BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-I

IA No. 125/MB/C-I/2022

In

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

Under section 60(5) of Insolvency and Bankruptcy Code, 2016.

Filed by

The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch, represented by Mr. Murari Lal Jalan (as lead Member), acting through his Power of Attorney holder Mr. Surender Singh,

Address at 243, D, Block – E-III, Gali No. 54-H/7, Molar Brand Extension, K.G. Khosla, Molar Band, New Delhi – 110044.

...Applicant

Versus

1. **State Bank of India**

   Stressed Asset Management, Branch – II, Raheja Chambers, Ground Floor, Wing-B, Free Press Journal Marg, Nariman Point, Mumbai - 400021.

2. **Yes Bank Limited**

   Stressed Asset Management West & South, Yes Bank House, Western Express Highway, Santacruz (E), Mumbai – 400055.

3. **Punjab National Bank**

   Zonal Sastra Centre, Mumbai, Maharashtra -

400099.

4. **Mr. Ashish Chhawchharia, Authorised Representative of Monitoring Committee of Jet Airways (India), Limited,**
   Having office at Global One, Jet Airways, 3rd Floor, 252 LBS Marg, Kurla West Mumbai - 400070.

...Respondents

In the matter of

State Bank of India

...Financial Creditor

Versus

Jet Airways (India) Ltd.

... Corporate Debtor

Order Pronounced on: 22.03.2022

Coram:

Hon'ble Member (Judicial)	:	Justice P. N. Deshmukh (Retd.)
Hon'ble Member (Technical)	:	Sh. Kapal Kumar Vohra

Appearances:

For the Applicant	:	Mr. Krishnendu Datta, Advocate
For the Respondent-1 to 3	:	Mr. Janak Dwarkadas, Ld Sr Advocate
For the Respondent-4	:	Mr. Rohan Rajadhyaksha, Advocate

ORDER

Per: Coram

1. This is an Application submitted by Successful Resolution Applicant (SRA) praying that certain expenses need to be borne by the Corporate Debtor (CD) until the 'Effective Date' of implementing Resolution Plan. In this case the Resolution Plan was approved on 22.06.2021 incorporating clause that 'Effective Date' will be within 90 days (or within maximum 270 days) from the approval of the Resolution Plan.

2. The applicant has prayed mainly for directions to the Respondents to pay, and continue to pay until the Effective Date, all expenses relating to the Corporate Debtor without any exception, including without limitation expenses incurred / to be incurred towards Conditions Precedent fulfilment, hiring of the employees of the CD, executing IT contracts, cabin crew training contracts, ground handling and engineering contracts, contracts with MRO and all operational and business expenses, out of its positive cash balance.

3. **In support of the Application, Applicant submitted that:**

   i. On Page 78 of the Application, Clause 6.4.1 (h) of the Resolution Plan states that any expenses incurred by the CD from the Approval

Date until the 'Effective Date' will be incurred out of the positive bank balance of the CD. Resolution Applicant (RA) has set aside sum of Rs 25 Crores as Corporate Insolvency Resolution Process (CIRP) cost towards payment of any such costs until the Approval Date.

ii. Page 152 of the Application refers to infusion of Rs 350 Crores in the CD by the SRA during the first 180 days from the Effective Date as equity (CIRP cost, contingency fund, payment FCs, Miscellaneous Administrative Funds). Further, clause 6.3.1.(g) on page 75-76 of the Application provides for all timelines for infusion of funds by the Applicant, as per which the Applicant can bring in funds into CD.

iii. Para 10.2 Page 17 of the Rejoinder states that all amounts received by the CD from the lease of its Aircraft can only be utilised by CD for working capital purposes and not towards payment of any creditors.

iv. Page 37 of the Rejoinder records that Committee of Creditors (CoC) paid for initial expenses in the five stage Air Operator Certificate (AOC) process.

v. Page 79 of the Application Clause 6.4.1 (m) states that CIRP cost shall be fully paid and discharged after the Effective Date before payment is made to any of the Creditors as per Resolution Plan. The SRA will be entitled and will use funds available with the CD on the Effective Date for making any portion of CIRP payments.

vi. Clause 7.6.1 on page 121 of the Application lists out the Condition Precedents (CPs) as per which, *inter alia,* after the Approval Date and prior to the Effective Date, CD must have a valid AOC for its operations. It follows that during the period from Approval Date till Effective Date, certain steps would necessarily need to be taken by the CD to have valid AOC and since all expenses from Approval Date until the Effective Date are to be paid out of the positive cash balance of the CD, the expenses for obtaining AOC certification must also be borne from the positive cash balance of the CD.

vii. Clause 7.8.5 on pg 124-125 of the Application states that the MC / CoC will have various responsibilities including making best endeavours for achieving and early completion and fulfilment of the CPs including obtaining all necessary approvals wherever required for getting the licenses / Bilateral rights reinstated back to CD.

4. **The Respondent (SBI & Ors) have submitted as under:**

i. Clause 7.6.4 (Pg 122 of application) of the Resolution Plan states that SRA is confident of completing all CPs within 90 days from the

Resolution Plan Approval Date and **SRA takes responsibility of completing outstanding CPs** within next 180 days. If the CPs are not fulfilled within such period (max 270 days) then this Resolution Plan shall automatically stand withdrawn without any further acts, deeds or things. On such withdrawal, the members of SRA in Monitoring Committee (MC) shall resign and remaining members of MC shall obtain absolute control of the CD.

ii. On Page 78 of the Affidavit in Rejoinder records that SRA brought 50 Crores on 31.01.2022 and agreed that this amount will not be returned to lenders till all liabilities as required under Resolution Plan towards the Financial Creditors have been met by SRA in full.

iii. Page 67 of the Rejoinder puts heavy burden (present and future) on CD by SRA by appointing key managerial personnel etc.

iv. On page 230-231 of the Application, SRA proposes to pay all positive balances to AFCs on effective date out of Rs 40 Crores balance (plus Rs 25 Crores earmarked separately). SRA Proposes to transfer the unutilised portion of CIRP costs giving impression that some money may remain in account on effective date out of these amounts.

Findings and Directions:

i. In the background of above submissions, it is observed that certain CPs are to be fulfilled before the Effective Date and SRA has taken full responsibility of completing the same maximum within a period of 270 days from the approval of the Resolution Plan.

ii. The expenses after the approval of the Resolution Plan relate to two major categories: (a) expenses which were incurred by the CD before the Resolution Plan was approved (lease rents for keeping equipment etc.); and (b) new set of expenses to meet CPs. It is observed that during the initial period after approval of the Resolution Plan, certain expenses have been approved and paid by MC/CoC while money has been arranged by SRA (January, 2022) in the efforts to complete CPs.

iii. It has been observed that many new heads of expenditures have been initiated and in case MC / CoC is required to pay these expenses, SRA can escape from completing the CPs and fulfilling his part of promise which can cause hurdle in the commencement of effective date and the blame for not completing CPs can shift to CoC which will be against the letter and spirit of the order of this Adjudicating Authority dated 22.06.2021 approving the Resolution Plan wherein it was clearly stated that if the CPs are not fulfilled within a time frame, the Resolution Plan stands automatically withdrawn without any further acts, deeds or things. It is thus clear that SRA took responsibilities of completing CPs and responsibility for all acts relating to completion of CPs including expenses to be incurred for completing CPs. It is also evident from the fact that SRA pumped in Rs 50 crore for the purpose in January 2022. It may be added that the time given for completing the CPs was extended by a total of 270 days after 22.06.21 by specific orders of this Court. In that view of the matter, prayer in this Application to issue directions to Respondent to pay and to continue to pay all expenses relating to CPs as elaborated in sub Para (b) of Para 35 of prayer is rejected. However, it is directed that MC/CoC to continue to meet the expenses of Corporate Debtor till Effective Date as per the average of monthly expenses 3 months before approval of the Resolution Plan which will include lease rentals etc.

iv. With the aforesaid observation the present **IA No. 125 of 2022 In C.P (IB) No. 2205/MB/C-I/2019** stands disposed of in above terms.

Sd/- **Sd/-**

KAPAL KUMAR VOHRA **MEMBER (TECHNICAL)**	**JUSTICE P. N. DESHMUKH (RETD.)** **MEMBER (JUDICIAL)**

22.03.2022

SAM/VEDANT