 2022 and July 11, 2022 respectively.
- 2.17. On September 26, 2023, the IA was listed for hearing before this Hon'ble Tribunal. Since no one appeared on behalf of the Respondents, the Bench inter alia directed the Respondents to remain present on the next date.
- 2.18. Even on the next date i.e. October 26, 2023, when the IA was called out, no one appeared on behalf of the Respondents. Accordingly, noting the Respondents' failure to appear on several occasions despite directions to do so, the Hon'ble Tribunal proceeded with the hearing of the IA ex parte. The Hon'ble Tribunal noted as follows, in its order dated October 26, 2023

*"...5. Heard Ld. Counsel for the Applicant for a considerable time and perused the Affidavit in Reply filed by the Respondent for considerable time. Reserved for orders.*

- 2.19. Thereafter, the final Order in the IA was pronounced by this Hon'ble Tribunal on December 4, 2023, that the IA was partly allowed [Annexure A hereto]. By the Order, this Hon'ble Tribunal has granted the Applicant's prayer for a return of the CD's Engine. However, the Applicant's prayer for return of the CD's APU has not been granted inter alia on the erroneous basis that the said APU is to be returned by JetLite, their sister concern.
- 2.20. As detailed herein, JetLite is no manner involved in the present matter. Consequently, the Applicant's prayer for usage charges was also rejected.
- 2.21. The Applicant diligently undertook an in-depth perusal of the contents of the Order in order to adhere to the directions of this Hon'ble Tribunal and also to intimate the relevant stakeholders of the Corporate Debtor with respect to the directions of this Hon'ble Tribunal.
- 2.22. However, it is most humbly submitted that upon perusal of the Order, it has come to light that, when compared to the relevant records and documents filed before this Tribunal along with the IA and Respondent No. 1's Affidavit in Reply as well as the actual factual position/ circumstances that transpired, certain incorrect facts have inadvertently been considered by this Hon'ble Tribunal while passing the Order.

3. The Respondent have filed affidavit in reply as well as written submissions stating that the instant Application though styled as a recall is in fact an application for review of the Order dated 04.12.2023 and/or seeks re-hearing of the matter which is impermissible in law.V. The Hon'ble NCLAT in *Union Bank of India v. Dinkar T. Venkatasubramanian; Comp. App. (AT) (Ins.) No. 729/2020* in Paragraph 20 has held that there is a distinction between the powers of review and re-call. Power of re-call is neither to rehear the case nor to find out any apparent error in the judgment which is the scope of review. The NCLT does not have the power of review. The relevant portion is extracted hereinbelow:

*20. The above judgments of the Hon'ble Supreme Court clearly lays down that there is a distinction between review and recall. The power to review is not conferred upon this Tribunal but power to recall its judgment is inherent in this Tribunal since inherent power of the Tribunal are preserved, powers which are inherent in the Tribunal as has been declared by Rule 11 of the NCLAT Rules, 2016. Power of recall is not power of the Tribunal to rehear the case to find out any apparent error in the judgment which is the scope of a review of a judgment...*

3.1. RP was functus officio as of 22.06.2021 and could not have continued the original application nor can he file the present Application. Moreover, this Hon'ble Tribunal cannot hear the present Application, inasmuch as post the resolution of CIRP, any grievance that the new management has is required to be agitated before a civil court and not before this Hon'ble Tribunal.

- 3.2. The Applicant seeks to obtain reliefs by misleading this Tribunal. Admittedly, APU 7243 was on A1 which is evident from the Schedule 1 attached to the Lease Agreement itself and the Application claims recovery of APU 5121 which was attached on A2 on the ground that the Respondent No. 1 has received APU 7243 from Honeywell post repairs. The same is completely impermissible on the ground that:
- a. The part of which a supposed return is sought by way of exchange of another part are attached on two separate Aircrafts which are governed by two separate lease agreements;
  - b. The Applicant has attempted to brazenly mislead this Hon'ble NCLT by stating that the recovery of the APU is sought as the APU 7243 was attached on the same aircraft and has been recovered by the Respondent No. 1.
- 3.3. The Respondent No. 1 is the owner of ESN 803473 and APU 5121. The terms of the Lease Agreement are clear and unequivocal that if the Applicant/Lessee attaches onto the Aircraft any part and/or Engine, the title of the same is vested with the Lessor. For APU, attention is drawn to Schedule 2 wherein parts are defined to include APU (Pg. 225 of Application). Moreover, Schedule 3, Cl. 1.3.1 and 1.3.2 clearly states that Lessee shall replace all parts in the Aircraft and upon replacement the Lessor shall become owner thereof. (Pg. 230 of Application). For Engine, Cl. 10.4 of the Lease Agreement clearly states that upon loss of Engine, the Lessee shall promptly convey title of replacement engine to the Lessor. (Pg. 193 of Application). Therefore, the Engine and APU being installed on the Aircrafts when the Respondent No. 1 took possession thereof are the undisputed asset of the Respondent No. 1 in terms of the Lease Agreements.

4. Heard learned counsel and perused the materials available on record.
- 4.1. We note that the ground No. 34 (c) in IA 615 OF 2021, was decided by us the APU E-5121 (“APU”) was to be returned by Jet Lite, one of the sisters concerned of the Corporate Debtor. Further, at para 7.7 Taking notice of this fact, this Bench had passed the following order at Para 7.8 of the order dt. 04.12.2023.

*“7.8 As regards return of APU E-5121 ("APU"), we do not find any submission from the Resolution Professional in relation to status of Original APU, except that the said APU is to be returned by JetLite, their sister concern. However, we find that Lease Agreement in relation to Aircrafts was entered into between the Corporate Debtor and Respondent No. 1, hence, the Resolution Professional can not shift the onus to recover the said APU from JetLite, as there exists no privity of contract between JetLite and the Respondent No. 1. Since, the said APU was in replacement of original APU, we do not find any force in the contention of the Resolution Professional for usage charges of said APU as well as return of said APU. Further, the repossession took place prior to CIRP, the right of set off is available to the Respondent No. 1 in relation to exchange of APU. However, the parties shall be entitled to make claim for the differential in price, if it is ascertainable”.*

- 4.2. The Applicant has filed this Application stating that the said APU was fitted in the Aircraft repossessed by the Lessor and further lease to Spice Jet, which is not their sister concerned. Accordingly, the conclusion drawn by this Bench on the mistaken facts required to be reconsidered and the said Order dt. 04.12.2023, more particularly Para 7.8 thereof, is required

to be recalled. Further, certain facts at para 7.6 and 7.7 also came to be incorrectly stated. Per contra the Respondent No. 1, the Lessor of the Aircraft opposed this Application stating that the Applicant is seeking review of the order dt. 04.12.2023, in the garb for prayer for recall.

4.3. We have gone through the case records of IA 615 of 2021 and find the submissions of the Applicant in relation to the facts stated at para 7.6, 7.7 and 7.8 of the Order to be correct. It is trite law that this Bench has power to recall its order if such order has been passed on factual mistakes and this Bench can pass another Order taking into account the correct fact. It is not in dispute that Para 7.6, 7.7 and 7.8 contains certain factual mistakes which lead to a conclusion on a different contextual note. We are conscious of the legal position submitted by Respondent No. 1 that this Bench cannot rehear the matter and take into consideration modified facts as placed in the Application. Accordingly, we recall the order dt. 04.12.2023 and pass the fresh order as annexed hereto as Annexure 1, which shall substitute the original order dated 4.12.2023.

4.4. In the result, the Interlocutory Application bearing IA No. 1011 of 2024, is allowed and an Order substituting Original order dt. 04.12.2023, is appended hereto.

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)

**Order substituting order dt. 04.12.2023, upon its recall**

***Per: Prabhat Kumar, Member (Technical)***

1. This IA 615/2021 is filed by Sh. Ashish Chhawchharia, the Resolution Professional (“Applicant”) of M/s Jet Airways (India) Limited (“Corporate Debtor”) in the Corporate Insolvency Resolution Process (“CIRP”) for directions to M/s Klaatu Aircraft Leasing Ireland Limited (“Respondent No. 1”) & M/s Spicejet Limited (“Respondent No. 2”) to return the Engine as well as the APU, to the Corporate Debtor, and also to pay variable as well as fixed rental for the period, it was in their use.
2. The Respondent No. 1 and the Corporate Debtor entered into separate Lease Agreements dated June 25, 2019 and dated December 22, 2016 for lease of Respondent No. 1's Aircrafts- Boeing (Model 737-800) bearing Serial Number MSN 34799 and Registration Mark: VT- JGR ("Aircraft 1"), and bearing Serial Number MSN 30410 Registration Mark VT-JGA ("Aircraft 2"). The Aircrafts 1 and 2 were fitted with engine bearing number ESN 803473 ("Engine"), and the APU E-5121 ("APU"). respectively, both of which belong to the Corporate Debtor.
3. Around June 2019, on account of the financial crisis faced by the Corporate Debtor, various aircraft leased and operated by Corporate Debtor including the Aircrafts, were grounded, and consequently were returned to the respective Lessors. When the Aircrafts were repossessed by the Respondent No. 1. the Engine and the API fitted thereto which belonged to Corporate

Debtor, remained attached to the said Aircrafts and the Applicant's Engine (ESN 803473) and the APU (E-5121) was also taken by the Respondent No.1 along with the Aircrafts repossessed by the Respondent No.1, as these equipment remained installed on the Aircrafts. Thereafter, the insolvency proceedings commenced against the Corporate Debtor on 20.6.2019.

4. Applicant was first appointed by this Hon'ble Tribunal as an Interim Resolution Professional ("RP") for the Corporate Debtor, and was confirmed by the Committee of Creditors of the Corporate Debtor as a Resolution Professional of the Corporate Debtor.
5. It is the case of the applicant that Section 18 (1) (f) of the Insolvency and Bankruptcy Code, 2016 ("Code") requires the Applicant to take control and custody of any asset over which the Corporate Debtor has ownership rights. Upon making enquiries, the Applicant learnt about the Aircraft, the Engine and APU of the Corporate Debtor installed thereon and its repossession by the Respondent No. 1 on 24.4.2019. The Applicant further learnt that at the time of such repossession. the Engine and the API belonging to the Corporate Debtor continued to be attached to the these Aircrafts, and the Aircrafts (alongwith the Engine and the AP) were subsequently given on an operating lease to Respondent no.2 which is continuing till date.
  - 5.1. In discharge of its duties as an RP of the Corporate Debtor, particularly Section 18 (1) (f) of the Code, the Applicant by way of its letters called upon the Respondent Nos. 1 and 2 to return the Engine and the APU belonging to the Corporate Debtor, however the Respondent No. 1 and 2 have failed to return the Engine owned by the Corporate Debtor to the Applicant. Further, in view of the imminent danger that Respondent No. I would have exported the Engine and the APL out of India, and also since in spite repeated follow ups as no response was forthcoming from

the Respondent Nos. 1 and 2, the Applicant also wrote letters to the Respondent No. 1 to 3. Ministry of Civil Aviation and GST Commissioner, in relation to return of the Engine and the API. However, all the above were of no avail, as the Engine and the APU is not yet returned to the Applicant.

5.2. The Applicant is making the present application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 inter alia seeking a direction against the Respondents to return to the Applicant, the Engine and the APU belonging to the Corporate Debtor attached to Respondent No. 1's Aircraft which is presently being operated by Respondent No. 2.

5.3. As detailed in the Application, although it is undisputed that the Engine and the APU are the assets belonging to the Corporate Debtor. Respondent No. 1 is illegally and unlawfully not returning the Engine and the APU to the Corporate Debtor. Further. Respondent Nos. 1 and 2 have failed and neglected to pay Corporate Debtor lease rentals for use of the Engine and the APU

6. The Respondent No. 1 has filed the reply stating that Engine Bearing number ESN 803473 and an Auxiliary Power Unit bearing number APU E-5121 are properties of Respondent No. 1 and were fitted in the leased aircrafts. It is their case that the Corporate Debtor has till date not returned the original Engine ("Aircastle Engine") which was removed and replaced by the Corporate Debtor from Aircraft 1, and also Auxiliary Power Unit No. P7440 which was removed from Aircraft 2 and in its place, APU was installed in the Aircraft 2. It is further emphasised that the re-possession of both the Aircrafts fitted with such replaced parts took place prior to commencement of CIRP/moratorium in the case of Corporate Debtor.

6.1. It is further stated that the Applicant could not have filed any application after the approval of the Resolution Plan in the case of Corporate Debtor

- by this Tribunal, and also this Tribunal has no role to play in respect of any dispute concerning the agreement of the Corporate debtor with any third party. For these propositions, the Respondent No. 1 has relied upon decision of Hon'ble Delhi High Court in case of Venu Recruiters Private Limited versus Union of India and Ors. {276 (2021) DLT 530}.
- 6.2. Accordingly, the Respondent No. 1 has contended that the APU and Engines are in the ownership and possession of the Respondent No. 1, the Resolution Professional cannot place reliance on section 18(1)(f) of the Code to claim delivery of assets which are not owned by the Corporate Debtor.
7. We have heard the Counsel and perused the material available on record.
- 7.1. It is not in dispute that Engine and APU claimed in this Application are owned by the Corporate Debtor, but these parts were fitted in the leased aircraft by the Corporate Debtor in replacement of already installed Engine and APU. The Respondent No. 1 asserts that the Engine and APU installed in the repossessed Aircraft are in lieu of already installed Engine and APU.
- 7.2. We find that the Applicant sent an letter dated 1.10.2019 to the Respondent Nos. 1 and 2 referring to the earlier correspondence for request for return of the Engine, inter alia stating that the Engine is an asset of the Corporate Debtor and is in the custody of Respondent No. 2. With regards to the proposal of the Respondent No. 1 for swapping of the Engine, the letter further recorded that there was a significant difference in the value of the Engines that Respondent No. 1 had proposed be swapped (i.e. the value of the Corporate Debtor's Engine exceeds the value of the engine with ESN 896341 that the Respondent No. 1 has offered for the title swap), and proposed that the title swap is neutral for all the parties. It further stated that if the difference in value between the 2 engines could not be neutralised in the swap then the

parties may need to be proceeded with the original request for return of the Engine to the Corporate Debtor.

- 7.3. Section 18(1)(f) of the Code casts an obligation on the Resolution Professional to take control and custody of any asset over which the Corporate debtor has ownership rights as recorded in the balance sheet of the Corporate Debtor, including those assets that may or may not be in possession of the Corporate Debtor. Explanation appended to Section 18 excludes assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment.
- 7.4. Section 25 of the Code further mandates that the Resolution Professional shall preserve and protect the assets of the Corporate Debtor, and take immediate custody and control of all the assets of the Corporate Debtor.
- 7.5. The Hon'ble Supreme Court in the case of *Victory Iron Works Ltd. Vs. Jitendra Lohia & Anr (2023) ibclaw.in 29 SC* held that “the word “asset” is not defined, either in IBC or in any of the seven enactments referred to in Section 3(37) of the Code. But the word “asset” is defined in Section 102(2) of the Income Tax Act, 1961 to include “property or right of any kind”. Though Section 102 applies as such to Chapter X-A of the Income Tax Act, the definition throws light on the fact that property or right of any kind is considered to be an asset”.
- 7.6. It is undisputed fact that the Engine and APU, fitted in the repossessed Aircrafts were owned by the Corporate Debtor, and the re-possession took place prior to commencement of CIRP. The Engine and APU came to be fitted into the repossessed Aircrafts in replacement of existing Engine and APU. It is the case of the Resolution Professional that original Engine is lesser in value than the Engine owned by the Corporate Debtor and fitted in the repossessed Aircraft prior to its repossession and the Original Engine has been retrieved by them from Honeywell, whom such original engine was given for repair.

Accordingly, they ought to be given back their engine by the Respondent No. 1, which is higher in value and in turn, they can return the Original Engine belonging to the Respondent No. 1.

7.7. Accordingly, the Respondent No. 1 are duty bound to return the Engine no. ESN 803473 ("Engine"), and the Corporate Debtor shall hand over the Original Engine to them, however, the Respondent No. 1 shall be entitled to make claim for the job work charges paid by them to M/s Honeywell while retrieving the Original Engine from them. Since, the said Engine was fitted in replacement of Original Engine and the Respondent No. 1 was deprived of Original Engine which is still in possession of Corporate Debtor, we do not find any merit in the claim for usage charges for such engine. In the alternate, the parties may choose to make claim for the differential in price, if it is ascertainable, and agreeable to the Parties.

7.8. As regards return of APU E-5121 ("APU"), we find that this APU was installed on Aircraft – 2, after removal of Lesser's APU P-7243 therefrom. APU P-7243 was sent for repairs to Honeywell on 04.08.2017 and was retrieved by Aircastle i.e. sister concern of Respondent No. by 22nd January 2020. The APU E-5121 fitted in Aircraft – 2 had also gone to the Lesser on repossession of the Aircraft in other words both APUs reached to the Lesser; thus, causing their unjust enrichment. Accordingly, we direct the Respondent No. 1 to return APU E-5121 to the Applicant within 15 days from the date of this order. However, the Respondent No. 1 shall be entitled to make claim for the job work charges paid by them to M/s Honeywell while retrieving the Original Engine from them. As regards usage charges of APU, we note that both the APUs came into possession of the Respondent No. 1 latest by 22.01.2020. Accordingly, we direct the Respondent No. 1 to pay a sum of Rs. 12,26,000/- towards fixed lease rental for use of the

APU and USD 220 per hours and USD 180 per cycle as variable rentals for the period from 23.01.2020 to 04.12.2023.

7.9. The reliance of the Respondent No. 1 on the Hon'ble Delhi High Court Single Member Bench decision in case of Venus Recruiters Pvt Ltd. (Supra) is misplaced, as the said decision went into appeal before Division Bench of Hon'ble High Court titled as *Tata Steel BSL Ltd. Vs. Venus Recruiter Pvt. Ltd. & Ors. (2023) ibclaw.in 09 HC* and was reversed. The Hon'ble Division Bench held that that in the judgment of the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Ltd. vs. Amit Gupta (2021) ibclaw.in 44 SC the Hon'ble Supreme Court has, in a comprehensive manner, interpreted and laid down the scope and import of the phrase "arising out of" and "in relation to" in the specific context of Section 60(5)(c) of the IBC. It becomes evident that the phrase "arising out of" and "in relation to" is to be given wide import. It further held that It follows that the RP will not be functus officio with respect to adjudication of avoidance applications in a situation, as described hereinabove. There being a clear demarcation between the scope and nature of the CIRP and avoidance application within the scheme of the IBC, the RP can continue to pursue such applications.

7.10. In view of the foregoing, IA 615/2021 is disposed of as partly allowed.

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)