

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI ATUL CHATURVEDI,
HON'BLE TECHNICAL MEMBER

IA No. 464/JPR/2022
In CP No. (IB) 176/9/JPR/2019

UNDER SECTION 9 OF IBC, 2016

IN THE MATTER OF:

JAIPUR TRADE EXPOCENTRE PRIVATE LIMITED

... Operational Creditor

VERSUS

M/S METRO JET AIRWAYS TRAINING PRIVATE LIMITED

... Corporate Debtor

AND IN THE MATTER OF:

IA No. 464/JPR/2022

MEMO OF PARTIES

Bhim Sain Goyal, IRP

Address: M- 215, Rear Ground Floor,
Greater Kailash II, New Delhi – 110048

... Applicant/ IRP

VERSUS

Mr. Satendra Tiwari, Suspended Director

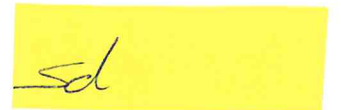
Suspended Director of Metro Jet Airways Training Pvt. Ltd.
102-103, Gopalpur Bypass Near Trivaninagar Chouraha,
Jaipur – 302018

... Non-Applicant/Respondent No. 1

Ms. Seema Tiwari, Suspended Director

Suspended Director of Metro Jet Airways Training Pvt. Ltd.





102-103, Gopalpur Bypass Near Trivaninagar Chouraha,
Jaipur – 302018

... Non-Applicant/Respondent No. 2

For the Applicant : Pramod Kumar Sachdeva, Adv.
Sanjana Saddy, Adv.
Bhim Sain Goyal, RP
For the Respondent : Aditya Vijay, Adv.

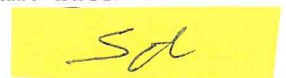
Order Pronounced On:31.08.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Interim Application ('IA') has been filed by the Resolution Professional ('RP') of M/s Metro Jet Airways Training Pvt. Ltd. ('Corporate Debtor') under Section 19 of Insolvency and Bankruptcy Code, 2016 (the 'Code'/ 'IBC'). The Adjudicating Authority *vide* Order dated 10.08.2022 ('CIRP Order') admitted the application under Section 9 of the IBC, filed by the Operational Creditor against the Corporate Debtor in the above-mentioned matter and Mr. Bhim Sain Goyal was appointed as the Interim Resolution Professional ('IRP').
2. Subsequently, after the appointment of the IRP, he visited the registered office of the Corporate Debtor wherein he found the premises locked. Hence, he sent a letter dated 16.08.2022 and an email dated 18.08.2022 intimating the requirement of requisite documents. Mr. Satyendra Tiwari, one of the *suspended* directors of the Corporate Debtor, informed the IRP to keep the CIRP in abeyance, as he filed an appeal before the Hon'ble





Supreme Court of India against the order of the Hon'ble NCLAT in Company Appeal (AT)(Ins) No. 423 of 2021. As per Master Data of the Corporate Debtor, the status was showing as strike off given the non-filing of the statutory returns from Financial Years 2011–12 to 2021–22. A copy of Master Data is annexed as Annexure A–3 of the IA.

3. The IRP requested the cooperation of *suspended* directors for the successful completion of the CIRP in a time-bound manner and made the public announcement dated 12.08.2022, duly published in Form A. A copy of the communications between the parties, postal slips and tracking reports and Form A is annexed as Annexure A–2 (Colly) of the IA. Further, the statutory auditors of the Corporate Debtor informed the IRP that they have not signed any financial statements after 31.03.2011, their fees being due and no knowledge of the whereabouts of the *suspended* directors.
4. Pursuant to the public announcement the IRP received only one claim from the Operational Creditor ('Original Applicant'). The first meeting of the Committee of Creditors ('CoC') was conducted on 03.09.2022 and IRP Mr. Bhim Sain Goyal was appointed as RP. Furthermore, the RP visited the banker of the Corporate Debtor and obtained a copy of the banking statement from 01.04.2016 to 18.08.2022, wherein the Corporate Debtor had the last bank transaction on 23.12.2017. A copy of the bank statements is annexed as Annexure A–4 of the IA.



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5. In the present application, it is stated that the direction passed in the CP No. 176/9/JPR/2019 could not be complied with as the personnel of the corporate debtor are not extending their assistance and cooperation to the RP and prayed that directions enumerated in the application may be given to the respondents including the following: -

I. *Pass an order directing all the Respondents to extend full cooperation to Applicant/ IRP and provide all the relevant records/ documents/ information/ assets immediately as well as facilitate the completion of CIRP in respect of CD and maximising of valuation of Corporate Debtor.*

II. *Pass any other order(s) which the Hon'ble Tribunal may deem fit and proper in the facts of the case.*

6. The Applicant filed his Written Submissions *vide* Diary No. 1448/2023 dated 07.06.2023 reiterating his earlier submissions and placing his reliance over the additional documents filed *vide* Diary No. 724/2023 dated 21.03.2023. The RP upon receiving the financial statement observed that *'all the Balance Sheet(s) are signed on 30th September of the respective year and none of the transactions that appeared in Company's Bank Statement in Union Bank of India, Malviya Nagar, Jaipur, is considered while preparing the Balance Sheet. The Bank Balance as on 31.03.2017 is the same as given by the previous Auditor as on 31.03.2011, whereas the actual balance is different'*. It is contented further that the depreciation has not been provided in respect of all the assets *vis-à-vis* the statutory auditor

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has also failed to pinpoint these major discrepancies. Thus, the Corporate Debtor should be directed to hand over the cash in hand as per the balance sheets to the Applicant.

7. Respondent Nos. 1 and 2, who are *suspended* directors of the Corporate Debtor in their reply denied the averments made in the IA, stating that the RP has suppressed material facts from the Adjudicating Authority. Thus, the present application filed under Section 19 of the IBC is not maintainable as:

a. RP has not attached any proof of receiving the claim(s) only from the Operational Creditor. The Respondents are ready to give the keys and possession of the Corporate Debtor's premises. However, the conduct of the Applicant in breaking the locks of the various rooms in the premises of the Corporate Debtor is coarseness and inappropriate. A copy of the photographs of the RP taking possession of the registered office of the Corporate Debtor is annexed as Annexure R-1 of the Reply.

b. It is requested for the appointment of the commissioner for taking over the physical possession of the premises as no due exercise has been carried out by the Applicant in ascertaining the valuation of the assets. The total value of the assets lying in the registered office of the Corporate Debtor is Rs. 13,62,50,000/- (Rupees Thirteen Crores Sixty-Two Lakhs and Fifty Thousand Only). Besides, an aircraft

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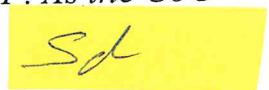
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beech Bonanza C-50 Twin Engines is also lying on the premises. A copy of the list of assets dated 04.07.2018 and a photograph of the aforesaid aircraft are annexed as Annexures R-2 and 3 of the Reply, respectively.

- c. The Respondents have always cooperated with the Applicant by not only requesting the auditor to furnish all the financial statements but also to provide all the available financial statements *vide* the email dated 12.01.2023. A copy of the email dated 12.01.2023 and its acknowledgement is annexed as Annexure R-4 and 5 of the Reply, respectively. Moreover, the Respondents also provided various cases filed by and against the Corporate Debtor *vide* email dated 07.04.2023.
- d. However, given the size of the documents, the same was sent through google drive and did not open as no access was granted to the RP. This was duly informed by the RP *vide* email dated 07.04.2023. As the Respondents are not technology friendly, he could not understand such a process and with the help of his relative, he made the link accessible *vide* email dated 07.05.2023. A copy of the pending list of cases concerning Corporate Debtor, emails dated 07.04.2023, 12.04.2023 and 07.05.2023 are annexed as Annexure R-6, 7 (Colly) and 8 of the Reply, respectively.

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- e. In addition, on the directions of the Adjudicating Authority *vide* Order dated 10.05.2023, Respondent No. 1 informed of his availability in discussing the pending case status by and against the Corporate Debtor before various legal forums best of his knowledge as any of the *suspended* directors cannot represent the Corporate Debtor on the account of CIRP Order. Also, it is the RP who is the whole and soul of the Corporate Debtor upon initiation of the CIRP including the RP's duty under Sections 17 and 18 of the Code. A copy of the email communications dated 03.05.2023 is annexed as Annexure R-9 of the Reply. Thus, the Respondents are ready to incorporate in the future too.
8. The Respondents filed their Written Submissions *vide* Diary No. 1681/2023 dated 12.07.2023, reiterating, controverting, or adding to, what is stated beforehand in the Reply:
- a. As per Section 21 of the Code, the CoC cannot be formed when there is only one operational creditor. The Hon'ble NCLAT in the case of *V. Duraisamy v. Jeypriya Fruits and Vegetables Commission Agent & Ors., Company Appeal (AT)(Ch)(Ins) No. 25 of 2022* has held that:
- '6. This Tribunal is of the earnest view that there is no provision in the Code for the Corporate Debtor to constitute the CoC with a single Operational Creditor, when it is seen from the record that despite the public announcement being made inviting claims from its stakeholders, the Appellant has not received a single 'Claim' from the date of initiation of the Corporate Debtor into CIRP. As the CoC*



itself is not constituted and in the light of the fact that not a single 'Claim' was received by the IRP even after the public announcement, as well as the fact that the Corporate Debtor Company has been struck off from the Registrar of Companies, this Tribunal is of the considered view that the CIRP may be closed with respect to the subject company.

7. For all the foregoing reasons, this Appeal is 'Allowed' and the order of the 'Adjudicating Authority' is set aside and the 'Company' is released from all rigors of CIRP. All pending Applications and Interlocutory Applications, if any, stand 'Closed'.'

- b. The Operational Creditor and Resolution Professional are working hand in glove and want to liquidate the Corporate Debtor without following the due process of CIRP as the RP has not published the expression of interest for submitting the resolution plan for the revival of the Corporate Debtor. Thus, such actions of the Applicant defeat the true purpose of the Code.
- c. Respondents are willing to extend their support to the Resolution Professional and are willing to provide all types of help to the Resolution Professional in furtherance of the CIRP process.

9. Section 19(1) of the IBC provides that the personnel of the Corporate Debtor, its promoters or any other person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor.

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10. The Adjudicating Authority on receiving an application under Sub-section (2), shall by an order, direct such personnel or other persons to comply with the instructions of the Resolution Professional and to cooperate with him in the collection of information and management of the Corporate Debtor.
11. Considering arguments advanced, submissions put forth and documents placed on the record, application of the Resolution Professional is allowed and Respondents are directed to extend their full cooperation and support to Resolution Professional and provide all the documents and records as required for successful resolution of the Corporate Debtor.
12. The RP shall be at liberty to approach this Adjudicating Authority in case of any breach of the direction given by this Adjudicating Authority. The non-compliance with the aforesaid direction would attract strict penalties and *Suspended* Management shall remain present in person either physically or through virtual mode to explain their non-compliances with the aforesaid directions.

Accordingly, IA No. 464/JPR/2022 stands disposed of.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**ATUL CHATURVEDI,
TECHNICAL MEMBER**