

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) (Ins.) No.1088 of 2023**

In the matter of:

Engine Lease Finance B.V

....Appellant

Vs.

**Resolution Professional of Go Airlines (India) Ltd. &
Anr.**

...Respondents

For Appellant:

**Mr. Anand Venkatramani, Mr. Saket Satapathy,
Mr. Anubhav Dutta, Mr. J Shiva Kumar, Ms. Priyal
Shah, Ms. Nikita Sharma, Advocates.**

For Respondents:

**Mr. Ramji Srinivasan, Sr. Advocate with Mr.
Vishnu Shriram, Mr. Yugam Taneja, Ms. Namrata
Saraogi, Mr. Kartik Pandey, Advocates for RP.**

ORDER

18.08.2023: Heard Learned Counsel for the Appellant and Shri Ramji Srinivasan, Learned Senior Counsel appearing for the Resolution Professional, the Respondent herein. With the consent of the parties, the Appeal is being finally disposed of.

2. This Appeal has been filed against the order dated 26.07.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-V in IA No.3048 of 2023. The Appellant is a lessor of the aircraft engines which was leased out to Go Airlines. Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor and thereafter in pursuance of the liberty granted by this Tribunal vide order dated 22.05.2023, IA No.3048 of 2023 was filed by the Appellant. Other IAs were filed by different lessors which we are not concerned in this Appeal.

3. In IA No. 3048 of 2023, the Appellant's prayer was:-

“a. Direct Respondent No.1/Corporate Debtor to pass urgent interim directions and grant necessary permissions to allow the Applicant to depute an agency or an inspector to conduct inspection of the Four Engines.”.

4. It is submitted by the Appellant that above was interim prayer and there were other prayers in the Application which are engaging attention of the Adjudicating Authority for consideration. Learned Counsel for the Appellant challenging the order contends that the Appellant has prayed for an interim direction to permit the Appellant to inspect the engines which prayer was opposed on behalf of the Resolution Professional. The Adjudicating Authority considered the interim prayer and held that it is not inclined to allow this prayer. Paragraph 14 of the order of the Adjudicating Authority is the consideration regarding the prayer for inspection, which is as follows:-

“14. Further with respect to the interim relief to allow the Applicant to conduct inspection, the respondent has strongly opposed and argued that it is the duty of the Respondent i.e. the Resolution Professional, under Section 25 to maintain assets at highest level of efficiency/safety. It has also been argued by the Resolution Professional that there is no need for inspection, as he is under obligation to maintain and protect the assets as per the duty assigned to him under the Code. Further, it is also evident that 'Inspection' is not an end in itself and is always done with a purpose and therefore must consequentially be followed by curative or remedial

action or directions. Under these circumstances, in the instant case, allowing inspection would only act as an impediment to the effective discharge of the duties of the Resolution professional which, inter alia, includes the protection and maintenance of the engines at the prescribed levels of efficiency/safety, which would be necessary to keep the Corporate Debtor as a going-concern. Furthermore, the purpose of inspection is to see whether these Aircrafts/Engines are properly cared and protected or not. Since by our order dated 15.06.2023, we have already sked the RP to maintain the Aircrafts, therefore, no fruitful purpose would be served by allowing this prayer. Hence, we are not inclined to allow this prayer.”

5. Learned Counsel for the Appellant contends that the Interim Resolution Professional has sent a letter dated 05.06.2023 on the subject “*Inspection of Engine manufacturer’s serial number P771315, P771320, 569228 and P770216*”. In paragraph 6 of the said letter, following was stated:-

“6. Without prejudice to the above, kindly note that your request for inspection is duly noted by us. We are reviewing the status of all aircrafts and engines installed given they are located at different airports across the country and interests of various stakeholders will need to be factored along with associated logistical issues. Once we have formulated a plan to address the situation an appropriate opportunity with respect to the request for inspection shall be provided to you after observing the required necessary formalities.”

6. Learned Counsel for the Appellant submits that in view of the letter, IRP/ RP ought to have permitted the inspection itself without there being any order of the Court.

7. Learned Counsel for the Appellant further submits that there were Writ Petitions filed in Delhi High Court by Aircraft lessors in which an order was passed by Learned Single Judge on 05.07.2023 in W.P No.6569 of 2023 and other Writ Petitions where Learned Single Judge has issued a direction to the Respondents of that Writ Petition to permit inspection of the Aircraft. Direction of the Learned Single Judge with regard to inspection contained in paragraph 20.1 (i). In paragraph 20.1(i), following direction was issued:-

“20.1 Therefore, with a view to obviate any further losses, the following directions are being passed:-

(i) The Petitioners, their employees, agents, officers and/or representatives shall be permitted by the Respondent/DGCA and the appropriate Airport Authorities to access the Airport(s) where the 30 Aircrafts are parked [details of the Aircraft(s) is reproduced in the table in paragraph 3.2 herein] inter alia to inspect their respective Aircrafts, within the next 3 days;”

8. It is submitted that against the said order, the Appeal was filed by the Resolution Professional. However, the Appellate Court vide its order dated 12.07.2023 did not interfere with the direction pertaining to the inspection. It is submitted that in view of the order of the Delhi High Court, inspection has

been permitted. It is submitted that Resolution Professional with regard to some Aircraft lessors has also permitted the inspection.

9. Shri Ramji Srinivasan, Learned Senior Counsel appearing for the Respondent submits that insofar as all issues are concerned, they are coming before the Adjudicating Authority for consideration on 01.09.2023 and all prayers in the IA filed by the Appellant and other lessors are yet to be considered.

10. It is submitted that the observations made in the impugned judgment are only at *prima facie* stage and cannot be treated as final expression of opinion by the Adjudicating Authority which is yet to be considered and decided.

11. After having considered the submissions of the Counsel for the parties and perusing the record, we are of the view that the order of the Adjudicating Authority insofar as it refuses inspection to the Appellant need not be approved.

12. Learned Counsel for the Resolution Professional submits that in view of the orders passed by the Delhi High Court, the inspection shall be allowed and date for carrying the inspection shall be intimated to the Appellant as early as possible.

13. We are of the view that inspection be permitted within 10 days from today. As observed above, the observations made in the impugned order being at *prima facie* stage need not be treated as final expression of opinion by the Adjudicating Authority and all contention of both the parties are left open.

14. We have no doubt that looking to the nature of the Application, the Adjudicating Authority shall endeavor to dispose of the Application as early as possible.

15. The Appeal is disposed of, accordingly.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

Anjali/nn