NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) (Ins.) No. 473 of 2022

In the matter of:

Jet Aircraft Maintenance Engineers Welfare Association (JAMEWA) ....**Appellant**
Vs.
The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Ors. ...**Respondents**

For Appellant: **Shri Vikas Mehta, Senior Advocate with Ms. Anshula Grover, Mr. Mayan Prasad, Advocates.**

For Respondents: **Ms. Pooja Mahajan, Ms. Mahima Singh, Ms. Arveena Sharma, Advocates for R1.**
Mr. Krishnan Venugopal, Senior Advocate with Mr. Anush Mathkar, Ms. Annie Jain, Mr. Rishit Vimadalal, Mr. Raunak Dhillon, Ms. Isha Malik, Advocates for R2 to 4.
Mr. Dhiraj Kumar Totala, Ms. Tanya Chib, Mr. Nishant Upadhyay, Advocates for R5.

ORDER

(Through Virtual Mode)

28.04.2022: Heard Shri Vikas Mehta, Learned Senior Counsel for the Appellant, Shri Krishnan Venugopal, Learned Senior Counsel for Respondent Nos.2 to 4 and Learned Counsel for the Successful Resolution Applicant.

2. This Appeal has been filed against the order dated 11.04.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I, by which two Applications i.e. I.A No. 766 of 2022 as well as I.A No. 686 of 2022 have been disposed of. The Resolution Plan with respect to the Corporate Debtor was approved by the Adjudicating Authority by order dated 22.06.2021. Against which order, the Appeals have been filed including the

Company Appeal (AT) (Ins.) No. 752 of 2021 by the Appellants themselves. For implementation of the Resolution Plan, the time provided in the plan was 90 days extendable to further 180 days. After 90 days admittedly, two extension of 90 days was granted which was came to an end on 22.03.2022. An Application I.A No. 125 of 2022 was filed by the Successful Resolution Applicant where following prayers have been made:-

> *“**Relief Sought:** In view of the above facts, circumstances and submissions, it is most humbly prayed that this Hon’ble Adjudicating Authority may be pleased to:-*
>
> *(a) allow the Application;*
>
> *(b) pass appropriate and urgent 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 employees of the Corporate Debtor, 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 without any delay, protest, demur, or cavil and not obstruct in the successful revival of the Corporate Debtor.*
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> *(c) pass appropriate and urgent directions to the Respondents that the positive cash balance of the Corporate Debtor can be utilized only in the manner set out in para 9 above.*

(d) pass interim/ ad-interim reliefs in terms of prayers (a) to (c) above.

(e) pass any other such order(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of this case."

3. The said Application came to be dismissed by the Adjudicating Authority by order dated 22.03.2022. Subsequently, another Application being I.A No.686 of 2022 in I.A No. 125 of 2022 in C.P. (IB) No. 2205/MB/2019 was filed by the Successful Resolution Applicant where following reliefs have been prayed:-

> *"**Relief Sought:** In view of the above facts, circumstances and submissions, it is most humbly prayed that this Hon'ble Adjudicating Authority may be pleased to:-*
>
> *(a) allow the Application and exclude the period from the date of filing of the Expenses Application i.e., 17 January 2022, till the date that the Expenses Application is decided by this Hon'ble Adjudicating Authority, from the period granted to the Applicant for completing fulfilment of the Conditions Precedent under the Resolution Plan and extend the 'Effective Date' by such period beyond 22 March 2022.*
>
> *(b) pass interim/ad-interim reliefs in terms of prayers (a) above.*
>
> *(c) pass any other such order(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of this case."*

4. In the Application I.A No. 686 of 2022, the present Appellant filed an Application for impleadment being I.A. No. 766 of 2022 which was considered and Adjudicating Authority permitted the Applicant to intervene in the matter by order dated 11.04.2022. By the same order, I.A No. 686 of 2022 has been allowed by which 65 days' period from 17.01.2022 till 22.03.2022 has been excluded. Aggrieved by the said order, the Appellant has come up in this Appeal.

5. Shri Vikas Mehta, Learned Senior Counsel for the Appellant challenging the order contends that the order passed by the Adjudicating Authority is without any reason. No reason has been given as to why the period has been excluded. Further, the Application has been filed in a disposed of Application I.A. No. 125 of 2022 which Application was not clearly maintainable. It is submitted that in the proceeding of the lenders meeting held on 28.03.2022, it was observed that the Successful Resolution Applicant to seek additional time for CP fulfilment and not for exclusion. It is further submitted that the plan having contemplated implementation within 90 days and further 180 days, no time could have been granted for implementation subsequent to expiry of the said period of 270 days. He submits that the order passed by the Adjudicating Authority is contrary to the approved Resolution Plan. He further submits that the other condition with regard to Resolution Plan has not been satisfied.

6. Shri Krishnan Venugopal, Learned Senior Counsel appearing for Respondent Nos. 2 to 4 submits that the Respondents support the exclusion of time as prayed by the Successful Resolution Applicant. It is further

submitted that under the Resolution Plan itself in para 33 plan approval order, there is already liberty to the Resolution Applicant to come back to the Tribunal for any order so that plan may not be frustrated.

7. Learned Counsel appearing for the Successful Resolution Applicant submits that the reason for exclusion of the time has already been given in the Application I.A No. 686 of 2022 in para 8 and due to the said reason, the exclusion become necessary after rejection of the Application IA 125 of 2022.

8. We have considered the submissions of Learned Counsel for the parties and perused the record.

9. The first submission of Shri Vikas Mehta, Learned Senior Counsel for the Appellant is that the order does not have any reason for exclusion of the time. The Application I.A No. 686 of 2022 was filed by the Resolution Applicant praying for exclusion from 17.01.2022 to 22.03.2022 for which specific prayer was made in the Application by Successful Resolution Applicant. In para 8 of the Application, following has been stated:-

> *"8. Thus, despite earnest efforts, the Applicant has not been able to make progress towards completion of pending Conditions Precedent. As detailed in the Expenses Application, the fulfilment of the pending Conditions Precedent requires certain payments to be incurred by and in the name of the Corporate Debtor. However, the MC Lenders have declined approval for any payments, including from the ICD deposited by the Applicant with the Corporate Debtor, until the Expenses Application is decided by this Hon'ble Adjudicating Authority. A copy of the draft minutes of*

> *the 14th MC meeting dated 14 February 2022 is annexed as* ***Annexure-5****."*

10. The Adjudicating Authority in the impugned order in paragraph 8 has made following observations while considering I.A No. 686 of 2022:-

> *"8. The prayer in this Application is to exclude the period from 17.01.2022 till 22.03.2022 i.e. 65 days during which period the Application bearing IA No. 125 of 2022 was pending before this Tribunal. The Application bearing IA No. 125 of 2022 was filed on 17.01.2022 and was listed for hearing on 20.01.2022, on which date the same was adjourned to 01.02.2022, for want of Hard Copies of the Application. On 01.02.2022 the matter was adjourned to 08.02.2022, for want of Affidavit in Reply. On 08.02.2022 the matter was heard and Reserved for Orders and disposed of on 22.03.2022.The Application in hand is filed by the SRA Jet Airways India Limited, the Corporate Debtor; whose Resolution Plan was approved in terms of order dt. 22.06.2021. the Respondents are the lenders and erstwhile Resolution Professional who form part of the Monitoring Committee."*

11. The exclusion has been sought for principally on the ground that I.A No. 125 of 2022 remains pending from 17.01.2022 to 22.03.2022 due to which period need to be excluded since the prayer made in the Application I.A No. 125 of 2022 was not granted by the Adjudicating Authority. When we look into the facts cumulatively, including the reasons given in the Application I.A. No.

686 of 2022 and the facts noticed by the Adjudicating Authority, we are of the view that it cannot be said that there is no reason given in the order of the Adjudicating Authority for granting exclusion. Further in paragraphs 19 and 20 of the order, following observations have been made by the Adjudicating Authority:-

> *"19. Having considered the facts in the Application which is specifically for grant of exclusion of time as mentioned above at no point of time it can be considered for grant of extension of time for implementation of the Resolution Plan and then by no stretch of imagination it can be said that by allowing this Application it would amount to modification of Resolution Plan.*
>
> *20. In that view of the matter, we find that if the relief as sought for is refused, it will cause hurdle in revival of the Corporate Debtor which cannot be spirit of the Code. If no exclusion is granted it will also amount to automatic withdrawal of the Resolution Plan and the Corporate Debtor shall be posted into Liquidation which is neither the intention of the Code nor of the Plan Approval Order. Hence the Application is liable to be allowed excluding period of 65 days and thus extending the 'effective date' to 25.05.2022."*

12. We, thus, are satisfied that there is ample reason in the order for granting exclusion of the period.

13. The second submission of Shri Vikas Mehta Learned Senior Counsel for the Appellant is that Application I.A No. 686 of 2022 itself was not maintainable since the Application was filed in a disposed of Application I.A No. 125 of 2022. The Application I.A No. 686 of 2022 was a separate I.A filed with the prayers as noticed above. The mere fact that in I.A No. 686 of 2022, it was mentioned that I.A No. 686 of 2022 is in I.A No. 125 of 2022 in C.P (IB) No. 2205/MB/C-I/2019 does not make it non-maintainable. The mere mention of I.A 125 of 2022 which was already disposed of does not take away the Application I.A 686 of 2022 and the prayers made therein which were separate prayers as noted above. We, thus, reject the submission of Shri Vikas Mehta, Learned Senior Counsel for the Appellant that I.A 686 of 2022 was not maintainable.

14. Now, we come to the submission of Shri Vikas Mehta, Learned Senior Counsel for the Appellant that extension could not have been granted beyond 90 + 180 days. Present is a case where the Adjudicating Authority by the impugned order has not granted extension of any time rather it allowed exclusion of the time i.e. exclusion of the period which was taken in disposal of I.A 125 of 2022.

15. As far as the submission that the decision was taken by the lenders committee, as noted above, extension of time be sought by the Applicant, suffice it to say that in the same meeting, it was noticed that Application I.A No. 686 of 2022 has already been filed for exclusion of the time. We thus, are of the view that the said observation in the lenders' committee meeting dated 28.03.2022 shall not detract the prayers made in the Application I.A No. 686

of 2022 nor that has any effect on order which has been passed by the Adjudicating Authority excluding the period.

16. The last submission made by Shri Vikas Mehta is that conditions of the Resolution Plan has not been fulfilled. The Application I.A No. 686 of 2022 was filed only for praying for exclusion of the period from 17.01.2022 to 22.03.2022. There was no other prayer made or considered in the order passed by the Adjudicating Authority. We, thus, are of the view that we need not consider the submission regarding whether the conditions of the plan are fulfilled or not in the present proceedings.

17. In view of the aforesaid, we see no good ground to entertain this Appeal. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Shreesha Merla]
Member (Technical)

Anjali/nn