

NATIONAL COMPANY LAW TRIBUNAL
COURT-I, MUMBAI BENCH

Item No. 2

IA 292/2022 IN CP (IB) 2205/MB/2019

CORAM:

SH. KAPAL KUMAR VOHRA
HON'BLE MEMBER (T)

JUSTICE P. N. DESHMUKH (Retd.)
HON'BLE MEMBER (J)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **09.02.2022**

NAME OF THE PARTIES: - State Bank of India
V/s
Jet Airways

Appearance (via video-conference):

For the Applicant : Mr. Rohan Rajadhyaksha, Advocate

For the Respondent : Mr. Vikram Nankani, Sr Advocate

Sections 60(5), 7 of IBC, 2016

ORDER

IA 292/2022

Heard Ld. Advocates for the Parties.

This Application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (Code), in relation to the strategic assets of the Applicant (Jet Airways) which are placed at the Respondent's Hangar and other places at airport approximately admeasuring 11,850 sq. mtr., contending that the Applicant has ceased its operation as commercial Airline since 17.04.2019 i.e. prior to commencement of Corporate Insolvency Resolution Process (CIRP) and Respondent on 03.06.2019, requested the Applicant to vacate the facility made available as aforesaid which is in use of the Applicant contending that permission of subject premises granted to the Applicant for its use stands revoked. Under these circumstances, prayer

in this Application is to restrain the Respondent from removing Applicant's assets lying at the Respondent's premises at Mumbai International Airport Limited (MIAL). It is further prayed that direction be issued to the Respondent to allow the Applicant unhindered access including to his Representatives, Workmen, Nominees, etc. who are required to visit the same for the purpose of maintenance of assets stored at above premises which are required to be preserved for successful implementation of the Resolution Plan and as such it is also prayed that parties be directed to maintain the status quo in respect of Applicant's assets lying at the MIAL Airport and its Hangar.

Ld. Sr. Advocate for the Respondent at the outset challenged the maintainability of the Application by referring to its own case contending that since 17.04.2019, Applicant Airline has ceased its operation as commercial Airline. Respondent w.e.f. 03.06.2019, rightly made request to the Applicant to vacate the premises and Hangar made available to it and as such the permission enforced as granted, to the Applicant stands revoked. Applicant has no locus to file such Application and no reliefs as prayed can be allowed. In the background of the above submissions, time is sought to file detailed Affidavit in Reply.

Ld. Advocate for the Applicant, however, prayed for grant of interim relief by issuing directions to Respondent to allow the Applicant including his Representatives, Workmen and Nominees to have access to the MIAL premises and Hangar as the same is necessary for preserving the assets.

Admittedly, the Resolution Plan submitted by the Successful Resolution Applicant is duly approved by this Tribunal on 22.06.2021. Ld.

Advocate for the Applicant by referring to the order pointed out that, the said Plan provides that the Applicant / Corporate Debtor (CD) would continue to utilize the MIAL facilities. Further, it is also directed that the Authorities concerned to favorably consider the Application, in relation to the reliefs, such as restoration of license or agreement executed by the CD prior to the commencement of CIRP, keeping in view the object of the Resolution of the CD. However, the Respondent by its communication dated 17.12.2021, withdrew the access granted to the Applicant and on the contrary instructed Applicant to move its assets within seven days. It is noted that the Applicant replied to the communication on 24.12.2021 with request to grant time; however, on 14.01.2022 Respondent contending that the time granted has since come to an end advised the Applicant to remove all his assets from its premises and Hangar. The Applicant again on 25.01.2022 requested the Respondent that any hinderance in access to assets or to the premises, where the Applicant's assets are lying would lead to significant loss and jeopardize the successful Resolution of the CD; in spite of that since the access to the premises has been denied, the Applicant has approached this Tribunal by filing this Application.

In the backdrop of above facts and as we are aware that the Resolution Mechanism is at an advanced stage and since admittedly the premises were made available to the Applicant prior to 17.04.2019 when it ceased its operation as commercial Airlines and it is the specific case of the Applicant that the aircrafts, engines, and auxiliary power units etc are lying at MIAL Airport which require maintenance at regular intervals of seven, fifteen, thirty, ninety and three sixty-five days, for instance regular check-ups of tyre pressures for aircrafts, battery recharges and engine runs.

These activities are performed as per step-by-step procedure laid down in Manuals. We find that if the Applicant is not allowed to have access to the subject premises, it would certainly cause great hardships to the Applicant to perform above activities which in turn would result in severe deterioration in value of assets. Even otherwise, it is to be noted that one of the principal objectives of the Code is to provide for revival of the CD and every attempt ought to be made to revive the CD and Liquidation being the last resort.

In view of the above and as it is also the case of the Applicant that despite cessation of Airline operations of the CD, the Erstwhile Resolution Professional had, with the approval of the Committee of Creditors, retained a team of personnel to look for the maintenance of aircrafts and engines placed at MIAL Airport including Hangar, we hold that the Applicant has made out case for grant for interim relief in its favor.

Accordingly, we restrain Respondent from removing Applicant's assets from its premises including MIAL Hangar and not to deny access to the Applicant's Representatives, Workmen, Nominees, etc. till the adjourned date.

Respondent is directed to file its Affidavit in Reply well before the adjourned date by duly serving copy to the other side.

List this matter on **04.03.2022**.

Sd/-
KAPAL KUMAR VOHRA
Member (Technical)

Vedant

Sd/-
JUSTICE P. N. DESHMUKH
Member (Judicial)