



NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
SPECIAL BENCH

Company Petition No. (IB)-264(PB)/2023

IN THE MATTER OF:

Go Airlines (India) Limited

Britannia Industries Limited,

A-33, Lawrence Road, Industrial Area,

New Delhi – 110035

... Corporate Applicant/Corporate Debtor

Section: 10 of IBC, 2016

Order Delivered on: 10.05.2023

CORAM:

JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Sr. Adv. Neeraj Kishan Kaul, Sr. Adv. P. Nagesh
Sr. Adv. Diwakar Maheshwari, Adv. Pranjal Kishore
Adv. Roohan Kelkan, Adv. Deepak Joshi, Adv.
Akshay Sharma, Adv. Mr. Lalit Mohan

For the Lessors : Sr. Adv. Arun Kathpalia,
Mr. Pranay Goyal, Mr. Chiranjivi Sharma,
Mr. Kshitij Wadhwa, Mr. Aditya Dhupar,
Mr. Arvinder Nath, Mr. Ankit Garg

For Others : Mr. Ritesh Singh, Mr. Ajay Kumar, Ms. Gurnoor
Kaur, Advs. for Unsecured Creditors ELFC,
Jackdon Square Aviation, Minshing Finance
Leasing Co. Ltd., Bank of China Aviation



ORDER

M/s Go Airlines (India) Limited (hereinafter called '**Corporate Applicant / Corporate Debtor / Company**') has filed the present application under Section 10 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the '**IBC, 2016**') with a prayer to initiate the Corporate Insolvency Resolution Process against it.

2. The Corporate Applicant namely, M/s Go Airlines (India) Limited is a Company incorporated on 29.04.2004 under the provisions of the Companies Act, 1956 with CIN U63013DL2004PLC217305 having its registered office at Britannia Industries Limited, A-33, Lawrence Road, Industrial Area, New Delhi-110035, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Company is Rs.9,60,00,00,000/- and Paid-up Share Capital is Rs.7,22,57,50,000/- as per the Master data annexed.

3. It is stated by the Corporate Applicant that it is engaged in the Airline Business and has been running a low-cost Airline under the brand name 'Go Air' for the last 17 years. The Company is licensed by the Directorate General of Civil Aviation to carry the business of commercial air operations in India. Since November 2005, it has operated a low-cost airline named GoAir and since May 2021, it was renamed 'GoFirst'. It is further submitted that the Company is the 3rd largest airline operator in India and an asset of national importance serving tourism, connectivity, and employment.



4. It is further averred that the Company has flown 83.8 million passengers on 2,290 departures per week between 2010 and January 2021. Till March 2022, the Company's Cost Per Available Seat Kilometer was lower than the best in class. It serves 12 (twelve) million passengers per annum. It was a profitable operator from 2009-10 to 2018-19 and made a cash surplus in 2019-20. The Company has an employee strength of about 7000 direct and 10,000 indirect employees. Further, the Company serves critical airports such as Leh & Port Blair and is the largest operator in Jammu & Kashmir.

5. It is submitted that from the year 2022 onwards, the Corporate Applicant started defaulting toward payments to vendors, and aircraft lessors and received notices from the lessors seeking payment, the details of which, as submitted in the brief chronology of events by the Applicant, are given below:

S.No	Date	Aircraft lessor which has issued Notice	Date default Amount default	of / of	Page Number
1.	06.03.2023	DAE (Ireland) Limited	1,094,900.10 USD	/	p.610, V4
2.	24.04.2023	SMBC Aviation Capital	20.02.2023 56,658,326.40 USD		p.612, V4
3.	24.04.2023	Banas Aviation Leasing Limited	3,159,310.88 USD		p.625, V4
4.	24.04.2023	GAL MSN	3,354, 227.50 USD		p.629, V4
5.	24.04.2023	Yamuna Aviation Leasing Ltd.	6,055,964.48 USD		p.634, V4
6.	24.04.2023	Narmada Aviation Leasing Ltd. (p. 639)	7,292,101.98 USD		p.639, V6
7.	27.02.2023	Minsheng Commercial Aviation (Ireland) Company Ltd. (p. 644)	USD 11,131,586.50		p. 644, V6
8.	06.03.2023	Pembroke Aircraft Leasing Ltd 11	USD 883,178.47		p.650, V6
9.	01.03.2023	AerCap Holdings N.V.	USD 2,598,497.20		p.659, V6

As of 28.04.2023, Applicant is in default of payment of INR 2660 Cr due and payable towards aircraft lessors.



6. Further, the Corporate Applicant has annexed with its application, the Statement of Lessors' Liabilities as on April 28, 2023 (page no. 1580, Volume 9 of the application), which reads thus:

Go Airlines (India) Ltd.
CIN - U63013DL2004PLC217305
Registered office - C/o, Britania Industries Limited, A-33, Lawrence Road, Industrial Area, New Delhi - 110035, India
Statement of Lessors Liabilities as on April 28, 2023 (Provisional)

Lessors Group	Lessors Name	Amount in USD			Amount in INR	Amount in USD	Amount in INR	Amount in USD	Amount in INR
		LR Outstanding	MR Outstanding	Total	Total	Cash Security Deposit	Cash Security Deposit	Cash MR Deposit	Cash MR Deposit
Accipitor	Accipiter Investments Aircraft 2 Limited	165,000	410,000	575,000	47,023,462.16	496,740	40,623,356	2,169,286	177,404,190
BOCA	BOC AVIATION IRELAND LIMITED	1,771,678	-	1,771,678	144,887,818.78	1,125,820	92,069,529	5,000,000	408,900,000
CCB	Star Rising Aviation 13 Limited	36,461,182	3,032,527	39,493,709	3,229,795,515.08	3,002,828	245,571,307	14,851,303	1,214,539,555
CDB	GY Aviation Lease 1722	1,817,632	1,876,116	3,693,748	302,074,740.96	-	-	3,666,239	299,825,040
CDB	GY Aviation 1728 Co/ Limited	1,930,389	1,445,993	3,376,382	276,120,521.70	-	-	4,197,149	343,242,872
CDB	GY Aviation 1729 Co, Limited	1,141,281	1,562,430	2,703,711	221,109,449.99	-	-	4,076,800	333,400,686
CDB	GY AVIATION LEASE 1803 CO	4,044,531	662,750	4,707,281	384,961,448.98	-	-	3,257,753	266,419,036
CDB	GY Aviation Lease 1802 Co/, Limited	5,020,947	1,085,136	6,106,082	499,355,426.34	-	-	3,085,782	252,355,280
CDB	GY AVIATION LEASE 1730 CO/, LI	4,040,067	774,437	4,814,504	393,730,144.95	-	-	1,760,399	143,965,464
CDB	GY AVIATION LEASE 1731 CO/, LIMITED	4,649,167	1,658,544	6,307,711	515,844,603.53	-	-	6,824,448	558,103,369
CDB	GY AVIATION LEASE 1801 CO/, LIMITED	4,533,930	207,820	4,741,750	387,780,325.76	-	-	4,188,278	342,517,398
CDB	GY Aviation Lease 1732 Co/ Limited	1,996,149	136,887	2,133,036	174,439,679.18	-	-	743,322	60,788,894
CDB	GY AVIATION LEASE 1804 CO., LIMITED	2,490,682	624,543	3,115,225	254,763,103.71	-	-	2,352,714	192,404,973
JSA	Jackson Square Aviation	57,370,373	18,250,340	75,620,714	6,184,261,968.25	4,766,337	389,791,040	13,835,632	1,131,477,960
SAEL	SMBC AERO ENGINE LEASE	1,467,749	719,806	2,187,555	178,898,208.01	3,743,688	306,158,764	5,830,782	476,841,334
SC	Pembroke Aircraft Leasing 11 Limited	3,341,251	1,044,799	4,386,050	358,691,163.41	-	-	2,315,613	189,370,868
ICBC	SKY High XCV Leasing Company Limited	23,175,760	4,068,304	27,244,064	2,228,019,539.13	2,114,955	172,960,981	3,691,036	301,852,960
ICBC	SKY HIGH XC LEASING COMPANY LIMITED	20,909,936	3,782,989	24,692,925	2,019,387,404.60	2,036,176	166,518,481	6,004,315	491,032,877
Minsheng	Bluesky 31 Leasing Company Limited	1,631,012	3,603,509	5,234,520	428,079,085.31	1,372,943	112,279,262	10,484,014	857,382,628
Minsheng	BLUESKY 19 LEASING COMPANY LIMITED	2,790,831	4,330,664	7,121,495	582,395,834.47	2,120,267	173,395,450	11,822,245	966,823,179
ELFC	Engine Lease Finance B/V	2,073,105	1,035,916	3,109,021	254,255,740.17	-	-	11,060,801	904,552,289
ELFC	Engine Lease Finance BV	4,498,771	724,458	5,223,229	427,155,666.47	-	-	11,027,857	901,858,147
SMBC	SMBC Aviation Capital	32,094,447	1,020,936	33,115,383	2,708,175,993.85	1,300,000	106,314,000	42,890,118	3,507,553,822
Goshawk	Banas Aviation Leasing Limited	1,635,315	1,877,680	3,512,995	287,292,704.17	-	-	8,552,410	699,416,131
Goshawk	GAL MSN 6072 & 6184 Limited	3,354,228	-	3,354,228	274,308,724.95	-	-	3,000,000	245,340,000
Goshawk	Yamuna Aviation Leasing Limited	3,973,847	2,237,032	6,210,879	507,925,693.46	-	-	9,092,041	743,547,151
Goshawk	Narmada Aviation Leasing Limited	4,728,883	2,776,288	7,505,171	613,772,887.13	-	-	7,367,668	602,527,908
ACG	ACG Aircraft Leasing Ireland Ltd	625,482	9,621,028	10,246,510	837,959,600.48	-	-	5,336,482	436,417,481
GECAS2 / Aercap	Celestial Aviation Trading 36 Limited	2,062,405	1,742,540	3,804,945	311,168,369.74	-	-	7,849,165	641,904,684
GECAS2 / Aercap	Celestial Aviation Trading 62 Limited	2,126,808	1,619,920	3,746,728	306,407,385.66	-	-	7,178,467	587,054,994
DAE	DAE (SY22)13 Ireland Designated Act	-	744,411	744,411	60,877,955.81	657,500	53,770,350	2,844,196	232,598,358
Merx	EOS AVIATION 12 (IRELAND) LIMITED					2,333,098	190,800,754	1,601,328	130,956,618
Sky Lease	SFV Aircraft Holdings IRE 9 DAC					1,657,500	135,550,350	2,107,991	172,391,523
Icelease	Sonoran MSN 9467 Limited							4,359,820	356,546,045
Icelease	Sonoran MSN 10011 Limited							4,329,179	354,040,285
	Total	237,922,837	72,677,801	310,600,638	25,400,920,166.21	26,727,851	2,185,803,625	238,754,634	19,525,353,999
	Add: Provision for Interest on Deferment				1,200,000,000.00	-	-	-	-
	Gross Total				26,600,920,166.21	26,727,851	2,185,803,625	238,754,634	19,525,353,999

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7. While explaining the reasons for such defaults, the Ld. Sr. Counsel Mr. Neeraj Kishan Kaul appearing for the Corporate Applicant stated that it has been facing financial distress due to inherently defective engines supplied by Pratt & Whitney



(hereinafter, referred to as “P&W”), as a result of which the aircraft are grounded and could not be taken off. It was stated that nearly 34% of aircraft were grounded in 2022. Though the Corporate Applicant has made various attempts to resolve the issue amicably with P & W, however, it refuses to honor its contractual obligations towards the Corporate Applicant by repairing/providing replacement engines.

8. It was further submitted by the Ld. Sr. Counsel that the Corporate Applicant had filed an emergency Arbitration against P&W before the Singapore International Arbitration Centre (SIAC), wherein the Emergency Arbitrator passed Awards dated 03.02.2023 and 15.04.2023 directing P&W to supply 10 serviceable engines by 27.04.2023 and 10 serviceable engines each month till December 2023. A copy of the same is annexed by the Corporate Applicant on page no. 111, Volume I of the application. He further stated that P&W failed to comply with the aforesaid orders, for which the Applicant has already initiated enforcement proceedings against P&W in Delaware, US as well as other relevant jurisdictions where engines are located.

9. It is stated that due to the aforesaid default, the Applicant was constrained to cancel 4,118 flights with 77,500 passengers in the last thirty days. Subsequent to the filing of the present application, the DGCA has issued a Show Cause Notice dated 02.05.2023 in relation to the cancellation of flights scheduled on 03.05.2023 and 04.05.2023.



10. It is further stated by the Ld. Sr. Counsel that the Corporate Applicant as on date has a total of 54 Air Crafts, which are its main assets. Out of these, 28 are grounded due to the non-supply of engines by P&W, and the remaining 26 are operational. He added that the Corporate Applicant will lose all its assets, if protection under the moratorium under Section 14(1) of IBC, 2016 is not granted to the Corporate Applicant, on an immediate basis.

11. The particulars of the total unpaid Financial and Operational debt and the “Date of Default” are mentioned by the Corporate Applicant in Part III and Part IV of the application, which are reproduced below:

Part-III

PARTICULARS OF FINANCIAL DEBT													
1.	NAME(S) OF FINANCIAL CREDITOR(S)	<p>The Corporate Applicant has availed financing from the following financial creditors:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Financial Creditors</th> <th style="text-align: left;">Nature</th> </tr> </thead> <tbody> <tr> <td>1. Central Bank of India</td> <td rowspan="4">Fund and non-fund-based facilities</td> </tr> <tr> <td>2. Bank of Baroda</td> </tr> <tr> <td>3. IDBI Bank</td> </tr> <tr> <td>4. Axis Bank</td> </tr> <tr> <td>5. Deutsche Bank</td> <td>Working capital facility (fund based)</td> </tr> <tr> <td>6. UT Finance Corporation</td> <td>ECB loan (fund based)</td> </tr> </tbody> </table> <p>Further, the Corporate Applicant has availed loan in the form of inter corporate deposits from its connected person ‘Bombay Burmah Trading Corporation Limited’.</p> <p>The details of the facilities availed by the Corporate Applicant from the aforesaid financial creditors is set annexed and marked as Annexure “A10”. The Corporate Applicant craves leave to refer to and rely upon any information or document that may have been inadvertently left out, at the time of the hearing.</p>	Financial Creditors	Nature	1. Central Bank of India	Fund and non-fund-based facilities	2. Bank of Baroda	3. IDBI Bank	4. Axis Bank	5. Deutsche Bank	Working capital facility (fund based)	6. UT Finance Corporation	ECB loan (fund based)
Financial Creditors	Nature												
1. Central Bank of India	Fund and non-fund-based facilities												
2. Bank of Baroda													
3. IDBI Bank													
4. Axis Bank													
5. Deutsche Bank	Working capital facility (fund based)												
6. UT Finance Corporation	ECB loan (fund based)												
2.	ADDRESS OF CORRESPONDENCE OF THE FINANCIAL CREDITOR(S)	<p>The details for address correspondence of the financial creditors are annexed and marked as Annexure “A11”.</p>											



PARTICULARS OF FINANCIAL DEBT		
3.	TOTAL DEBT RAISED AND AMOUNT IN DEFAULT	The aggregate outstanding debt raised by the Corporate Applicant from the Financial Creditors as on 28 April 2023 is INR 6,521 Crore. As on 30 April 2023, the Corporate Applicant has not defaulted to pay its financial creditors (listed in Annexure "A10" of this Application). However, considering the present financial situation of the Corporate Applicant, defaults to financial creditors would be imminent.
4.	DATE WHEN THE FINANCIAL DEBT WAS INCURRED	The details of the dates when the financial debt was incurred by the Applicant is set out in Annexure "A10" to this Application.
5.	PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR. ATTACH A COPY OF A CERTIFICATE OF REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPANIES (IF THE CORPORATE DEBTOR IS A COMPANY)	The list of charges created over the assets of the Corporate Applicant (including books debts, current assets, non-current assets, and immovable property) along with date of creation, value of security cover, and charge id's registered with the Registrar of Companies, New Delhi and available at the website of the 'Ministry of Corporate Affairs' is annexed and marked as Annexure "A12". The Corporate Applicant craves leave to refer to and rely upon the security documents at the time of hearing.



PARTICULARS OF FINANCIAL DEBT						
5.	DETAILS OF RETENTION OF TITLE ARRANGEMENTS (IF ANY) IN RESPECT OF GOODS TO WHICH THE OPERATIONAL DEBT REFERS	Not Applicable				
6.	RECORD OF DEFAULT WITH THE INFORMATION UTILITY, IF ANY	Not Applicable				
7.	LIST OF DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF FINANCIAL DEBT AND THE AMOUNT IN DEFAULT	<p>The List of the documents attached to this Application to prove existence of financial debt are as follows:</p> <p><u>Financial Debt:</u></p> <table border="1"> <thead> <tr> <th>Financial Creditors</th> <th>Documents</th> </tr> </thead> <tbody> <tr> <td>Debt incurred under the consortium lending led by Central Bank of India (INR 1300 crores) Bank of Baroda (INR 1300 crores) and IDBI Bank (INR 50 crores).</td> <td> <ul style="list-style-type: none"> ▪ Sanction letter dated 10 November 2022 issued by Central Bank of India; ▪ Sanction letter dated 01 July 2022 issued by Bank of Baroda; ▪ Sanction letter dated 24 July 2022 issued by IDBI Bank; and ▪ Common facility agreement dated 13 September 2017 entered into <i>inter alia</i> between the Corporate Applicant and Central Bank of India, Bank of Baroda, Dena Bank </td> </tr> </tbody> </table>	Financial Creditors	Documents	Debt incurred under the consortium lending led by Central Bank of India (INR 1300 crores) Bank of Baroda (INR 1300 crores) and IDBI Bank (INR 50 crores).	<ul style="list-style-type: none"> ▪ Sanction letter dated 10 November 2022 issued by Central Bank of India; ▪ Sanction letter dated 01 July 2022 issued by Bank of Baroda; ▪ Sanction letter dated 24 July 2022 issued by IDBI Bank; and ▪ Common facility agreement dated 13 September 2017 entered into <i>inter alia</i> between the Corporate Applicant and Central Bank of India, Bank of Baroda, Dena Bank
Financial Creditors	Documents					
Debt incurred under the consortium lending led by Central Bank of India (INR 1300 crores) Bank of Baroda (INR 1300 crores) and IDBI Bank (INR 50 crores).	<ul style="list-style-type: none"> ▪ Sanction letter dated 10 November 2022 issued by Central Bank of India; ▪ Sanction letter dated 01 July 2022 issued by Bank of Baroda; ▪ Sanction letter dated 24 July 2022 issued by IDBI Bank; and ▪ Common facility agreement dated 13 September 2017 entered into <i>inter alia</i> between the Corporate Applicant and Central Bank of India, Bank of Baroda, Dena Bank 					



PARTICULARS OF FINANCIAL DEBT			
			<p>and BNP Paribas.</p> <p>The aforementioned facility documents are annexed and marked as Annexure "A13 (colly)". The Corporate Applicant craves leave to refer to and rely upon any information or documents that has been inadvertently left out, at the time of hearing.</p>
		<p>Debt incurred under the ECLG scheme from Central Bank of India, Bank of Baroda and IDBI Bank.</p>	<ul style="list-style-type: none">▪ Sanction letters dated 5 December 2022, 25 March 2022, 6 August 2022, 16 December 2022, 21 June 2021, 22 July 2021 and 1 July 2022 issued by Bank of Baroda;▪ Sanction letters dated 4 July 2020, 3 May 2021, 12 October 2021, 5 September 2022 and 24 January 2023 issued by IDBI Bank; and▪ Sanction letters dated 4 February 2021, 28 September 2021, 19 March 2022, 13 June 2022, 5 June 2021 and 10 November 2022 issued by Central Bank of India. <p>The aforementioned facility documents are annexed and marked as Annexure "A14 (colly)". The Corporate Applicant craves leave to refer to and rely upon any information or documents that has been</p>



PARTICULARS OF FINANCIAL DEBT	
	<p>inadvertently left out, at the time of hearing.</p>
Axis Bank	<p>Sanction letter dated 18 April 2022 issued by Axis Bank (as the lender) in favour of the Corporate Applicant, as the borrower, a copy of which is annexed and marked as Annexure "A15". The Corporate Applicant craves leave to refer to and rely upon any information or documents that has been inadvertently left out, at the time of hearing.</p>
Deutsche Bank	<ul style="list-style-type: none">▪ Facility agreement dated 30 March 2022 executed between Go Air and Deutsche Bank AG, Mumbai Branch for INR 475 crores.▪ Amendment and restated facility agreement dated 30 March 2022 executed between Go Air and Deutsche Bank AG, Mumbai Branch for INR 342 crores.▪ Amended and restated facility agreement dated 14 April 2021, as amended and restated on 30 March 2022 executed between Go Air and Deutsche Bank AG, Mumbai Branch for INR 342 crores. <p>The aforementioned facility documents are annexed and marked as Annexure "A16 (colly)". The Corporate Applicant craves leave to refer to and rely upon any information or documents that has been inadvertently left out, at the time of hearing.</p>
UT Finance Corporation	<p>Facility agreement dated 15 February 2012 executed between Go Air and UT Finance Corporation, a copy of which is annexed and marked as Annexure "A17". The Corporate Applicant craves leave to refer to and rely upon any information or documents that has been inadvertently left out, at the time of hearing.</p>



PART IV

PARTICULARS OF OPERATIONAL DEBT		
1.	NAME(S) OF OPERATIONAL CREDITOR(S)	The names of the vendors of the Corporate Applicant is annexed and marked as Annexure "A18" . Name of the lessors of the Corporate Applicant is annexed and marked as Annexure "A19 (colly)" . The Corporate Applicant craves leave to refer to and rely upon any information or documents that has been inadvertently left out, at the time of hearing.
2.	ADDRESS OF CORRESPONDENCE OF THE OPERATIONAL CREDITOR(S)	The details for address correspondence of the (a) vendors of the Corporate Applicant is marked as annexed and marked as Annexure "A18" and (b) of the lessors of the Corporate Applicant is annexed and marked as Annexure "A19 (colly)".
3.	TOTAL DEBT RAISED AND AMOUNT IN DEFAULT	As on date, the Corporate Applicant has defaulted to pay its operational creditors, which includes dues towards its vendors which aggregate to an amount of INR 1,202 Crore (net of advances) and dues towards aircraft lessors aggregating to an amount INR 2,660 Crore. The details of the amount due to its vendors of the Corporate Applicant is provided under Annexure "A18". The amounts due to the lessors of the Corporate Applicant is provided under Annexure "A19 (colly)".



5.	PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR. ATTACH A COPY OF A CERTIFICATE OF REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPANIES (IF THE CORPORATE DEBTOR IS A COMPANY)	Not Applicable
4.	DATE WHEN THE OPERATIONAL DEBT WAS INCURRED	The details of the operational debt with respect to the vendors and the lessors are set out in Annexure "A18" and Annexure "A19 (colly)" respectively.
5.	DETAILS OF RETENTION OF TITLE ARRANGEMENTS (IF ANY) IN RESPECT OF GOODS TO WHICH THE OPERATIONAL DEBT REFERS	Not Applicable



6.	RECORD OF DEFAULT WITH THE INFORMATION UTILITY, IF ANY	Not Applicable
7.	LIST OF DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF OPERATIONAL DEBT AND THE AMOUNT IN DEFAULT	(i) The details of the amount due to the vendors of the Corporate Applicant is provided under Annexure "A 18". The amounts due to the Lessors of the Corporate Applicant are provided under Annexure "A19". (ii) A copy of the audited financial statement of the Corporate Applicant for the financial year 2020-21 is annexed and marked as Annexure "A20". (iii) A copy of the audited financial statement of the Corporate Applicant for the financial year 2021-22 is annexed and marked as Annexure "A21". (iv) The statement of affairs of the Corporate Applicant as on 28 April 2023 is annexed and marked as Annexure "A22 colly". (v) A copy of the memorandum and articles of association of the Corporate Applicant is annexed and marked as Annexure "A23". (vi) Copy of Form 2 executed by Mr. Abhilash Lal is annexed and marked as Annexure "A24". (vii) Proof of Service of application on IBBI is annexed herewith and marked as Annexure "A25"

12. Thus, as per its Application, the Corporate Applicant is claimed to have committed a default of Rs. 2660 Crores toward Aircraft Lessors and Rs. 1202 Crores (page no. 26 of Volume I) towards its Vendors. During the course of the hearing, Ld. Sr Counsel for the Corporate Applicant stated that as on the date of filing of the application, the Corporate Applicant did not default towards payment of dues to the Financial Creditors; however, on 04.05.2023, it has committed default of Rs.11.03 Crores towards interest dues of the Financial Creditors.



13. The Applicant has also annexed the copies of the Board of Directors' Resolution and Shareholders' Special Resolution authorizing the Corporate Applicant to file the Section 10 application before this Adjudicating Authority. The copies of said Resolutions, annexed on page nos. 1149-50, Volume 7 of the application, are reproduced thus:



ANNEXURE - A8

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF GO AIRLINES (INDIA) LIMITED AT THEIR MEETING HELD ON SUNDAY, APRIL 30, 2023

AUTHORITY FOR FILING OF PETITION/APPLICATION OF CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER SECTION 10 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

"RESOLVED THAT, in continuation of the resolution passed by the Board on April 28, 2023 for approving the initiation of the Corporate Insolvency Resolution Process ("CIRP"), under Section 10 of the Insolvency and Bankruptcy Code, 2016 ("IBC") with respect to the Company, and in accordance with the authorisation provided to the Board pursuant to the resolution passed by the shareholders dated April 30, 2023, subject to necessary internal and external approvals, any Directors of the Company, Mr. Kaushik Khona, Chief Executive Officer, Mr. Niraj Kumar, Chief Financial Officer, Mr. Manish Sehgal, Company Secretary, Mr. Sumit Bhandari, General Manager-Delhi, Mr. Ranjeev Radhakrishnan, Airport Manager- Delhi, Mr. Mohit Dwivedi-Senior General Manager-Corporate Affairs-Delhi ("**Authorised Signatory**"), of the Company, be and are severally authorised to file and submit the application on behalf of the Company for initiation of the CIRP under Section 10 of the IBC, before the Hon'ble National Company Law Tribunal, Principal Bench at New Delhi and do all such acts, deeds and things as may be necessary, desirable or expedient, take all necessary steps including make/file any application, appeals, writ petitions, rejoinders, written statements, etc., execution of all forms, documents and writings in connection therewith, accept service of process for and on behalf of the Company and to appear and act on behalf of the Company before any Hon'ble National Company Law Tribunal, Hon'ble National Company Law Appellate Tribunal, Hon'ble High Courts, Hon'ble Supreme Court, or any other authority or court having jurisdiction over the Company in this regard.

RESOLVED FURTHER THAT the authority of the Authorised Signatory to propose and engage insolvency professionals, advisors, consultants, lawyers advocates and solicitors etc. on such terms as may be deemed fit from time to time in connection with the proposed CIRP and obtain any advisory/consultation in regard to the above.

RESOLVED FURTHER THAT all or any of the Directors or the Authorised Signatory of the Company be and hereby severally authorised to issue the certified true copy of this resolution.

**Certified True Copy
For Go Airlines (India) Limited**

Manish
**Manish Sehgal
Company Secretary
FCS - 7102**





ANNEXURE - A9

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED BY THE SHAREHOLDERS OF GO AIRLINES (INDIA) LIMITED AT THEIR EXTRA ORDINARY GENERAL MEETING HELD ON SUNDAY, APRIL 30, 2023

TO INITIATE CORPORATE INSOLVENCY RESOLUTION PROCESS OF THE COMPANY

“RESOLVED THAT pursuant to the provisions of Section 10 and other applicable provisions, if any, of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and other relevant rules framed thereunder (including any statutory modification(s) or re-enactment thereof for the time being in force), for the time being in force in India, the consent of the members of the Company be and is hereby accorded to initiate Corporate Insolvency Resolution Process (CIRP), voluntarily, and file an application before the Hon'ble National Company Law Tribunal, Bench at New Delhi under Section 10 of Insolvency and Bankruptcy Code, 2016.

RESOLVED FURTHER THAT approval of the members of the Company be and is hereby accorded to the Board of Directors of the Company to do all such acts, deeds, matters and things and to take all such steps as may be required in this connection and to settle any questions, difficulties or doubts that may arise in this regard, without being required to secure any further consent or approval of the members of the Company to the end and intent that they shall be deemed to have given their approval thereto expressly by the authority of this resolution.”

**Certified True Copy
For Go Airlines (India) Limited**

Manish

**Manish Sehgal
Company Secretary
FCS - 7012**



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14. The Corporate Applicant has also placed on record, its audited financial statements for the last two financial years, which are annexed on page nos. 1582-1719 of Volume 9 of the application.

15. Based on the aforesaid facts and documents, it was submitted by the Ld. Sr. Counsel appearing for the Corporate Applicant that there is a financial debt subsisting of more than Rs. 01 Crore, the Corporate Applicant has committed default towards the same, and all the ingredients required under Section 10 of IBC, 2016 are fulfilled. In the background, he prayed for the initiation of CIRP against the Corporate Applicant. In the alternative, he prayed for a grant of an interim moratorium for the Corporate Applicant. He emphatically stated the said relief is necessary, in the instant case, to preserve the assets of the Corporate Applicant and to keep the Company as a going concern in the larger public interest.

16. At this stage of the hearing, Shri. Arun Kathpalia, Ld. Sr. Counsel appeared on behalf of certain Operational Creditors, viz., SMBC Aviation Capital Limited, Narmada Aviation Leasing Ltd., Yamuna Aviation Leasing Ltd., GAL MSN 6072 & 6184 Limited, GY Aviation Lease 1722 Ltd., etc., and opposed the present application on the ground that they wish to file an application under Section 65 of IBC, 2016. He further stated that before adjudicating the Section 10 application, it is necessary that the notice be issued to the Creditors giving them an opportunity to object to the present Application. In this regard, he relied upon the Judgement of Hon'ble NCLAT passed in the matter of **Krrish Realtech**



Private Limited in Company Appeal (AT) (Insolvency) No. 1008 of 2021, dated 21.012.2021, wherein the following was observed:

“18. We have noticed that cardinal principle of procedure to be followed by the Adjudicating Authority is the adherence of Rules of natural justice which is statutorily provided for under Section 424 of the Companies Act, 2013. The time given for objection to the objectors in the facts of the present case, is in accordance with principle of natural justice which is to be followed by the Adjudicating Authority. Further, there is no violation of any Regulations or Rules or provisions of the ‘I&B Code’ in giving opportunity to objectors to file their objection nor any such violation has been pointed out before us. It is further relevant to notice that all the objectors who have filed different IAs for objection are the persons who are included in list of unrelated Financial Creditors as disclosed by the Appellant itself in his Application filed for prepackaged insolvency resolution process except few objectors who claimed that although they are allottees but their names have not been shown in the list. Some of the counsel appearing for the objectors have also submitted that various homebuyers although objected to the Resolution but their votes have been wrongly recorded as ‘YES’ in the Form P-4 filed alongwith Application.”

17. In response to the aforesaid submissions, the Ld. Sr. Counsel for the Applicant submitted that the facts of **Krrish Realtech** (supra) are different from the facts herein, as Krrish Realtech was a case of pre-packed Insolvency, wherein consent of 66% of Creditors is required prior to filing an application and the Creditors of that particular case objected to the application on the ground that they did not give the requisite



consent. He further argued that in the same very Judgement, it has also been held that IBC proceedings are to be adjudicated in a time-bound manner, and giving the opportunity to the objectors and intervenors is the discretion of the Tribunal to be exercised only on valid grounds.

18. The Ld. Sr. Counsel for the Applicant further relied upon the Judgement of NCLT Kolkata Bench passed in C.P. (I.B) No. 104/KB/2022 in the matter of **Power Max (India) Private Limited** dated 01.05.2023, wherein the IAs were filed by the Creditors. However, it is noted that those were not heard on merits. Rather, a direction was issued to the Creditors to file their claims before the IRP, which implies that Creditors are not a necessary party to be heard at the time of admission of a Section 10 Application. The Section 10 Application was pending for admission for quite some time and in the meantime, IAs as above were filed and finally, disposed of.

19. In rebuttal, the Ld. Sr. Counsel Mr. Arun Kathpalia representing the Lessors/Objectors stated that through the IAs filed in the matter of Power Max (India) Private Limited, the Creditors were seeking recovery of their dues, and those IAs were not filed under Section 65 of IBC, 2016. He further relied upon the Judgement of **Wave Megacity Centre Private Limited Vs Rakesh Taneja & Ors. Company Appeal (AT) (Insolvency) No. 918 of 2022**, wherein an IA preferred under Section 65 of IBC, 2016 was heard prior to the admission of Section 10 Application, which led to the dismissal of the Section 10 Application by the NCLT Principal Bench, and that was upheld by the Hon'ble NCLAT.



20. Responding to the above, the Ld. Sr. Counsel for the Corporate Applicant contended that the **Wave Megacity** (supra) has not laid down any law that adjudication of a Section 65 Application is a pre-requisite for admitting the Section 10 Application. He further stated that the Creditors have no locus to object to the admission of an Application under Section 10 of IBC 2016, which is otherwise complete in all respects. If any Creditor has any grievance, it can file an Application under Section 65 of IBC 2016, which can be heard even after the admission of a Section 10 Application. He further argued that if Creditors are heard at the time of admission, there is a risk that the Corporate Applicant may lose its Assets or value thereof, causing an irreparable loss to the Corporate Applicant, resulting in lack of or no possibility of its resolution.

21. We heard the Ld. Sr. Counsel Sh. Neeraj Kishan Kaul appearing for the Corporate Applicant/Debtor and Sh. Arun Kathpalia and Others appearing for the Lessors/Objectors, and perused the application/documents and the Judgments placed on record. An issue, that emerged during the course of the hearing, was regarding the issuance of notice to the Creditors. Hence, before considering the present Application on merits, we would like to examine -

“Whether there is any mandatory requirement of issuing notice to the Creditors before admitting an Application filed under Section 10 of IBC 2016.”



22. On perusal of the Memo of Parties of the present Application filed under Section 10 of IBC 2016, it is observed that there is no Respondent impleaded in the application, unlike the Section 7 & 9 Applications, which are preferred by a Creditor against a specific Corporate Debtor. Further, though an application, if admitted, under either of Sections 7 or 9, or 10 leads to one and the same outcome i.e., initiation of CIRP of the corporate debtor, however, each of these routes is different from the other in terms of criteria and eligibility.

23. Undisputedly, before the commencement of CIRP, an Application under Sections 7 and 9 are in personam i.e., a litigation between two parties, where notice to the Respondent/Corporate Debtor is a matter of right. Usually, there are no other parties as Respondent other than the Corporate Debtor in Section 7 and 9 applications. There are various instances, where the Hon'ble NCLAT and this Adjudicating Authority prohibited the intervention of other parties/Creditors in Section 7 or Section 9 Application on the ground that they are not necessary parties to the Application. The instances of such Judgements are given below:

- (i) Hon'ble NCLAT in its Judgement dated 18.02.2021 in the matter of **“Vekas Kumar Garg vs. DMI Finance Pvt. Ltd. & Anr.” in Company Appeal (AT) (Insolvency) No. 113 of 2021** with respect to the right of a third party to intervene in a Section 7 Application at a pre-admission stage, held as reproduced overleaf:



“3. After hearing learned counsel for the Appellant and going through the record, we are of the view that the ground projected by the Appellant in his capacity as Resolution Professional of NDL for seeking impleadment in CP IB2115/ND/2019 pending consideration before the Adjudicating Authority does not warrant impleadment of Appellant as party Respondent. In an application under Section 7, the Financial Creditor and the Corporate Debtor alone are the necessary party and the Adjudicating Authority is, at the pre-admission stage, only required to satisfy itself that there is a financial debt in respect whereof the Corporate Debtor has committed a default warranting triggering of CIRP. **The Adjudicating Authority is required to satisfy itself in regard to there being a financial debt and default thereof on the part of the Corporate Debtor besides the application being complete as mandated under Section 7(5) of the ‘I&B Code’ and then pass an order of admission or rejection on merit as mandated under sub-section (4) of Section 7 within 14 days. No third party intervention is contemplated at that stage.**

(Emphasis added)

(ii) NCLT Delhi Court-II, in the matter of **“SREI Infrastructure Finance Limited Vs M/s. Alstrong Enterprises India Private Limited”**, while deciding an Application IA-1615/2021 filed by Punjab National Bank opposing a Section 7 Application, observed vide order dated 02.07.2021 that:

“10. We further notice that under the scope of Section 7 of IBC, 2016, **the third person is not a necessary party. Only the Financial Creditor and the Corporate Debtor are the necessary party in these proceedings.**



11. We further notice that the applicant has filed this application under Section 60(5) of IBC, 2016. Admittedly, the IB/913/2020 has not been admitted as yet. **Therefore, in our considered view, the applicant is not a necessary party and even their prayer, which has been made under Section 60(5) of the IBC, 2016, cannot be allowed.**

(Emphasis added)

24. However, under Section 10 of IBC 2016, the Corporate Applicant/Corporate Debtor itself approaches the Adjudicating Authority for initiating its own CIR Process and the default in such cases may or may not be limited to just 1 Creditor. For instance, in the instant case, there are numerous Creditors of the Corporate Applicant, the default to whom is running into thousands of Crores. However, in order to examine whether issuance of notice is a matter of right to those Creditors under the Section 10 Application, we refer to the Judgement of Hon'ble NCLAT dated 01.12.2017 passed in the matter of **M/s. Unigreen Global Private Limited vs. Punjab National Bank & Ors. in Company Appeal (AT) (Insolvency) No. 81 of 2017**, wherein the Hon'ble NCLAT discussed on what grounds, a Creditor can object to a Section 10 Application –

*“21. In an application under Section 10, the ‘financial creditor’ or ‘operational creditor’, **may dispute that there is no default or that debt is not due and is not payable in law or in fact. They may also oppose admission on the ground that the Corporate Applicant is not eligible to make application in view of ineligibility under Section 11 of the I & B Code. The Adjudicating Authority on hearing the parties and on perusal of record, if satisfied that there is a debt and default has occurred and the Corporate Applicant is not ineligible under Section 11,***



the Adjudicating Authority has no option but to admit the application, unless it is incomplete, in which case the Corporate Applicant is to be granted time to rectify the defects.”

(Emphasis added)

25. On perusal of the Judgement of the Hon’ble NCLAT (supra), it is observed that a Creditor has limited grounds to object to an application preferred under Section 10 i.e., if the debt is not due and is not payable in law or in fact or Corporate Applicant is not eligible to make an application in view of its ineligibility under Section 11. In the instant case, it is not the case of the Lessors/Objectors/Creditors represented during the hearing through Ld. Sr. Counsel, Sh. Arun Kathpalia and Others that there is no debt due and payable or the Corporate Applicant herein is ineligible under Section 11 of IBC, 2016. Even if there was no representation at all on behalf of the Creditors, then also, it is evident from the notices of the Operational Creditors annexed to the present Application that the amount of default of the Corporate Applicant is running in thousands of crores.

26. We further observe that although the Judgement of **M/s. Unigreen Global Private Limited (supra)** recognizes the creditors to be heard in a Section 10 Application, we however, notice that it has not specifically dealt with the issue of whether there is any requirement of issuing prior notice to the Creditors under a Section 10 Application as a condition precedent.



27. A party who can seek a hearing as a matter of right, in our view, is the one who is mandatorily required to be served with a copy of an application. In this context, we would like to examine to whom a copy of Section 7, 9, and 10 applications are mandatory and required to be served. Accordingly, we refer to Rules 4, 6, and 7 of the “Application to Adjudicating Authority Rules, 2016”, which are reproduced below:

4. **Application by financial creditor.**—(1) A financial creditor, either by itself or jointly, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 7 of the Code in Form 1, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
 - (2) Where the applicant under sub-rule (1) is an assignee or transferee of a financial contract, the application shall be accompanied with a copy of the assignment or transfer agreement and other relevant documentation to demonstrate the assignment or transfer.
 - (3) The applicant shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the corporate debtor.
 - (4) In case the application is made jointly by financial creditors, they may nominate one amongst them to act on their behalf.

6. **Application by operational creditor.**—(1) An operational creditor, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 9 of the Code in Form 5, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
 - (2) The applicant under sub-rule (1) shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the corporate debtor.

7. **Application by corporate applicant.**—(1) A corporate applicant, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 10 of the Code in Form 6, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
 - (2) The applicant under sub-rule(1) shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the corporate debtor.



28. On perusal of the abovesaid Rules, it is observed that Rule 4 of the Application to Adjudicating Authority Rules, 2016 prescribes an Application filed under Section 7 by a Financial Creditor to be served to the Corporate Debtor. Similarly, Rule 6 prescribes that an Application filed by an Operational Creditor under Section 9 of IBC, 2016 be served to the Corporate Debtor. However, Rule 7 which deals with the filing of an Application by a Corporate Applicant under Section 10, does not stipulate that the application is required to be served to the Creditor(s).

29. We are well aware that this is not the position, in the case of Insolvency of a Personal Guarantor itself. When an application for Voluntary Insolvency is filed by a Personal Guarantor under Section 94 of IBC 2016 to initiate its own IR process, a copy of the application is mandatorily required to be served to the Creditors. [It may be noted that Section 94 is a similar provision where the debtor itself files an application for its own insolvency like a Corporate Person does under Section 10]. At this stage, we refer to Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, which reads thus:

- 6. Application by guarantor.—** (1) The application under sub-section (1) of section 94 shall be submitted in Form A, along with an application fee of two thousand rupees.
- (2) The guarantor shall serve forthwith a copy of the application referred to in sub-rule (1) to every financial creditor and the corporate debtor for whom the guarantor is a personal guarantor.



30. In view of the aforesaid discussion, we find that there is no express provision in the law, which necessitates the issue of notice or service of a copy of the Section 10 Application to the Creditor(s).

31. The Ld. Sr. Counsel for the Lessors/Objectors/Creditors further contended that as per Section 424 of the Companies Act 2013, this Adjudicating Authority is to be guided by the Principles of Natural Justice (“PNJ”) and therefore, is bound to afford an opportunity of being heard to the Creditors.

32. In our view, there is no straight-jacket formula for applying the Principles of Natural Justice. The proceedings under Sections 7 & 9 of IBC 2016, where only 2 parties are involved, no 3rd party can interfere and notice of hearing is issued, cannot be compared with the proceedings under Section 10, where a Corporate Debtor is having multiple Creditors and each of the Creditors will plead for a hearing. This is so because the timelines, that are specified in the IBC 2016, have also to be adhered to. In any event, the Creditors do not lose their rights, which they will have, eventually in the course of proceedings. At this juncture, we refer to the Judgement of the Hon’ble Supreme Court dated 19.09.2005 in the matter of “**Kumar Nag Vs G.M (P.J) India Oil, Civil Appeal No. 4544 of 2005**”, the relevant extracts of which are reproduced below-

*“.... But we are also aware that **principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a straight-jacket. They must yield to and change with exigencies of situations. They must be confined within their limits and cannot be allowed to run***



wild. It has been stated; "To do a great right after all, it is permissible sometimes to do a little wrong". [Per Mukharji, C.J. in Charan Lal Sahu v. Union of India, (Bhopal Gas Disaster); (1990) 1 SCC 613] While interpreting legal provisions, a court of law cannot be unmindful of hard realities of life. In our opinion, the approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than 'precedential'."

(Emphasis added)

33. Further, the Hon'ble NCLAT in the Judgement dated 21.012.2021 passed in the matter of **Krrish Realtech Private Limited in Company Appeal (AT) (Insolvency) No. 1008 of 2021**, observed the following:

"15. The legislative intent which is clear by Section 424 (1) is that the Tribunal while disposing of any proceeding before it shall not be bound by procedure laid down by Code of Civil Procedure but shall be guided by the principle of natural justice and subject to the other provisions of this Act or Code 2016 and any of the Rules made thereunder. Further, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure. The statutory scheme delineated by Chapter III-A of 'I&B Code' as well as the Regulations, 2021 as observed above does not indicate any prohibition on the Adjudicating Authority to hear any objector or intervener before admitting an Application of pre-packaged insolvency resolution process. When there is no prohibition in hearing an objector or interveners by the Adjudicating Authority, the orders passed by the Adjudicating Authority giving time to the objectors to file objection cannot be said to be in breach of any statutory provisions. **We may hasten to add that hearing of objectors or interveners in each case where pre-packaged insolvency resolution process**



application has been filed is not a matter of course and has to be limited to exceptional cases. We are cautious that proceeding under the 'I&B Code' are time bound procedure where unnecessary delay has to be avoided by the Adjudicating Authority and giving time to objections which are meritless and giving time to objectors and interveners has to be exercised on sound discretion on valid grounds.

(Emphasis added)

34. Further, we are conscious of the fact that hearing each and every Creditor, under Section 10 of IBC 2016, can cause an inordinate delay in the conclusion of the proceeding, which may result in the erosion of the value of the assets and defeat the very purpose of value maximization and ultimately, the revival of the Corporate Applicant, which is not the objective of the IBC. As we have seen above, in the Application to Adjudicating Authority Rules, 2016, even the right to serve a copy of a Section 10 Application is not conferred to the Creditor(s). **Hence, in view of the above, we conclude that in Section 10 proceedings, though there is no mandatory requirement of issuing notice to the Creditor(s) at the pre-admission stage, rather giving notice to the Creditor(s) is a matter of discretion to be exercised on a case-to-case basis on valid grounds. Wherever there is a clear apprehension of deterioration of assets of the Corporate Applicant/Debtor and larger public interest is involved, issuance of notice at the pre-admission stage cannot be claimed as a matter of right.**



35. The other contention raised by the Ld. Sr. Counsel Sh. Arun Kathpalia for the Lessors/Objectors is that they intend to file an Application under Section 65 of IBC, 2016, which should be heard first before adjudicating the present Section 10 Application.

36. Per Contra, the Ld. Sr. Counsel for the Applicant stated that there is no bar in filing an Application under Section 65 of IBC, 2016 after the commencement of the CIR Process and hearing thereof.

37. During the course of the hearing, this Bench raised a specific query to Mr. Arun Kathpalia, Ld. Sr. Counsel representing the Lessors/Objectors whether the Corporate Applicant has committed default in respect to the Lessors/objectors he is representing and what is the malicious element in the present Application?

38. In response to the same, the Ld. Sr. Counsel Mr. Arun Kathpalia representing the Lessors/Objectors did not dispute the fact that the Corporate Applicant herein has defaulted to the Lessors. However, with respect to the malicious content, he stated that the CIR process is not feasible in the present case due to the following reasons:

(i) The aircraft of the Corporate Debtor are grounded and are not in a flying condition. In the absence of flying aircraft, the Corporate Debtor could not be kept as a going concern.

(ii) The grounded aircraft will only be unproductive assets and will burden the Corporate Debtor further with the CIRP cost in the form of continued lease rentals of the aircraft.



39. Ld. Sr. Counsel Mr. Neeraj Kishan Kaul, appearing for the Applicant replied to the contentions of the objectors and stated that the aircraft are grounded due to the defective engines supplied by P&W against which it has an Arbitral Award in its favor which directs P&W to supply 10 serviceable engines by 27.04.2023 and thereafter, 10 serviceable engines each month till December 2023. Further, the proposed IRP backed by a professional agency Alvarez and Marsel will take steps to enforce the arbitral award. It was further added if these engines are supplied by P&W, the flights could be resumed and the Corporate Applicant/Debtor could continue to function as a going concern. As regards the CIRP cost, he added that the same shall be absorbed by the Successful Resolution Applicant as per the Scheme laid down in Section 30(2)(a) of IBC 2016. The Ld. Sr. Counsel further stated that in any case, the aforesaid grounds do not make the present Application malicious. He vehemently opposed any proposition regarding the malicious intent of the Applicant as leveled by the Ld. Sr, Counsel appearing for the Lessors/Objectors. He further added that even, if any Section 65 Application is filed subsequently, the same can be heard by this Adjudicating Authority post-admission and there is no law/requirement to keep the admission of a Section 10 Application pending for a Section 65 application, which is proposed to be filed by the Lessors/Objectors in future.



40. We are aware, though as of the date of the hearing, there is no Section 65 Application filed/pending/listed before this Adjudicating Authority, the moot question that has been raised is -

“Whether an Application under Section 65 can be entertained even after the commencement of CIRP.”

41. In this context, first we visit Section 65 of IBC, 2016, which reads thus:

“65. Fraudulent or malicious initiation of proceedings. –

(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees

[(3) If any person initiates the pre-packaged insolvency resolution process—

(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or

(b) with the intent to defraud any person,

the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees....”



42. On reading the contents of Section 65(1), it is observed that a penalty can be imposed on a Person, who **initiates** the Insolvency Resolution Process fraudulently or with malicious intent for any purpose other than for the resolution of insolvency.

Now, in order to decode the word “initiates”, we refer to the definition of “initiation date” that has been defined under Section 5(11) of IBC, 2016 –

(11) “initiation date” means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process [or pre-packaged insolvency resolution process, as the case may be];

43. We observe that Section 65 only uses the word “initiates”, and does not make any distinction like the stage of pre-admission or post-admission of CIRP, and from the reading of Sub-section (1), it transpires that the provision is applicable not only on the date on which a financial creditor / operational creditor or corporate applicant, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process but certainly, not limited to and may extend to the period of Liquidation, as the case may be. Needless to say, that fraud vitiates all acts. There could be instances where the fraudulent act is detected much after the commencement of CIRP. If a narrow interpretation of Section 65 of IBC 2016 is taken i.e., limiting its applicability to the pre-admission stage, then Section 65 will have no relevance. Therefore, Section 65 of



IBC can be resorted to by an aggrieved party at any stage, be it pre-admission or post-admission. **Accordingly, we conclude that there is no bar in entertaining/considering/adjudicating a Section 65 Application after the initiation of the CIR Process.**

44. Further, as we have noted earlier, as of the date of the hearing, there was no Section 65 Application filed/pending/listed before this Adjudicating Authority. Keeping in mind the urgency of the instant case, to protect and maximize the value of the Assets in line with the objectives of IBC, employment involved, and the larger public interest, the judicial propriety demands it will not be apt to wait for the filing of the Section 65 Application. Hence, we would like to proceed ahead with the examination of the Section 10 Application on merits.

45. At this juncture, first we refer to Section 10 of IBC, 2016, which reads thus:

10. Initiation of corporate insolvency resolution process by corporate applicant. -

(1) Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

(2) The application under sub-section (1) shall be filed in such form, containing such particulars and in such manner and accompanied with such fee as may be prescribed.

²(3) The corporate applicant shall, along with the application, furnish-

(a) the information relating to its books of account and such other documents for such period as may be specified;

(b) the information relating to the resolution professional proposed to be appointed as an interim resolution professional; and

(c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.]

(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of



the application, by an order-

(a) admit the application, if it is complete ¹[and no disciplinary proceeding is pending against the proposed resolution professional]; or

(b) reject the application, if it is incomplete ²[or any disciplinary proceeding is pending against the proposed resolution professional]:

Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.

(5) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (4) of this section.

46. On perusal of the contents of Section 10 of IBC 2016, we find that what the Adjudicating Authority has to satisfy is that (a) there is a debt, (b) default has occurred, (c) the application is complete in terms of sub-section (2) & (3) of Section 10, and further, (d) the Corporate Applicant is not ineligible under Section 11. Therefore, we would like to examine the present application in terms of these parameters.

47. In support of the existence of its debt and default, the Corporate Applicant has placed on record the demand notices issued by the Creditors to the Applicant to demonstrate that it has committed default of a debt of more than Rs 01 Crore. Also, Ld. Sr. Counsel representing Lessors/Objectors did not raise any dispute regarding the existence of the debt owed to them and the occurrence of default. As regards compliance with Section 10(3)(a), the Corporate Applicant has annexed the Audited Balance Sheets for the last two Financial Years on Pages 1582-1719 in Volume 9 of the Application. In compliance with Section 10(2)(b), the Written Consent of the proposed



IRP in Form-2 is placed on record on Page 1833 of the Application. Further, as already noted in para 13, in compliance with Section 10(2)(c), the Special Resolution passed by the Shareholders is also on record on Page 1150 in Volume 7 of the Application. Hence, we find that the Application is complete in terms of Section 10(3) of IBC 2016.

48. Hence, in view of the unpaid debt subsisting above Rs. 01 Crore and the default committed by the Corporate Applicant towards the same, and the Corporate Applicant being not disqualified under Section 11 of IBC 2016, we have no other option but to admit the present Application under Section 10 of IBC 2016. **Accordingly, the Application of the Corporate Applicant is admitted.** As a necessary consequence, the moratorium in terms of Section 14(1) (a), (b), (c) & (d) is declared, and the following prohibitions are imposed:

- “(a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including the execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating, or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;



- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor.”

49. As proposed by the Corporate Applicant, this Bench appoints Mr. Abhilash Lal as IRP having IBBI Registration IBBI/IPA-001/IP-P00344/2017-2018/10645 (Email: abhilash.lal@gmail.com) subject to the condition that no disciplinary proceeding is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week of this order. This Adjudicating Authority orders that:

- (a) Mr. Abhilash Lal (Email: abhilash.lal@gmail.com) as IRP having IBBI Registration IBBI/IPA-001/IP-P00344/2017-2018/10645 is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The IRP is directed to take the steps as mandated under the IBC specifically under Sections 15, 17, 18, 20, and 21 of IBC, 2016.
- (b) The IRP will ensure to take all necessary steps including the execution of the Arbitral Award to keep the Corporate Debtor as a going concern and run its services smoothly.
- (c) The IRP also shall ensure that retrenchment of employees is not resorted to as a matter of course. In any event, any such decision/event should be brought to the attention of this Adjudicating Authority.

50. It is further ordered that the Suspended Board of Directors and Ex-Management of the Corporate Applicant/Corporate Debtor shall extend all necessary support and cooperation to the IRP and his team in keeping the



Corporate Applicant/Corporate Debtor as “a going concern” and running its operations/services smoothly.

51. The Suspended Management is directed to deposit Rs. 5 Crores (Five Crores) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back.

52. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Applicant and the IRP mentioned above. In addition, a copy of the Order shall also be forwarded by the Registry/Court Officer of this Tribunal immediately to the IBBI for their records.

Sd/-
(RAMALINGAM SUDHAKAR)
PRESIDENT

Sd/-
(L. N. GUPTA)
MEMBER (TECHNICAL)