BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I

IANo.766/MB/C-I/2022
In
IA No. 686/MB/C-I/2022

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

In the Interlocutory Application bearing IA No.766/2022

Under Rule 11 of the National Company Law Tribunal Rules, 2016.

Filed by

Jet Aircraft Maintenance Engineers Welfare Association (JAMEWA),
A-101, Laxmi Palace Society, Shahaji Raje Road, Near Thakkar Bakery, Vile Parle (E), Mumbai - 400057.

...Applicant

Versus

1. **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**
   243, D, Block-E-III, Gall No. 54-H/7, Molar Band Extension, K.G. Khosla, Molar Band, New Delhi - 110044.
2. **State Bank of India**
   Stressed Asset Management, Branch – II, Raheja

Chambers, Ground Floor, Wing-B, Free Press Journal Marg, Nariman Point, Mumbai - 400021.

3. **Yes Bank Limited**

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

4. **Punjab National Bank**

   Zonal Sastra Centre, Mumbai, Maharashtra - 400099.

5. **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 Interlocutory Application bearing IA No. 686 of 2022

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016.

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

...Applicant

Versus

1. **State Bank of India**
2. **Yes Bank Limited**
3. **Punjab National Bank**
4. **Mr. Ashish Chhawchharia, Authorised**

Representative of Monitoring Committee of Jet Airways (India), Limited

...Respondents

In the matter of

CP (IB) No. 2205 of 2019

State Bank of India

...Financial Creditor

Versus

Jet Airways (India) Ltd.

...Corporate Debtor

Order Pronounced on: 11.04.2022

Coram:

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

Appearances:

<u>IA 766/2022</u>

For the Applicant	:	Mr. Vikas Mehta a/w Rahul Kamerkar, Advocates
For the Respondent 1	:	Mr. Krishnendu Datta, Ld Sr Advocate
For the Respondents 2 – 4	:	Mr. Janak Dwarkadas, Ld. Sr. Advocate with Mr. Dhananjay Kumar, Mr. AnushMathkar, Ms. Annie Jain and Mr. Rishit Vimadalal, i/b M/s Cyril Amarchand Mangaldas, Advocates

<u>IA 686/2022</u>

For the Applicant	:	Mr. Krishnendu Datta, Ld Sr Advocate
For the Respondents 1 – 3	:	Mr. Janak Dwarkadas, Ld. Sr. Advocate with Mr. Dhananjay Kumar, Mr. AnushMathkar, Ms. Annie Jain and Mr. Rishit Vimadalal, i/b M/s Cyril Amarchand Mangaldas, Advocates
For the Respondent 4	:	Mr. Rohan Rajadhyaksha, Advocate a/w Mr. DhirajkumarTotala, Mr. Nishant Upadhyay, Ms. Tanya Chib and Mr. Parimal Kashyap, i/b AZB & Partners. Advocates

<u>ORDER</u>

Per Coram:

<u>IA 766/2022</u>

1. This is an Application filed by the Applicant, Registered Trade Union being a stakeholder in the Resolution Process having stake in the Corporate Debtor's assets praying to be impleaded as a party Respondent in the Resolution Applicant's IA No. 686 of 2022 in order to oppose the same. More particularly, the Applicant has filed the present Application for the following reliefs:

a) Allow this Interlocutory Application, and direct that the Applicant Union be joined as a Party Respondents in IA No. 686 of 2022 in CP No. 2205 of 2019;

b) Reject/Dismiss IA No. 686 of 2022 in CP No. 2205 of 2019;

c) The Resolution Applicant be directed to provide a copy of IA No. 686 of 2022 to the Applicant Union and all parties to the said IA be directed to provide the Applicant Union copies of any and all of their pleadings filed in the said IA;

d) To Grant interim and ad-interim reliefs in terms of Prayer clauses '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.

2. Ld. Advocate for the Applicant in support of maintainability of this Application has relied upon the order of the Hon'ble National Company Law Appellate Tribunal (NCLAT) dt. 14.02.2022 passed in Appeal No. 628 of 2020.

3. Applicant in their capacity as member of Registered Trade Union representing 95% of the Aircraft Maintenance Engineers of the

Corporate Debtor had preferred said Appeal against the order granting approval to the Proposal of the Committee of Creditors (CoC) and RP to sell subject assets of the Corporate Debtor.

4. Said challenge was as the Applicant were the stakeholders in the CIRP having interest in the assets of the Corporate Debtor and the value of such assets was claimed to be relevant for determination of their claim either in the Resolution Plan or in the Liquidation and on the grounds that the sale of subject property involved therein was also impermissible in view of the Moratorium imposed under Section 14 of the Insolvency and Bankruptcy Code, 2016.

5. Considering the facts as aforestated, the Hon'ble NCLAT held that the Applicant had locus to challenge the order of this Tribunal in Appeal by which approval for proposal of sale of Corporate Debtor's property was granted.

6. The issue involved in the Application bearing IA No. 686 of 2022 is limited to grant exclusion for the period from 17.01.2022 to 22.03.2022 during which period the Application bearing IA No. 125 of 2022 filed by the Resolution Applicant in relation to the expenses required for fulfillment of Conditions Precedent to be paid from the positive cash

balance of the Corporate Debtor was pending and came to be rejected on 22.03.2022.

7. As such though the subject matter involved in the Appeal before the Hon'ble NCLAT wherein the Applicant was held to have locus in Appeal and the fact involved in the Application stated as aforesaid wherein the Applicant is seeking intervention are to some extent different, as it is the case of the Applicant that the IA taken out for exclusion of time is without any merits and the non-fulfillment of Conditions Precedent as agreed by the Successful Resolution Applicant (SRA) in the approved Resolution Plan directly concerns the livelihood of the Applicant's Members, we find it appropriate to allow the Applicant to intervene in the present Application. Accordingly, the Application bearing **IA No. 766 is disposed of as allowed**.

<u>IA 686/2022</u>

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.

9. Sh. Krishnendu Datta, Ld Sr. Advocate for the Applicant while praying for exclusion of above time submitted that this Tribunal has power to extend / exclude the timelines pursuant to the plan Approval order and had referred to the relevant portion of the order approving Resolution Plan wherein to operationalize the business of the Corporate Debtor, the Applicant is required to fulfill certain Conditions Precedent before the 'effective date' and has also submitted that, on date only one Condition Precedent remains to be fulfilled which is validation of Air Operator Certificate (AOC) of the Corporate Debtor by the Director General of Civil Aviation (DGCA) which was suspended in 2019.

10. For the purpose of exclusion of time as prayed in this Application, Ld. Sr. Advocate referred to the relevant paragraphs of the Resolution Plan being clause 7.6.2 & 7.6.4 of the same. The perusal of the said clause

would reveal that the Resolution Plan originally defines the date of completion of Conditions Precedent as effective date. Clause 7.6.4 provided for 90+180 days from the approval date for fulfillment of Conditions Precedent and further provided for automatic withdrawal by the Applicant if Conditions Precedent are not fulfilled within above period which comes to 270 days.

11. Admittedly, the Resolution Plan was approved by this Tribunal vide its order dt. 22.06.2021 and while approving the same the effective date was tentatively decided as on 90^{th} day from the Approval of the Resolution Plan. Accordingly, the time period was till 22.09.2021. However, as per the order approving Resolution Plan, SRA was given liberty to approach the Adjudicating Authority for extension of time up to 180 days. Vide order dt. 29.09.2021 in IA 2906, time was extended by another 90 days i.e. up to 22.12.2021. Thereafter, vide order dt. 22.01.2022 in the same IA, the effective date was extended till 22.03.2022, on which day 270 days period is over.

12. The contents of para 7.6.4 of the Resolution Plan provides for 90+180 days for fulfillment of Conditions Precedent from the approval date and further provides for automatic withdrawal by the Applicant if the Conditions Precedent are not fulfilled within the above period.

However, while approving the Resolution Plan, the SRA was granted liberty to approach this Authority for appropriate orders with regard to the extension of timeline as would be deemed proper that would help prevent the SRA from frustration of automatic withdrawal of Resolution Plan on expiry of 270 days.

13. Mr. Vikas Mehta, Ld. Advocate appearing for the intervener while opposing this Application has stressed upon same paragraph contending that if all the Conditions Precedent are not fulfilled within 270 days from the approval date, then the Resolution Plan is liable to be withdrawn without any further acts, deed or thing. However, we have noted that when our order dt. 22.06.2021 is read into its entirety including para 33 and part 'd', the Applicant is given liberty to approach this Tribunal for extension of timeline for implementation of the Resolution Plan.

14. In that view of the matter, we do not find any substance in the opposition raised by the interveners for exclusion of period as prayed for. Even otherwise, Jet Aircraft Maintenance Engineers' Welfare Association (JAMEWA) has no grounds to challenge the extension / exclusion, as it relates to the liberty granted to the Applicant by this Tribunal in the Plan Approval Order which is binding on all creditors,

including the employees of the Corporate Debtor. Similarly, till date no orders have been passed by the Hon'ble NCLAT to stay or set aside the Plan Approval Order which is alleged to be challenged by JAMEWA. In that view of the matter and since the present Application is filed in terms of liberty granted in the Plan Approval Order, the contention on behalf of the Members of the Union needs no further consideration.

15. Mr. Krishnendu Datta, Ld Sr Advocate for the Applicant with reference to the fulfillment of the Conditions Precedent (CPs) has contended that only condition which is in the process of its fulfillment is grant of revalidation of Air Operator Certificate and with this regard had contended that the said issue has been successfully taken up by the Applicant and the same is at an advanced stage and relying upon the minutes of the meeting held on 25.01.2022 between the SRA and the Director General of Civil Aviation authorities has contended that the revival of AoC would require the Applicant to undergo certification process for which normally timeline prescribed is of 90 days. However, more time may be required depending upon the documentation and responses from the authorities during certification process as well as their preparedness in terms of availability of aircraft and other required

facilities and resources. In this background the Applicant has referred to minutes of the meeting dt. 25.01.2022, wherein the Applicant is informed to take appropriate steps for extension / exclusion of time informing the Applicant that DGCA will extend full co-operation to which the timelines subject to the Applicant to comply with all the regulatory requirements for certification process. During detailed discussion of things to be done to complete Conditions Precedent, Mr. Krishnendu Datta informed that not more than 60 days are required from 22.03.2022 to complete the Conditions Precedent. The Applicant has also drawn our attention on the aspect of pending work for completion of other Conditions Precedent and submitted that steps are being taken for fulfillment of those Conditions Precedent. However, we are not expressing our view on this aspect in details, considering the fact that the issue involved in the Application in hand deals primarily with the exclusion of time during which IA 125 of 2022 was pending for the adjudication before this Bench.

16. Sh. Janak Dwarkadas, Ld. Sr. Advocate for the Respondents has not objected for allowing the prayer for exclusion of period for calculating the effective date mainly due to the unconditional commitment by SRA to comply remaining Conditions Precedent which are at the advanced

stage as indicated in the Affidavit dt 29.03.2022 filed by the Applicant on pg. 8 & 9. After going through the Affidavit dt. 29.03.2022 filed by the Applicant along with its undertaking whereby the Applicant have irrevocably undertook, agreed and acknowledged that if further time is allowed for fulfillment of Conditions Precedent under the Resolution Plan beyond 23.03.2022 then the Successful Resolution Applicant promptly fund out of his own funds for cost and expenses to fulfill Conditions Precedent and for preservation and protection of assets of the Corporate Debtor and for managing day to day affairs of the Corporate Debtor including Airport Parking Charges, Fees, Expenses, etc. Said Respondents have also rebutted the submissions of the intervener supporting the case of the Applicant contending that the interveners conveniently ignored the relevant portion from the Plan Approval order whereby this Tribunal has provided for grant of liberty to avoid consequence of automatic withdrawal of the Resolution Plan.

17. In the circumstances, the reference can be made to the order in case of *Kotak Mahindra Bank Ltd v AP Enterprises Pvt Ltd through Rajiv Khurana*, RP & others,3 of the NCLAT considered a challenge to the order dated 12.01.2021 passed by the NCLT Chandigarh Bench, whereby period between 25.03.2020 to 21.07.2020 was excluded from the schedule of

making payments under the approved Resolution Plan observing that once the Resolution Applicant takes over the Corporate Debtor, its supervision and control comes under the purview of the Monitoring Committee and accordingly noted that there is no infirmity in the order passed by the Hon'ble NCLT Chandigarh Bench.

18. We have noted that there is no specific provision in the Insolvency & Bankruptcy Code, 2016, that specifies what should be done in cases where a successful resolution applicant applies to the court for extension of timelines either on account of force majeure circumstances or otherwise. Further, once a resolution plan has been approved by the adjudicating authority, the Committee of Creditors (CoC) ceases to exist. Therefore, there is no way that the Adjudicating Authority can direct the CoC to consider the request. It is up to the Adjudicating Authority to find a way out in such circumstances, by invoking rule 15 of the National Company Law Tribunal Rules, 2016.

> "**15. Power to extend time**– The Tribunal may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore is not made until after the expiration of the time appointed or allowed."

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.

21. Application stands disposed of as allowed in above terms.

Sd/- **Sd/-**

KAPAL KUMAR VOHRA
MEMBER (TECHNICAL)

JUSTICE P. N. DESHMUKH
MEMBER (JUDICIAL)

11.04.2022
SAM/VEDANT