NATIONAL COMPANY LAW TRIBUNAL
COURT-I, MUMBAI BENCH

Item 1

IA 3398/2022, IA 3508/2022 IN C.P.(IB)2205/MB/2019

CORAM:

SH. SHYAM BABU GAUTAM — HON'BLE MEMBER (T)

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

ORDER SHEET OF THE HEARING ON **13.01.2023**

NAME OF THE PARTIES**:** **STATE BANK OF INDIA**

V**.S**

JET AIRWAYS INDIA LIMITED

Appearance (via video-conference):

For the Applicant	:	Adv. K Datta ,Ms. Mahima Singh, Mr. Mustafa Kachwala Ms. Ketki Pansare,Ms. Arveena Sharma i/b Kachwala Misar & Co
For R-1 TO R-3	:	Rohan Rajadhyaksha, a/w Mr. Dhananjay Kumar, Mr.Anush Mathkar, Ms. Annie Jain, Mr. Rishit Vimadalal and Ms. Shubhangi Singh, i/b M/s Cyril Amarchand Mangaldas, Advocates
R-4 IN IA 3398/2022 & IA3508/2022	:	Adv. Malhar Zatakia a/w Adv. Dhirajkumar Totala, Adv. Trisha Sarkar, Adv. Aditi Bhansali, Adv. Nishant Upadhyay, Adv. Tanya Chib, Adv. Madhur Arora, Adv. Parimal Kashyap & Adv. Mehul Bachhawat i/b AZB & Partners – Advocates

Section 60(5), 7of the IBC, 2016

ORDER

Ld. Counsel appearing for the Respondents no 1,2 & 3 Shri Rohan Rajadhakshya requested for stay of Order for the period of two weeks. Having considered the facts involved in the case and the period already undergone we are not inclined to stay the Order. Hence his request is rejected.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)

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

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IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH-I

IA No. 3398/MB/C-I/2022
and
IA No. 3508/MB/C-I/2022

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

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

Filed by
In the Interlocutory Application bearing
IA No. 3398 of 2022

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.

…Applicant

Versus

1. **State Bank of India**
   Stressed Asset Management, Branch – II, Raheja Chambers, Ground Floor, Wing-B, Free Press Journal Marg, Nariman Point, Mumbai - 400021.
2. **Yes Bank Limited**
   Stressed Asset Management West & South, Western Express Highway, Yes Bank House,Santacruz (E), Mumbai – 400055.

3. **Punjab National Bank**
   Zonal Sastra Centre, Mumbai, Maharashtra - 400099.
4. **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. 3508 of 2022

The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Ors.

…Applicants

Versus

State Bank of India & Ors.

…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:13.01.2023

Coram:

Hon'ble Member (Judicial)	:	Justice P. N. Deshmukh (Retd.)
Hon'ble Member (Technical)	:	Mr. Shyam Babu Gautam

Appearances:

IA 3398/2022 and IA 3508 of 2022

For the Applicant : Mr. Krishnendu Datta, Ld Sr Advocate, Ms. Mahima Singh, Mr. Mustafa Kanchwala, Ms. Arveen Sharma, Mr. Ashish Vats, Ms. Roshni Sewlani, Ms. Mehak Nayak.

For the Respondents 1 - 3 : Mr. Rohan Rajadhyaksha, Counsel a/w Mr. Dhirajkumar Totala, Mr. Tanya Chib and Mr. Madhur Arora i/b AZB & Partners, Advocates

For the Respondent 4 : Mr. Malhar Zatakia, Counsel a/w Mr. Dhirajkumar Totala, Mr. Tanya Chib and Mr. Madhur Arora i/b AZB & Partners, Advocates

ORDER

Per Coram:

IA 3398 of 2022

1. IA. No. 3398 of 2022 ("**Implementation Application**") and I.A. No. 3508 of 2022 ("**Exclusion Application**") have been filed on behalf of the Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch, the Successful Resolution Applicant ("**Applicant"/ "SRA**") for Jet Airways (India) Limited ("**Corporate Debtor**"/"**Jet Airways**"), whose Resolution Plan was in approved terms of order dated 22 June 2021

("**Plan Approval Order**") passed by this Tribunal. The Respondents are the top three lenders of the CD ("MC Lenders") and the erstwhile Resolution Professional ("RP"), who (along with three representative of SRA) from part of the Monitoring Committee ("**MC**").

2. This is an Application is filed on behalf of the Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch, the **SRA** for Jet Airways (India) Limited, whose resolution plan was approved by this Adjudicating Authority in IA No. 2081 of 2020 filed under section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 ("**Code**"). The Application has been executed by Mr. Surender Singh, who is authorized to act for and on behalf of Mr. Murari Lal Jalan (the Lead Member of the Consortium) in the present Application. The Applicant sought reliefs as follows:

a) Allow the Application and direct the Respondents to allow the SRA to infuse the funds into the Corporate Debtor and tale control and management of the Corporate Debtor and execute the necessary documents in this regard so that the Resolution Plan can be implemented;

b) Pass interim/ad-interim reliefs in terms of prayers (a) above.

c) Pass any other such order(s) as this Adjudicating Authority may deem fit and proper in the facts and circumstances of this case.

3. In the instant Application, the Respondents are the top three lenders of the Corporate Debtor ("**MC Lenders**") and Mr. Ashish Chhawchharia (the erstwhile Resolution Professional), who, *inter alia,* form part of the Monitoring Committee ("**MC**") constituted in terms of the approved Resolution Plan for the Corporate Debtor.

4. The facts leading to the Application are that, as per the Resolution Plan, the obligation of the SRA is to re-commence operations as an aviation company subject to the fulfilment of the following 5 conditions precedent ("**CPs**"):

i. Validation of Air Operator Certificate ("**AOC**") of the Corporate Debtor by the Directorate General of Civil Aviation ("**DGCA**") and Ministry of Civil Aviation ("**MoCA**")

ii. Submission of the Business Plan to DGCA & MoCA

iii. Slots allotment approval

iv. International Traffic Rights clearance in compliance with applicable law

v. Approval of Demerger of ground handling business into AGSL

5. As per the Resolution Plan, the date of completion of the Conditions Precedent was defined as the 'Effective Date', and such conditions were required to be fulfilled within 90 days from the Approval Date, extendable to maximum period of 270 days from the Approval Date. Furthermore, after the Effective Date, the Resolution Applicant is required to infuse funds and make certain payments to the stakeholders including payments to Employees and Workmen and other Operational Creditors, in accordance with the Resolution Plan, within 180 days from the Effective Date.

6. 'Closing Date' is defined under the Resolution Plan as the 180th day from the Effective Date or such earlier date by which the first tranche payment of up to INR 175 Crores is made to the Financial Creditors, and from such date the MC shall be dissolved, and the entire management and control of the Corporate Debtor shall stand transferred to the SRA. While the payments to the stakeholders are to be completed within 180 days of the Effective Date, as per the Resolution Plan, such payments can be advanced by the SRA.

7. Both the matters concerning the Conditions Precedent and the Effective Date were addressed before this Tribunal at the time of hearing of the

application for approval of the Resolution Plan. As regards Effective Date, this Tribunal directed that the Effective Date be 90 days from the Plan Approval Date, with the SRA having the liberty to approach this Tribunal for extension of timeline. Whereas as regards Conditions Precedent, this Tribunal directed that in respect of AOC and slots (including bilateral rights and traffic rights), DGCA and MoCA will need to consider the application/representation of the Corporate Debtor for renewal/grant of AOC with-due dispatch. Moreover, while denying the prayer of the Applicant for reinstatement of all suspended slots of the Corporate Debtor, this Tribunal directed the appropriate authorities to consider the allocation of slots to the Corporate Debtor. Notably, the Business Plan was already submitted for the approval of DGCA & MoCA on 27 January 2021, prior to the Plan Approval Order and again on 5 August 2021 after the Plan Approval Order.

8. After passing of the Plan Approval Order, the Applicant worked towards fulfilment of Conditions Precedent. However, on account of pendency of the AOC, they could not be completed within 90 days of the Plan Approval Order. Therefore, the Applicant/SRA, vide I.A. No. 2150 of 2021 in September 2021 and another I.A. No. 2906 of 2021 in December 2021, before this Tribunal, sought an extension of timeline

for completion of Conditions Precedent and therefore the same was extended until 22 March 2022 vide orders dated 29 September 2021 in IA 2150 of 2021 and 22 December 2021 and 20 January 2022 in IA 2906 of 2021.

9. In January 2022, the Applicant filed I.A. No. 125 of 2022 seeking directions to the Respondents towards speedy and effective implementation of the Resolution Plan, including payment of expenses for fulfilment of then pending Conditions Precedent. Subsequently, by order dated 22 March 2022, in IA 125, this Tribunal rejected the aforesaid prayer of the Applicant, however, the MC/ CoC was directed to continue to meet the expenses of the Corporate Debtor till the Effective Date as per the average of monthly expenses 3 months before approval of the Resolution Plan which will include lease rentals etc.

10. During this time, the pending Conditions Precedent could not be fulfilled by 22 March 2022 inter alia on account of disputes with the Respondents on utilization of available positive cash balance of the Corporate Debtor for meeting expenses relating to fulfilment of the pending Conditions Precedent. As a result, the Applicant filed I.A. No. 686 of 2022 seeking exclusion of the period from the date of filing of IA 125 till the date that IA 125 is decided by this Tribunal. In the

meantime, Jet Aircraft Maintenance Engineers Welfare Association ("JAMEWA") filed an application, I.A. No. 766 of 2022 before this Tribunal, objecting to IA 686 of 2022, primarily contending that the Conditions Precedent relating to the International Traffic Rights clearance and Demerger had not been met.

11. By order dated 11 April 2022, this Tribunal allowed IA 686 of 2022 of the Applicant, excluding a period of 65 days for the purpose of computation of the Effective Date under the Resolution Plan, and IA 766 filed by JAMEWA was rejected. This order was upheld by the Hon'ble Appellate Tribunal by an order dated 28 April 2022 passed in an appeal, bearing Company Appeal (AT) (Ins.) No 473 of 2022, filed by JAMEWA.

12. On 20 May 2022, the DGCA re-issued the AOC of the Corporate Debtor certifying that the Corporate Debtor is authorized to perform commercial air operations. Meanwhile, all the remaining Conditions Precedent were fulfilled before 20 May 2022. Thereafter, the Applicant sent an email to the Respondent No. 4 informing him of the same and shared the updated status of the Conditions Precedent along with requisite documents for their records. The said email was further shared by the Respondent No. 4 with the MC Lenders.

13. On 21 May 2022, the Applicant e-filed an up-to-date status report with this Adjudicating Authority, intimating this Tribunal about the completion of the Conditions Precedent and the said report was served on the Respondents. No objection to the same has been raised. The Applicant also sent an email, as well as a letter, to the Respondents confirming the fulfilment of all Conditions Precedent, which paved the way for implementation of the approved Resolution Plan, with the Effective Date being 20 May 2022. Further, the Applicant requested the Respondents to share necessary documents for execution and completion of necessary steps to enable the Applicant to start capital infusion in the Corporate Debtor and settle dues of the creditors. The Applicant also informed that they will be submitting a performance bank guarantee ("PBG") of the differential amount of INR 87.5 Crores as per the Resolution Plan.

14. On 27 May 2022, the Applicant submitted a copy of the PBG for an amount of INR 87.50 Crores to the MC lenders, thus completing the deposit of INR 150 Crores towards PBG, in compliance with the Resolution Plan.

15. On 29 September 2022, in a Joint Lenders' Meeting, it was decided that the Applicant shall approach this Tribunal for seeking necessary

directions for taking steps for infusion of funds and for Plan implementation. Accordingly, present application is filed.

Submissions on behalf of the Applicant:

A. IMPLEMENTATION APPLICATION-

16. All Conditions Precedent in the Resolution Plan of the SRA (read with Order of this Tribunal dated 22 June 2021 approving the Resolution Plan have been met. Accordingly, the 'Effective Date, under the Resolution Plan is 20 May 2022.

17. Under the terms of the Resolution Plan, the SRA is to infuse certain funds into the CD within 150 days from the Effective Date, make payments as per the terms of the Resolution Plan and take control of the CD within first 180 days from the Effective Date.

18. Such infusion of funds by the SRA is to be in the form of equity against fresh issuance of shares by the CD to the SRA. To enable such infusion, the CD (currently manged by the MC) is required to take certain steps- for instance, take secretarial steps for making CD active compliant in the records of Registrar of Companies and Ministry of Corporate Affairs, Government of India, appointment of directors for passing

mandatory resolutions, applying to stock exchanges for taking in principle approval for issuance of share to SRA and suspension of ongoing trading, providing bank account details of CD to enable the SRA to infuse funds and issuance of shared by CD to the SRA. However, the MC/MC Lenders are not completing any of the above steps, thereby allowing the SRA to implement the Resolution Plan.

19. Various emails/letters have been written by the SRA to the MC and MC Lenders from time to time, informing them about the achievement of the Effective Date and asking them to take steps to enable the SRA to infuse first tranche of funds into the CD. These are emails/letter dated 21 May 2022 **[@Page 361, Vol II, Application] @Page 93 of the Convenience Compilation filed by the SRA ("CC")],** 22 August 2022 **[@Page 418-420, Vol III, Rejoinder] @Page 95-97 of the CC], 24 September2022 [@Page 421-422, Vol III, Rejoinder] @ Page 98-99 of the CC], 19 October 2022 [@ Page 424-425, Vol III Rejoinder] @ Page 100-101 of the CC], 26 October 2022 [@ Page 423-424, Vol III Rejoinder] @ Page 102-103 of the CC] and 29 October 2022 [@ Page 426-427, Vol III Rejoinder] @ Page 104-105 of the CC].**

20. The SRA has also requested the MC and MC Lenders to take steps to enable implementation of the Resolution Plan at various meetings of the MC. However, the MC Lenders have taken a stand that certain CPs under the Resolution Plan have not been met and that this Tribunal is to certify the completion of CP's. Whilst the Resolution Plan does not provide any process for validation of CPs by the Respondents of this Tribunal (as the CPs are not conditions precedent to plan implementation but only conditions precedent to recommencement of business of CD), however, in good faith, the SRA filed this Implementation Application of the instance of the MC Lenders and is seeking necessary directions to the MC to enable implementation of the Resolution Plan.

21. **ISSUE DECIDED BY THIS TRIBUNAL:**

    a. It is submitted that the issue relating to completion of the CPs and the achievement of the Effective Date has ben discussed and decided by the Hon'ble National Company Law Appellate Tribunal ("**NCLAT"**) in the appeals filed by the employees and workmen before NCLAT against the Plan Approval Order (lead appeal being the Compal Appeal (AT)

(Ins.) NO. 752 of 2021 filed by the Jet Aircraft Maintenance Engineers Welfare Association **("JAMEWA")**) ("**NCLAT Appeals")**.

b. In the NCLAT Appeals, on 30 May 2022, the SRA informed the Hon'ble NCLAT that the Effective Date under the Resolution Plan is 20 May 2022. The said submission is also recorded in the order passed by the Hon'ble NCLAT on 30 May 2022 as "*the effective date has been fixed as 20th May, 2022 and the process of the Implementation of the Plan have begun*. "All Respondents were present during the said hearings and did not object to the same **[Order @ Page 383, Application Vol II] @ Page 87-88 of the CC]**.

c. Subsequently, the NCLAT passed its final order dated 21 October 2022 in the NCLAT Appeals ("**NCLAT Order")**. In the NCLAT Appeals, one of the issues raised by JAMEWA and the question of law framed by the Hon'ble NCLAT was:

> "*IX. Whether the Resolution Plan begin contingent and conditions ought not to have been approved in view of the law laid down by the Hon'ble Supreme Court in "Ebix Singapore*

*Pvt Ltd. Vs. CoC of Educompt Solutions Ltd. & Anr. (2022) 4 SCC 401" [**NCLAT Order @ Page 247, Rejoinder Vol II]***

d. In the NCLT Appeals, JAMEWA had *inter alia* argued that the CPs have not been met by the SRA and hence the Effective Date of 20 May 2022 was achieved. The SRA explained the status of each of the CPs before the Hon'ble NCLAT and the submissions on how the CPs have been met [**Para 108 of the NCLAT Order @ Page 322, Rejoinder Vol II].** Notably, the MC and the MC Lenders, who were parties to these proceedings supported the submissions of the SRA and did not suggest or submit to the Hon'ble NCLAT that the CPs have not been met. After hearing the parties, while noting JAMEWSA's objection on completion of CPs, the Hon'ble NCLAT held:

"*The Resolution Applicant has also completed all necessary conditions precedents to the satisfaction of the Monitoring Committee."* **[Para 109 @ Page 326, Rejoinder Vol II]**

e. Hence, the MC Lenders cannot be heard at this stage to state that the CPs have not been met or the Effective Date has not been achieved when the Hon'ble NCLAT has already heard the parties and is satisfied on the completion of the CPs. In

fact, after the arguments on the present application commenced before this Tribunal, a Clarification Application (I.A. No. 4771 of 2022) was filed by the MC Lenders against the NCLAT Order, seeking to expunge the above finding of the Hon'ble NCLAT. However, the same was not allowed by the Hon'ble NCLAT who rejected the prayer of the MC Lenders vide order dated 20 December 2022. The Hon'ble NCLAT stated that no clarification is needed and their observation in Para 109 of the order was passed in terms of question of law framed and the submissions made by the parties. **[The Clarification Application filed by the MC Lenders and the order dated 20 December 2022 passed by the Hon'ble NCLAT are annexed as Annexure-A (Colly)].** Pertinently, no challenge or clarification was ever sought by the MC Lenders with respect to the submissions recorded in the NCLAT order dated 30 May 2022, which demonstrates that the Clarification Application was only an afterthought, fled once the arguments commenced on the present application.

f. In light of the above, the issue regarding completion of the CPs having been decided by the Hon'ble NCLAT, the said issue ought not to be reagitated before this Tribunal by the MC Lenders.

22. **CONDITIONS PRECEDENT**

(i) At the outset, it is submitted that the CPs are set out in Clause 7.6.1 of the Resolution Plan and are conditions precedent to recommencement of the business of the CD as an activation company and not conditions precedent to implementation of the Resolution Plan. [**Clause 7.6.1 @ Page 115-116, Rejoinder Vol I] @ Page 11-12 of the CC].** In this regards, Clause 7.1.2 of the approved Resolution Plan states that: "***The effectiveness and implementation of the Resolution Plan by the Resolution Applicant shall be subject to the approval of the NCLT. Notwithstanding anything set out in this Resolution Plan, the implementation of this Resolution Plan by the Resolution Applicant shall not be conditional upon satisfaction of any conditions, other than approval of the***

NCLT." **[@ Page 111, Rejoinder Vol I] [@ Page 10 of the CC].**

(ii) ***CPs relating to Air Operator Certificate ("AOC") and Demerger:***

g. There is no dispute raised by the MC Lenders on completion of CPs relating to receipt of AOC [**@ Page 322, Application Vol II] [@ Page 31 of the CC]** and Demerger (which was approved as part of the Plan Approval Order and upheld by the Hon'ble NCLAT) [**Para 7 and 'c' o the Plan Approval Order @ Page 69 and 89, Application Vol I] Page 22 & 28 of the CC] and [Para 93 of the NCLAT Order @ Page 308, Rejoinder Vol II] @ Page 34 of the CC].**

(iii) ***CPs relating to approval of the Business Plan*:**

a. Clause 7.6.1 (b) of the Resolution Plan reads as under [**@ Page 115-116, Rejoinder Vol I] [@ Page 12 of the CC]:**

> **"***Submission and approval of the Business Plan to DGCA & MoCA – The Business Plan of the Resolution Applicant* ***shall have been submitted after the Approval Date to the DGCA and MoCA for their review, and approval.*** *The Resolution Applicant agrees to modify its Business Plan to incorporate all reasonable changes required by the DGCA/MoCA, which*

otherwise does not make the business unviable for the Resolution Applicant."

b. The SRA had included this CP for purpose of compliance with Show Cause Notice dated 23rd April 2019 issued by DGCA to the CD prior to CIRP, wherein the AOC of the CD was suspended by DGCA stating *inter alia* that CD should submit its revival plan including Business Plan and *once the Business Plan is approved by MoCA,* DGCA will revalidate the AOC **[@ Page 389-390, Rejoinder Vol III] @ Page 38-29 of the CC].**

c. Keeping in line with the above, after the Plan Approval, the SRA on 5 August 2021, submitted the Business Plan with DGCA and MoCA, vide their letter dated 9 May 2022 acknowledged receipt of the comprehensive revival plan and Business Plan and stated that process of rectification of AOC is under examination by the DGCA. **[@ Page 387, Rejoinder Vol III] @ Page 40 of the CC].** Subsequently, the DGCA on 20 May 2022 issued the AOC to the CD in compliance with the provisions of Air Operator Certificate Manual ("**CAP 3100 Guidelines") @ Page 322, Application**

Vol II] @ Page 31 of the CC]. Hence, the CP in clause 7.6.1 (b) of the Resolution Plan stands fulfilled with the grant of AOC. However, the MC Lenders have contended that the Business Plan of the SRA should have been specifically approved by the DGCA/ MoCA.

d. As per the CAP 3100 Guidelines, the AOC is granted by DGCA only upon completion of all previous phases, which include pre-application phase, formal application phase, document evaluation phase and demonstration and inspection phase. **[@ Page 379-380, Rejoinder Vol III] @ Page 42-43 of the CC].** DGCA or MoCA will not provide a separate letter specifically approving each phase of AOC approval including a letter confirming approval of the Business Plan; and the issuance of AOC is a consolidated approval that all previous phases stand completed, thus making it clear that the Business Plan that was submitted by the SRA (in 2021) stands approved. Therefore, the grant of AOC is itself a deemed approval of the SRA's Business Plan as required under Clause 706.1 (b) of the Resolution Plan.

(iv) ***CP relating to approval of the slot allotment:***

a. Clause 7.6.1 (c) of the Resolution Plan reads as under [**@ Page 12 of the CC]:**

> "*Slots Allotment Approval – The DGCA and MoCA shall have approved the* ***reinstatement of all the suspended slots (****including the bilateral rights and traffic rights) back to Jet Airways/ Corporate Debtor. The slots (along with related bilateral rights and traffic rights)* ***can be allotted to the Corporate Debtor gradually as per its Business Plan with immediate slots allotment approval (along with related bilateral rights and traffic rights) for sector on which Jet 2.0 proposes to recommence operations after the Effective Date".***

b. The said CP was included by the SRA since the RP and CoC had informed the SRA that all slots of the CD (available to the CD prior to the CIRP) have been suspended and allocated to other airlines on a temporary basis. In its resolution plan, the SRA had therefore sought *reinstatement of all suspended slots* of the CD (available to CD prior to CIRP and which has been allocated to other airlines) on the principle of historicity. Further under Clause 10.11.2 of the Resolution Plan, the SRA had listed out slots that are

to be reinstated upfront and immediately, including slots at Mumbai and Delhi airports. [**Clause 10.11.2 @ Page 151 and 165-170, Rejoinder V I] [@ Page 13, 15-20 of the CC].**

c. At the time of hearing of Plan Approval Application, the issue regarding reinstatement of slots was discussed and the DGCA/MoCA were directed by the Tribunal to file their response. The DGCA and MoCA objected to reinstatement of all previous slots of CD on the principles of historicity. After detailed hearing on this issue, in the Plan Approval Order, this Tribunal held that the reinstatement of slots is not permissible on the basis of principle "use it or lost it". This Tribunal further held that considering the peculiar nature of slots allotment and its usage, the principle of slots allotment and its usage, the principle of slots allotment could not come within the commercial wisdom of the CoC. Hence, this Tribunal specifically rejected the grant of direction and upfront relief of reinstating all slots of the

CD on the principle of historicity and instead held that **the CD could seek slots periodically, as per requirements and that the authorities concerned may consider such a request favourably. [Para 24,25,27 h @ Page 81-83 and Page 90, Application Vol I] [Page 23-25 and 29 of the CC].**

d. In compliance with the Plan Approval Order, the SRA applied for slots as per its requirements in sectors (to/ from Kochi, Bengaluru, Nagpur, Hyderabad, Delhi, and Mumbai) on which the SRA proposed the CD to recommence operations with a flying schedule utilizing 6 narrow-body aircraft. The request of the SRA was favorably considered by the relevant airports and required slots were issued to CD. As per the Business Plan, the SRA was required to secure 40 (including some of Delhi and Mumbai) slots for the first 6 aircraft. As on the Effective Date, the SRA secured approvals for more than 48 slots for recommencing CD's operations (**Details of slots secured by Corporate**

Debtor @Page 358, Rejoinder Vol II @ Page 44 of the CC). Notably, the approvals for Delhi and Mumbai airport were subject to payment of pending CIRP dues as per Clause 6.4.1 (e) of the Resolution Plan [**Emails pertaining to conditional slot approval for Delhi and Mumbai airports @ Page 359-362, Rejoinder Vol II] [Page 56-59 of the CC].**

e. However, the fulfilment of this CP has been challenged by the MC Lenders on grounds that inter alia the SRA has not received slot approval for all slots listed in the Resolution Plan and Business Plan and SRA's inability to get slots in Delhi and Mumbai shall hamper their receivables under the Resolution Plan. It was also argued that it is essential to get all slots as the Resolution Plan was approved by CoC for deferred consideration and that lenders have 9.5% equity in the CD.

f. In the above backdrop, it is reiterated that while the SRA had asked for reinstatement of all suspended slots and upfront reinstatement of all slots of CD. The same was not permitted by this Tribunal. Instead, this Tribunal allowed CD to seek slots periodically from the authorities, as per requirements and held that the authorities may consider the same favourably as per applicable guidelines. It may be noted that the Plan Approval Order has not been challenged by MC Lenders on any grounds, including on the grounds that old slots of CD have not been reinstated. As on date, the Plan Approval Order has achieved finality on this issue and is binding on all stakeholders including the Respondents. Hence, the CP in Clause 7.6.1 (c) of the Resolution Plan must necessarily be read along with the Plan Approval Order, in terms whereof the SRA cannot get the erstwhile slots of the CD reinstated again.

g. Neither Clause 7.3.1(c), nor the Plan Approval Order state that only grant of slots in Mumbai and Delhi will satisfy the CP in Clause 7.6.1. (c) (to be read with the Plan Approval Order). There is no requirement for CD to obtain any/ only the slots mentioned in Clause 10.11.2 of the Resolution Plan or the Business Plan, to recommence its operations. It is also important to point out that Clause 10.2 of the Resolution Plan specifically provides that the implementation of the Resolution Plan is not conditional on grant of any reliefs set out in Clause 10 (which would include the relief in respect of upfront reinstatement of slots at Delhi and Mumbai) **[Clause 10.2 @ Page 151. Rejoinder Vol 11 [@ Page 13 of the CC**]. Hence, the choice of sectors is as per the discretion of the SRA/ CD and the consideration of the application of the SRA/CD by the relevant authorities is in terms of the Plan Approval Order.

h. Further, the Business Plan of the SRA (being relied upon by the MC Lenders), sets out "*availability of slots*

and parking bays for SRA from Indian Government" as one of the "primary risks" in respect of the revenue projections. Such risks were therefore deemed to have been taken into account by the MC Lenders at the time of approval of the Resolution Plan.

i. In any event, it is submitted that the SRA did obtain the slot approval for Mumbai and airports as on the Effective Date, subject to payment of airport dues, which have been categorised as CIRP costs as per Clause 6.4.1 (e) read with Annexure 2 of the Resolution Plan **[Clause 6.4.1 (e) @ Page 71, Annexure 2 @ Page 175, Rejoinder Vol I]**. However, even after having a positive cash balance in the CD, the MC Lenders have not cleared the CIRP dues of these airports and have instead contested receipt of conditional approvals for Delhi and Mumbai.

j. It is submitted that since Clause 6.4.1 (m) of the Resolution Plans specifically states that the SRA will

be entitled to use funds available on Effective Date to meet CIRP costs (including airport dues), the MC Lenders ought not to have contested the receipt of slot approvals for Delhi and Mumbai airports **[Clause 6.4.1 (m) @ Page 73, Rejoinder Vol I]**. Moreover, the Implementation Schedule **[@ Page 117, Rejoinder Vol I]** states that the SRA will infuse funds (Z+150), pay pending CIRP costs (between Z+150 and Z+170), pay creditors (between Z+175 and Z+180) and only after making the first tranche payment to Assenting Financial Creditors on Z+180 day, the SRA shall take control of the CD from the MC. Hence, by the time SRA would have taken control of CD, it would have the slots for Mumbai and Delhi airports anyway by paying the airport dues (payable by Z+170). However, the MC Lenders are not allowing the SRA to infuse money and start running the business of the CD [Note: 'Z' in the Implementation Schedule means Effective Date].

k. The MC Lenders have incorrectly argued that the expenses for airport dues are to be met by the SRA without recourse to the positive cash balance of the CD. It is submitted that the said argument is patently flawed and against the terms of the Resolution Plan (as explained above), which allows SRA to utilize the cash balance of the CD for meeting CIRP costs (which specifically includes airport dues). The MC Lenders have also wrongly submitted that this Tribunal had directed the SRA to bear all CP related expenses, including airport dues, pursuant to the order dated 22 March 2022 passed by this Tribunal in IA 125 of 2022 filed by the SRA **(Order@ Page 149, Application Vol 1)**. In this regard it is submitted that IA 125 of 2022 was not filed by the SRA in respect of the CIRP costs which are to be paid in terms of the Resolution Plan. The IA 125 of 2022 was filed by the SRA for utilization of cash balances to meet CP related expenses incurred after the Plan Approval Date such as lease rentals for purposes of leasing the aircraft,

employee costs after NCLT Approval Date, costs for recertifying AOC etc. These expenses were specifically set out in Paragraph 22 and Prayer 35 (b) of IA 125 of 2022 **[@ Pg 136 and 141, Application Vol 1]**. It is in this context that this Tribunal passed an order stating that:

> "iii... *In that view of the matter, prayer in this Application to issue directions to Respondent to pay and to continue* ***to pay all expenses relating to CPs as elaborated in sub Para (b) of Para 35 of prayer*** *is rejected. However, it is directed that MC/ CoC to continue to meet the expenses of Corporate Debtor till Effective Date as per the average of monthly expenses 3 months before approval of the Resolution Plan which will include lease rentals etc****."[@ Page 150. Application Vol 1]***

1. It is humbly submitted that the order passed by this Tribunal in IA 125 cannot be misinterpreted or misconstrued by the MC Lenders to now contend that cash balance of the CD cannot be utilized to meet the airport dues (which constitute CIRP costs as per RP's own submission), especially when the Resolution Plan

specifically provides for utilization of cash balance of the CD for meeting CIRP costs.

m. As regards the apprehension of the MC Lenders that the CD will not have enough revenue to meet deferred payments to the lenders under the Resolution Plan, it is submitted that the SRA remains committed to pay deferred consideration to the lenders in accordance with the Resolution Plan and such unfounded apprehension cannot be a justification for not allowing the SRA to implement its approved Resolution Plan. Pertinently, the SRA will be the majority shareholder of the CD (with lenders holding a minority stake of 10%) and therefore it is also in the interest of the SRA to ensure maximization of revenue of the CD including by operating on multiple routes. Further, all deferred payments to the lenders under the Resolution Plan are secured, including by way of security over the SRA's personal properties **[Security Structure at @ Page 84,**

Rejoinder Vol I]. Hence, the MC lenders are fully secured with respect to the deferred payments.

n. It is also important to point out that approval of the Reserve Bank of India ("**RBI**") was required for creating a charge over the SRA's property for securing deferred payment to the lenders. Accordingly, the SRA made an application to the RBI seeking approval for creation of such charge. In response to the application made by the SRA, the RBI sent a letter to the State Bank of India **("SBI")** (an MC Lender) on 4 March 2022, asking SBI (as the lead bank in the CoC/MC) to apply to the RBI for creation of security over SRA's properties. However, SBI did not take any action on the application and only after the SRA received the AOC (thereby achieving the Effective Date) on 20 May 2020, the SBI applied to the RBI on 23 May 2022 for an approval for creation of security over then SRA's personal properties, which approval was received from the RBI in July 2022.

(v) ***CPs relating to International Traffic Right Clearance:***

a. Clause 7.6.1 (d) of the Resolution Plan reads as under [@ Page 151 and 165-170, Rejoinder Vol II [@ Page 12 of the CC]:

> "*International Traffic Rights Clearance - The Corporate Debtor shall have received the International Traffic Rights Clearance in compliance with Applicable Laws*."

b. The SRA had initially sought certain upfront approvals relating to International Traffic Rights Clearance from this Tribunal **[@ Page 165, Rejoinder Vol I] [@ Page 15 of the CC]**. The Plan Approval order states that as far as the permits held by the CD and the rights and benefits accrued therein, the CD (under the new Management) shall approach the authorities concerned for renewal and that the same may be considered by them favourably. Further, for reliefs and concessions, the CD may approach the respective authorities and departments which may favourably consider such applications as deemed proper under law, keeping in view the object of resolution of the CD **[@ Page 69, 89 & 90, Rejoinder Vol 1] [@ Page 22, 28 and 29 of the CC].**

c. Hence, notwithstanding the fact that the SRA initially proposes to start domestic operations with 6 narrow-body aircraft as per the approved Resolution Plan, basis the Plan Approval Order, the SRA attempted to receive upfront approval relating to the International Traffic Rights Clearance from MOCA. However, MoCA vide its letter dated 10 May 2022 clarified that International Traffic Rights Clearance can only be granted as per the extant National Civil Aviation Policy, 2016, which requires deployment of 20 aircraft or 20% of total capacity (in terms of average number of seats on all departure put together), whichever is higher for domestic operations for the **clearance [@ Page 393, Rejoinder Vol III] @ Page 62 of the CC].**

d. Thus, for the purpose of achieving the Effective Date, the International Traffic Rights Clearance is not relevant and the same will be obtained by the CD after it recommences in operations as a condition subsequent in compliance with the applicable laws.

e. Notably, this aspect was also argued before the Hon'ble NCLAT in the appeal filed by JAMEWA against the Plan Approval Order. JAMEWA contested that this approval has not been received by the SRA and hence, the CPs have not been complied with by the SRA. The SRA explained the requirements for obtaining International Traffic Rights Clearance to the Hon'ble NCLAT which recorded that:

> *"108. As per requirement of international traffic license, the said license is granted only to airlines which has a minimum 20 aircrafts or 20% total capacity in its fleet. The Successful Resolution Applicant has scheduled the recommencement with only six airplanes for domestic operations, hence, the said condition is not applicable in the present case..."* **[@ Page 323, Rejoinder Vol II].**

Basis submissions made, the Hon'ble NCLAT further recorded that "*The Resolution Applicant has also completed all necessary condition precedents to the satisfaction of the Monitoring Committee..."* ***[Para 109 @ Page 326, Rejoinder Vol III]***

f. Lastly, the MC Lenders have contended that SRA all along, in various MC Meetings has been projecting to the MC

Lenders that International Traffic Rights will be obtained **[Page 35 and 43 of the Surrejoinder]**. However, it is submitted that the MC Lenders are deliberately misinterpreting the statements made by the SRA during the MC meetings where the SRA had informed the MC that it is discussing grant of slots (in future) at international airports with certain airlines- notably, the International Traffic Rights are rights which are to be granted by the DGCA/MOCA, which can only be granted once the SRA meets the requirements of the National Civil Aviation Policy, 2016.

23. **CONTRARY STAND TAKEN BY THE MC LENDERS**:

a. It is submitted that the stand taken by the MC Lenders before this Tribunal is contrary to the stand taken by the MC Lenders previously. For instance, MC Lenders supported the SRA the LA. No. 766 of filed by JAMEWA before this Tribunal in which one of the primary grounds taken by JAMEWA at the time of hearing was that the CP's relating to slots allotment approval, international traffic rights clearance and demerger were not fulfilled by the SRA. By order dated 11 April 2022, this Tribunal rejected the objections raised by JAMEWA **[Order @ Page 298-312, Application Vol 11) [@ Page**

64-77 of the CC]. This Tribunal's order was upheld by the Hon'ble NCLAT by an order dated 28 April 2022 passed in an appeal, bearing Company Appeal (AT) (In.) No. 473 filed by JAMEWA, which has not been challenged any party **[Order @Page 313-321, Application Vol II] [@ Page 78-86 of the CC).**

b. Further, as mentioned earlier, in the NCLAT Appeals, the Hon'ble NCLAT on 30 May 2022, was informed that the Effective Date under the Resolution Plan is fixed as 20 May 2022. All Respondents were present during the said hearings and supported the SRA and did not object to the Effective Date of 20 May 2022 **(Order @ Page 378-383, Application Vol II] @ Page 87-88 of the CC)**.

c. The stand of MC Lenders was again reiterated in the NCLAT Order dated 21 October 2022, wherein the Hon'ble NCLAT recorded that the SRA has completed all necessary condition precedents to the satisfaction of the MC**. [@Page 326, Rejoinder Vol III].**

d. In addition, on 21 May 2022, the SRA e-filed an up-to-date status report with this Tribunal, intimating about the completion of the CPs

and 20 May 2022 being the Effective Date. A copy of the said status report was also served on the Respondents, however, no objection to the said status report has been raised by the MC Lenders till date.

e. Further, the MC Lenders accepted the balance Performance Bank Guarantee ("**PBG**") provided by the SRA on the Effective Date. In this regard, as per the Addendum to the Resolution Plan (amending Clause 6.4.12):

> "*As required under the RFRP, the Resolution Applicant shall provide performance security bank guarantee ("**PBG**") for a total sum of INR 150 Crores. The PBG will be provided in two parts, with the first PBG of 47.5 Crores provided within 7 (seven) days from the date of receipt of LOI; and **PBG for the remaining sum of INR 102.5 Crores provided on the Effective Date*** **[Page 207, Rejoinder Vol II]** [**@ Page 90 of the CC]**

After the Effective Date, the SRA submitted the PBG of INR 87.50 Crores, [PBGs of 47.5 Crores and INR 15 Crores were already deposited earlier with the MC]. The MC Lenders accepted the balance PBG (which was supposed to the given on the Effective Date) and did not object to it on the grounds that the CPs have not been fulfilled as per the Resolution Plan **[@ Page 363, Application Vol II] @ Page 91 of the CC]**.

The said PBG was expiring on 25 November 2022. While the SRA was in the process of renewing the PBG, the MC Lenders tried to invoke the PBG on the grounds that the PBG was expiring **[@Page 398, Rejoinder Vol III] [@ Page 92 of the CC].** This itself' shows that the MC Lenders considered Effective Date to have been achieved since if the MC Lenders were disputing the fulfilment of CPs, there was no basis for them to accept the PBG (that was supposed to be given on the Effective Date) or seek its invocation on the basis that it is expiring.

24. **MC LENDERS' REFUSAL TO ALLOW THE SRA TO INFUSE FUNDS WITHOUT AN 'UNDERTAKING:**

a. As stated earlier, after the Effective Date, the SRA wrote various letters/emails to the MC between May 2022 and October 2022 asking it to take steps to enable implementation of the Resolution Plan including allowing the SRA to bring in the first tranche of the funding into the CD and pay the stakeholders as per the binding timelines set out in the Resolution Plan **[@ Page 361, Application Vol II and @ Page 418-427, Rejoinder Vol III] [@ Page 93-105 of the CC].**

b. However, instead of taking necessary steps for plan implementation, the MC Lenders shared draft of an undertaking ("Undertaking") with the SRA on 4 June 2022, insisting the SRA to execute the said Undertaking, which, inter alia, required the SRA: (i) to procure all slots set in Clause 10.11.2 of the Resolution Plan, within the timelines provided under the Business Plan; (ii) to obtain International Traffic Rights Clearance, (iii) to meet any shortfall in meeting financial obligations towards the stakeholders over and above the amounts agreed under the Resolution Plan and infuse funds in manner acceptable to the FCs; (iv) to appropriate all MSN 885 aircraft lease rentals recoveries of the CD to the FCs notwithstanding that the approved Resolution Plan provides for using these funds exclusively as working capital purposes for CD's restart of domestic operations; (iv) to allow FCs to have absolute right to verify and review the implementation of Resolution Plan even after the MC ceases to exist; and (v) to undertake that in event of any conflict between the provisions of the Resolution Plan and the Undertaking, the contents of the Undertaking shall prevail, thereby requiring the SRA to modify the approved Resolution Plan **[@ Page 408-413, @ 411 Rejoinder Vol III] @ Page 106-107A of the CC]**.

c. Since the Undertaking envisaged conditions which are beyond the scope of the approved Resolution Plan and in fact amounted to modification of the Resolution Plan, the SRA objected to said undertaking and refused to execute the same. In any event once the Resolution Plan is approved by this Tribunal and the said approval is not challenged, there is no requirement for the SRA either under law or the Resolution Plan to provide any additional comfort to the Lenders or agree on any terms towards modifying such approved Resolution Plan.

d. Various MC meetings and Joint Lender Meetings (JLM) were held, where MC Lenders refused to acknowledge the fulfilment of CPs by the SRA and insisted on the Undertaking. These are:

- 19th MC meeting dated 14 July **2022 [@ 77-78 and 86-88, Vol I. Reply by MC Lenders). [@ Page 109-110 and 111-113 of the CC]**
- JLM dated 19 July 2022 **[@Page 90-91 @ 95, Vol 1, Reply of MC Lenders] [@ Page 115-117 the CC]**
- JLM dated 26 July 2022 **[@Page 104-106 @ 106, Vol 1, Reply of MC Lenders] [@ Page 119 of the CC]**

- JLM dated 22 August 2022 **[@Page 115-124@ 118, Vol 1, Reply of MC Lenders] [@ Page 121 of the CC]**

- 21st MC meeting dated 1 September 2022 **[@Page 428-443 @ 438-439, Vol III, Rejoinder] |@Page 124-125 of the CC]**

- 23rd MC meeting dated 23 September 2022 **[@Page 444-458 @ 446- 448, Vol III, Rejoinder] |@ Page 127-128 of the CC]**

e. Eventually, at a JLM held on 29 September 2022, it was agreed that by the MC Lenders that the SRA will file an application with this Tribunal with regard to compliance of CPs, which all lenders will support for next steps of plan implementation. During the meeting, the SRA once again clarified that all CPs have been fulfilled as per applicable laws, that international traffic rights approval can only be applied after CD has, inter alia, 20 aircraft in its fleet as per the extant regulations and that the Plan Approval Order clearly stipulates that old slots of CD are not reserved for the SRA/ CD anymore and slots for Jet Airways may be allocated to them subsequently as per their requirements and availability. However, the lenders suggested that these facts be brought to the notice of this Tribunal and approval for the same be sought for. The SRA agreed to filing of the said application (i.e. the present application) before this Tribunal and also proposed 23 October 2022 to be official date on which CD be operationalised, subject to this Tribunal's approval and sought full

support of lenders in meeting these timelines. [**Draft JLM minutes recording these discussions @ Page 474 and 476, Rejoinder Vol 111@Page 131 and 133 of the CC]**

f. However, when the signed copy of the minutes of JLM held on 29 September 2022 was shared with the SRA on 28 October 2022, it was noted that the minutes so shared were inconsistent with the previous draft minutes shared and the actual discussions held with the MC Lenders during the said JLM. It was further noted that once again, the MC Lenders have insisted on the Undertaking as a condition to allow SRA to implement the Resolution Plan. **[Signed Minutes @ Page 459-465, Rejoinder Vol III] @ Page 136- 137 and 140 of the CC**]. The SRA notified the MC Lenders of the said inconsistencies in the signed minutes vide its email dated 1 November 2022 **[@ Page 479, Rejoinder Vol III] [Page 142 of the CC].**

25. **DIRECTIONS SOUGHT FROM THIS TRIBUNAL**

a. Despite achieving the Effective Date on 20 May 2022 and despite multiple requests made by the SRA, the MC Lenders are not taking

steps to enable the SRA to infuse first tranche of payment in the CD, thereby not allowing the SRA to implement the Resolution Plan, contending that all CPs have not been made.

b. It is submitted that the SRA has completed all necessary CPs and has achieved the Effective Date on 20 May 2022. The completion of all necessary CPs has also been confirmed in the NCLAT Order where the SRA explained compliance of each of the CPs to the Hon'ble NCLAT.

c. Notably, there is no provision under the Resolution Plan which authorizes the erstwhile CoC of the CD/ lenders/ erstwhile RP and/or the MC to confirm, certify and/or approve the completion of the CPs and/or the occurrence of "Effective Date".

d. Further, as mentioned earlier, the CPs are conditions for recommencement of the operations as an aviation company and not conditions for implementation of the Resolution Plan. As per Clause 7.1.2 of the Resolution Plan, the implementation of the Plan is not

conditional on upon satisfaction of any conditions, other than approval of the Resolution Plan by this Tribunal.

e. Thus, with the SRA now having approvals in place for recommencing the operations of Jet 2.0, there are no restrictions under the approved Resolution Plan towards its implementation. Notably, while the MC Lenders had stated (in the JLM held on 29 September 2022) that they will support the application of the SRA before this Tribunal in respect of confirmation of completion of CPs, the MC Lenders are once again insisting on the Undertaking as a condition for allowing the SRA to implement the Resolution Plan.

f. It is submitted that the SRA remains committed to implement the Resolution Plan. It also remains committed to obtain slots from time to time as required for its operation and to: apply for International Traffic Right Clearance once it becomes eligible to apply for the same as per applicable law. However, the MC Lenders are not permitted to seek any additional comforts, modifying the Resolution Plan, as a condition for allowing implementation of the Resolution Plan. In light of the stand taken by the MC Lenders, it is prayed that this Tribunal

allow the Application and direct the Respondents to allow the SRA to infuse the funds into the Corporate Debtor and take control and management of the Corporate Debtor and execute the necessary documents in this regard in a time bound manner so that the Resolution Plan can be implemented.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NOS. 1 TO 3

26. It is very important to emphasize, that evaluations as required to be undertaken by the CoC before approving a resolution plan, the CoC in the matter of Jet Airways, had engaged Alvarez and Marsal India Private Limited ("**A&M")** to undertake a detailed techno-economic evaluation of the eligible resolution plans ("**Techno-Economic Evaluation**") Request for Resolution Plan ("**RFRP**"), including that submitted by the Applicant, in order to assess the feasibility and viability of the resolution plan an obligation imposed upon the CoC under Regulation 38 (3)(b) of the CIRP Regulations. As part of its scope of work, A&M, was *inter alia*, required to opine, for reference of the members of the CoC while making their evaluations of the resolution plan(s), the commercial proposal and structure for payments towards various stakeholders, in absence of any corporate/personal

guarantee or any credit enhancement measures as proposed by the resolution applicants in their resolution plans. As part of such evaluation, it may be noted that the structure of upfront plus deferred considerations (including the NPVs of such deferred considerations) formed crucial considerations while according numbers to each of the resolution plan (including that of the Applicant's) basis the evaluation matrix set out in the RFRP.

27. The aforesaid evaluation and extensive negotiations that the Resolution Plan dated 21st September 2020 along with the first addendum dated 2nd October 2020, as received from the Applicant, was approved by the CoC by a majority of 99.22% and subsequently by this Tribunal vide its order dated 22nd June 2021. The Resolution Plan included certain CPs which were highly critical for the successful commencement of the business of the Corporate Debtor as an aviation company. The Resolution Plan further lays down several actions, other than the fulfilment of the CPs, that are required to be accomplished on or prior to the *Effective Date* i.e. date of fulfilment of all CPs in accordance with the provisions of the Resolution Plan. As submitted above, the Resolution Plan also provides for payments by way of both Upfront and Deferred Considerations payable to the Financial Creditors (with

the Deferred Considerations payable by the Corporate Debtor from its cashflows, forming the higher proportion of the total consideration envisaged under the Resolution Plan) upon achievement of the Effective Date, and up until a period of 5 (five) years in several forms and structures, including issuance of various debt instruments by the Corporate Debtor.

28. As per Clause 7.6.1 of the Resolution Plan, the obligation of the Resolution Applicant to recommence operations as an aviation company, being the business proposed to be acquired by the Applicant was subject to the fulfilment of the following five Conditions Precedent:

[*the Resolution Plan at Annexure A of the Rejoinder Vol. I at pg. 115 & 116*]

> ***7.6.1. Conditions Precedent*** *- The obligation of the Resolution Applicant to re-commence operations as an aviation company, being the business proposed to be acquired is subject to the fulfilment of the following conditions after the Approval Date ("Conditions Precedent"):*
>
> ***(b) Submission and approval of the Business Plan to DGCA & MoCA*** *– The Business Plan of the Resolution Applicant shall have been submitted after the Approval Date to the DGCA and MoCA for their review, and approval. The Resolution Applicant agrees to modify its business plan to incorporate all reasonable changes required by the DGCA/ MoCA, which otherwise does not make the*

business unviable for the Resolution Applicant.

***(c) Slots Allotment Approval** – The DGCA and MoCA shall have approved the reinstatement of all the suspended slots (including the bilateral rights and traffic rights) back to Jet Airways/ Corporate Debtor. The slots (along with related bilateral rights and traffic rights) can be allotted to the Corporate Debtor gradually as per its Business Plan with immediate slots allotment approval (along with related bilateral rights and traffic rights) for sectors on which Jet 2.0 proposes to recommence operations after the Effective Date.*

***(d) International Traffic Rights Clearance** – The Corporate Debtor shall have received the International Traffic Rights Clearance in compliance with Applicable Laws.*

29. As per Clause 7.6.4 of the Resolution Plan, the CPs mentioned in Clause 7.6.1 of the Resolution Plan were required to be fulfilled within 90 (ninety) days from the Resolution Plan Approval Date, which was further extendable to a maximum period of 270 (two hundred and seventy) days from the Resolution Plan Approval Date. Considering the aforesaid uncertainty in the Effective Date, this Tribunal in its Plan Approval Order suggested that the CPs be completed and consequently Effective Date be achieved by the 90th day from the Plan Approval Date. This Tribunal further granted the Applicant the liberty to approach this Tribunal for appropriate orders with regard to extension of the 90-day timeline till the outer limit of 270 (two hundred and

seventy) days as would be deemed proper, per the terms of the Resolution Plan.

Delayed Implementation of the Resolution Plan

First Extension

30. As per the Resolution Plan, the Conditions Precedent were required to be fulfilled by the Applicant within a maximum period of 270 days from the date of the Plan Approval Order. The Applicant having exceeded the originally stipulated time-limit of 90 days from the Resolution Plan Approval Date for fulfilling the Conditions Precedent, availed the liberty granted by this Tribunal in Resolution Plan Approval Order, to seek an extension by another period of 90 days for fulfilling the Conditions Precedent. This Tribunal *vide* its order dated 29th September, 2021, noted the submission made by the Applicant that various actions for achievement of the CPs were in pipeline, and therefore extended the Effective Date to 22nd December, 2021. [*the 29th September 2021 NCLT Order at Annexure 4 of the Application Vol. I at pg. 96*]

Second Extension

31. The Applicant, in accordance with its intention laid down in the 16th December 2021 Letter, filed IA No. 2906 of 2021 ("**IA 2906/21**"), with this Tribunal, close to the expiry of 180 days period, *inter alia* seeking

22nd December 2021 be declared as the Effective Date (despite not having complied with the CPs as required under the Resolution Plan) and further requiring vesting of the control and management of the Corporate Debtor in the Applicant on such date. This was sought to be achieved through a purported waiver of the CPs which had the effect of altering the original terms and conditions as set out in the duly approved Resolution Plan.

32. This Tribunal *vide* its order dated 22nd December 2021 observed that once the Resolution Plan was approved by the Adjudicating Authority, its terms could not be changed, and the only liberty was given to the Applicant, under the terms of the Resolution Plan, was the extension of the Effective Date. This Tribunal had further observed that the CPs were necessary, and the Applicant was committed and bound by the same and as such is required to put more efforts to comply the commitments given in the form of CPs within the total time committed by the Applicant and as approved by this Tribunal. This Tribunal further noted that there cannot be any change in the terms and conditions of the Resolution Plan. [*the 22nd December 2021 NCLT Order at Annexure 5 of the Application Vol. I at pg. 98*]

33. On 20th January 2022, this Tribunal disposed of the said IA No. 2906/2021 filed by the Applicant and extended the timeline for fulfilment of Condition Precedent by a further period of 90 days from 22nd December 2021 i.e., until 22nd March 2022. [*the 20th January 2022 NCLT Order at Annexure 6 of the Application Vol. I at pg. 102*]

Exclusion

34. Thereafter, the Applicant filed an Interlocutory Application bearing IA No. 125 of 2022 ("**IA125/22**"), *inter alia*, praying for all the expenses of the Corporate Debtor, including towards the fulfilment of the CPs, be paid from the positive cash balance of the Corporate Debtor. Prayers (a) to (c) sought by the Resolution Applicant in IA 125/22 have been reproduced below for convenience:

a. allow the Application;

b. ***pass appropriate and urgent directions to the Respondents to pay, and continue to pay until the Effective Date, all expenses relating to the Corporate Debtor without any exception, including without limitation expenses incurred/ to be incurred towards Conditions Precedent*** *fulfilment, hiring of employees of the Corporate Debtor, executing IT contracts, cabin crew training contracts, ground handling and engineering contracts, contracts with MRO* ***and all operational and business expenses, out of its***

positive cash balance *without any delay, protest, demur, or cavil and not obstruct in the successful revival of the Corporate Debtor; c. pass appropriate and urgent directions to the Respondents that the positive cash balance of the Corporate Debtor can be utilized only in the manner set out in para 9 above.*

[*IA 125/22 at Annexure 7 of the Application Vol. I at pg. 108*].

35. The IA 125/22 was heard and rejected by this Tribunal on 22nd March 2022. Relevant extracts from the said order have been reproduced below:

i. ***In the background of above submissions, it is observed that certain CPs are to be fulfilled before the Effective Date and SRA has taken full responsibility of completing the same maximum within a period of 270 days from the approval of the Resolution Plan.***

…

iii. ***It has been observed that many new heads of expenditures have been initiated and in case MC / CoC is required to pay these expenses, SRA can escape from completing the CPs and fulfilling his part of promise which can cause hurdle in the commencement of effective date and the blame for not completing CPs can shift to CoC which will be against the letter and spirit of the order of this Adjudicating Authority dated 22.06.2021 approving the Resolution Plan wherein it was clearly stated that if the CPs are***

not fulfilled within a time frame, the Resolution Plan stands automatically withdrawn without any further acts, deeds or things. It is thus clear that SRA took responsibilities of completing CPs and responsibility for all acts relating to completion of CPs including expenses to be incurred for completing CPs. It is also evident *from the fact that SRA pumped in Rs 50 crore for the purpose in January 2022. It may be added that the time given for completing the CPs was extended by a total of 270 days after 22.06.21 by specific orders of this Court.* ***In that view of the matter, prayer in this Application to issue directions to Respondent [CoC] to pay and to continue to pay all expenses relating to CPs as elaborated in sub Para (b) of Para 35 of prayer is rejected****. However, it is directed that MC/CoC to continue to meet the expenses of Corporate Debtor till Effective Date as per the average of monthly expenses 3 months before approval of the Resolution Plan which will include lease rentals etc.*

[*22nd March 2022 NCLT Order at Annexure 8 of the Application Vol. I at pg. 149*]

Exclusion

36. The Applicant, on 10th March 2022, filed IA No. 686 of 2022 ("**IA 686/22**"), *inter alia*, praying for the exclusion of the period between which the aforementioned IA 125/22 was decided by this Tribunal, in

order for it to fulfil the Conditions Precedent under the Resolution Plan.

37. In light of the aforementioned undertaking, in furtherance of the spirit of the IBC and revival of the Corporate Debtor, the CoC did not object to the aforesaid IA 686/22 for exclusion of the time-period while IA 125/22 was subjudice before this Tribunal. Subsequently, this Tribunal, *vide* order dated 11th April 2022, was pleased to allow the exclusion of a period of 65 days, thereby extending the Effective Date to 25th May 2022. The same was also upheld by the Hon'ble National Company Law Appellate Tribunal ("**Hon'ble NCLAT**") *vide* order dated 28th April 2022 in Company Appeal (AT) (Ins.) No. 473 of 2022. [*11th April 2022 NCLT Order at Annexure 11 of the Application Vol. I at pg. 298*].

38. On 20th May 2022, the Directorate General of Civil Aviation ("**DGCA**") re-issued the AOC of the Corporate Debtor certifying that the Corporate Debtor was authorized to perform commercial air operations. The remaining CPs were yet to be fulfilled.

39. As submitted above, pending fulfilment of other CPs, the Applicant, on 20th May 2022, addressed an email to the representative of the lenders on the MC and the erstwhile Resolution Professional, [falsely] representing that it had fulfilled *all* the Conditions Precedent, and that 20th May 2022 should be considered as the Effective Date under the Resolution Plan. On 21st May 2022, the Resolution Applicant, without consulting the Monitoring Committee filed a Status Report with this Tribunal, submitting that it had completed *all* the Conditions Precedent as required under Clause 7.6.1 of the Resolution Plan (without substantiating on or bringing on record the non-completion of CPs relating to the slots (as envisaged to be procured in its Business Plan for the immediate recommencement of the domestic operations of the Corporate Debtor) as well as International Traffic Rights Clearance, the non-procurement of which is also admitted by the Applicant and as a matter of fact and record) as on 20th May 2022 thereby declaring 20th May 2022 to be the Effective Date, further stating that it was fully committed to the implementation of the Resolution Plan ("**RA's Status Report**"). [*the 20th May 2022 e-mail and the 21st May 2022 Status Report at Annexure 14 & 15 of the Application Vol. I at pg. 323 & 324, respectively*]

40. The Applicant had thereafter *vide* an email of even date intimated the "CP Completion and Effective Date" and the filing of such Status Report to the MC members [*the 21st May 2022 e-mail at Annexure 16 (colly.) of the Application Vol. II at pg. 360 to 362*]. In response to this e-mail, however, Respondent No. 4 as the representative of the Monitoring Committee replied to the Applicant stating that the Monitoring Committee was in the process of examining the status of CP compliance basis documents shared by the Applicant. members [*the 22nd May 2022 e-mail at Annexure L of the Rejoinder Vol. III at pg. 399*]. This was followed by a letter dated 25 May 2022 addressed by Respondent No. 1 (as the representative of the CoC) to the Applicant stating that the CPs were reviewed and examined in detail in the Joint Lenders Meeting ("**JLM**") held on the same date and basis documents submitted by the Applicant evidencing fulfilment of CPs, serious deviations/variances were observed in relation to fulfilment of all CPs. Accordingly, a CP-wise response was sought by Respondent No. 1 on behalf of all financial creditors. [*letter dated 25th May 2022, at Annexure N of the Rejoinder Vol. III at pg. 402*]

41. On 27th May 2022, the Applicant submitted a copy of the Performance Bank Guarantee ("**PBG**") for an amount of Rs 87.50 Crores to the

Respondents, in furtherance of the Rs. 150 Crores requirement towards PBG.

42. The Applicant has been time and again informed that in terms of the Resolution Plan as well as the Plan Approval Order, the MC was mandated with supervising the implementation of the Resolution Plan, hence the MC was required to review the fulfilment of the Conditions Precedent. Accordingly, the counsel of the MC was required to review and examine the position on the fulfilment of the CPs and present its view to the MC. The matter relating to fulfilment of the Conditions Precedent by the Applicant was taken up for deliberations in subsequent MC meetings where the Respondent No. 4 / MC Representative presented its observations/report on the status of the CP compliance by the Applicant herein. The Advocates for Respondent No. 4 accordingly prepared a report on CP compliances by the Applicant and presented the same before the MC on July 14, 2022 where the incomplete status of the CPs were highlighted to the MC. [*the AZB Report on CP Completion at Exhibit 4 of the Reply Vol. I at pg. 86 to 88*]

43. Ever since, on multiple occasions and meetings thereafter, the MC Lenders have communicated their dissatisfaction with the status of the

CP compliances by the Applicant, in opposition of the Applicant's version of complete fulfilment of CP compliance. The issue of CP compliance was, *inter alia,* considered in the JLM held on 19th July 2022 and 26th July 2022, wherein the Applicant was informed that all the CPs that are required for the achievement of the Effective Date as well as effective implementation of the Resolution Plan have not been complied with by the Applicant. [*the 19th July 2022 & 26th July 2022 minutes of the meetings at Exhibit 5 (Colly.) of the Reply Vol. I at pg. 89 and 104 respectively*]

44. Given the non-fulfilment of CPs by the Applicant and the direct impact that such non-fulfilment of CPs has on the commercial feasibility and viability as well as the operational revivability of the Resolution Plan, as also upheld by this Tribunal in its order dated 22 December 2021 in IA 2906/21 the financial creditors/lenders constituting majority of the CoC, in a JLM conducted on 27th June 2022 and 30th June 2022 agreed on obtaining the opinion of the Ld. Solicitor General of India, Mr. Tushar Mehta in respect of the safeguards that may be adopted by the lenders on account of the adverse effects on the Resolution Plan arising out of such non-compliances. The lenders sought advice on the

potential way forward in the Resolution Plan implementation process. The Ld. Solicitor General in his opinion dated 14th July 2022 observed that the compliance of the CPs by the Applicant was doubtful and the deviations in relation to compliance of such CPs could substantially affect the generation of revenue that may result in the Applicant not being able to fulfil its obligations towards the revival of the operations, in turn impacting the pay-outs to the creditors, especially the deferred considerations payable from the Corporate Debtor's cash flows, as envisaged under the Resolution Plan. The Solicitor General also opined that the lenders and the Successful Resolution Applicant may jointly agree to make provisions to accommodate such deviations from CP compliance in the Resolution Plan in order to protect the payment to the Lenders. Such additional assurance would however require the consent of the CoC and thereafter the Adjudicating Authority. Relevant extracts of the said opinion are reproduced hereunder:

4.2. ***The deviations, which were not contemplated at the time of its approval by Committee of Creditors, may substantially affect the generation of revenue resulting in the Resolution Applicant not being able to fulfil its obligations towards the creditors in a phased manner****.*

4.9. ***At the same time, however, there is no bar or prohibition if the creditors on one side and the successful Resolution Applicant on the other, jointly agree to make any addition or changes in the plan as approved by the CoC and confirmed by the Adjudicating Authority. Since both the sides would like to avoid extreme steps to liquidate, it is neither prohibited nor impermissible for the parties to agree upon some additional provisions which would protect the payment coming to the creditors. If parties agree to such additional assurances to be given by the successful resolution applicant, it will require the approval of the adjudicating authority again****.*

45. The financial creditors/lenders thereafter continued to deliberate on CP compliance as well as the way forward in the implementation of the Resolution Plan on a number of occasions. The lenders, in JLMs (including those conducted on 28th March 2022, 27th June 2022, 22nd August 2022 and 29th September 2022) and MC Meetings (conducted on 14th July 2022 & 19th July 2022) have consistently maintained the position that since the unfulfilled CPs within 270 days alter the commercial considerations basis which the CoC had approved the Resolution Plan, as well as the differing stance in relation to the treatments of cash balance of the Corporate Debtor including the lease rentals from Etihad Airways PJSC/Air Serbia ("**Air Serbia Rentals**")

(as contended by the Applicant in its Rejoinder on Paragraph 8.18) (further elaborated in Paragraph 34 below), each of which had the effect of leaving the Corporate Debtor's resolution high and dry. Therefore, any step forward in the implementation of the Resolution Plan required a fresh approval from the CoC in law, subject to an undertaking whereunder the Applicant commits to comply with the CPs as well as provide for any shortfall in the financial pay-outs in future, an aspect currently put at risk on account of the Applicant's CP non-compliances. Any such move to proceed in the implementation process, however, would require the approval of this Tribunal as well as the CoC.

46. Absent the above, the future of the revival and resolution of the Corporate Debtor and the pay-outs to stakeholders of the Corporate Debtor sources of which are identified to be cashflows and generation of the Corporate Debtor would be put in a state of dubiety. [*the 28th March 2022, 27th June 2022, 22nd August 2022, and 29th September 2022 JLM Minutes at Exhibit 6 (Colly.) of the Reply Vol. I at pg. 107 & also the 14th July & 19th July 2022 MC Meeting Minutes at Exhibit 4 of the Reply Vol. I at pg. 56*]

47. Not only the CPs, the Applicant has also throughout the course of Resolution Plan implementation attempted interpretations of clauses in the Resolution Plan that affect the funds otherwise reserved for payments to the financial creditors, thereby also wanting to illegally usurp the cash balance of the Corporate Debtor, otherwise slated for the benefit of the financial creditors under the Resolution Plan. One such interpretation is in relation to the utilisation of funds received by the Corporate Debtor from the lease rentals from Etihad Airways PJSC as contested to be utilised for the working capital purposes of the Corporate Debtor by the Applicant in sub-paragraph 8.18 of the Rejoinder. Such Air Serbia Rentals are however, per the terms of the Resolution Plan, provided to be utilised in the following manner only:

Treatment of Lease Rentals from Etihad Airways PJSC

a) *Until date of repayment to Barclays PLC:*

Per the terms of Clause 6.4.4 (i) of the Resolution Plan, the Serbia Lease Rentals was to be utilised towards repayment of loan of Barclays Bank, PLC and it was expected by the Resolution Applicant that the entire outstanding of Barclays Bank, PLC would be satisfied by December 31, 2020. It has been confirmed by the Company that the principal and interest amounts due to Barclays Bank, PLC were fully paid and satisfied close to the slated expiry of the lease term i.e. May 05, 2021, i.e. prior to the Resolution Plan Approval Date. However, due to complications relating to re-delivery of the Aircraft by Etihad back to India, the lease agreement has not come to an end and certain rentals are continuing to be received by the Company from Etihad under the

terms of the lease agreement.

b) *From date of repayment to Barclays Bank, PLC to Approval Date:*

The Resolution Plan could not have come into effect before approval of the Resolution Plan by the NCLT, which approval was obtained on June 22, 2021. Furthermore, the outstanding amounts payable to the Barclays Bank, PLC as stipulated under the Resolution Plan stood paid by the Resolution Professional prior to the Resolution Plan Approval Date. Clause 8.2.5 of the Resolution Plan, therefore, is not in operation as of date.
Therefore forms part of the positive cash balance of the Corporate Debtor, slated to be used in the limited manner as specifically provided under Clauses 6.3.1 (d) [page 29 of 167], 6.4.1(h) [page 39 of 167], 6.4.1 (i) [page 39 of 167], 6.4.2 (c) [page 41 of 167], 6.4.3 (a) (iii) [page 45 of 167], 6.4.3 (g) [page 48 of 167], 6.4.4 (f) (i) [page 66 of 167] and 6.6.3 [page 77 of 167] of the Resolution Plan.

c) *From Approval Date to Effective Date:*

Given the settlement of the loan and interest payment of Barclays Bank, PLC prior to the Resolution Plan Approval Date, the Sub-Lease Rentals from the Resolution Plan Approval Date form part of the positive cash balance of the Corporate Debtor. Treatment for the positive cash balance of the Corporate Debtor has been specifically prescribed under the terms of the Resolution Plan. This, inter alia, includes Clause 6.4.4. (f)(i) of the Resolution Plan that prescribes payment of all positive balance of the Corporate Debtor standing to the credit of the Corporate Debtor as on the Effective Date (defined as the date of fulfilment of all Conditions Precedent under the Resolution Plan) to the Assenting Financial Creditors, in accordance with the terms of the Resolution Plan.

48. In keeping with the (i) intent to resolve the deadlock in the Resolution Plan implementation on account of CP non-compliance that affected the ability of the Corporate Debtor to meet its future financial

obligations as well as the constant contest to usurp even the positive cash balance of the Corporate Debtor (including for CP compliances, as submitted in detail below, and the Air Serbia Rentals) and (ii) the larger objective of an effective resolution of the Corporate Debtor, the lenders, **subject to the consent of the CoC and this Tribunal**, advised that the actions for Resolution Plan implementation may be proceeded with (per the demands of the Applicant) provided that the Applicant commits to fulfil the CPs per the terms of the Resolution Plan, assures to guarantee any shortfall in financial pay-outs on account of the risks accruing out of (i) potential alterations in estimated cashflows and revenues of the Corporate Debtor; and (ii) changed contours of business plan given the CP non-compliances as well as commits the Air Serbia Rentals in favour of the creditors as per the terms of the Resolution Plan ("**Proposed Undertaking**").

49. The aforesaid Proposed Undertaking was therefore the by-product of the alterations in the Resolution Plan brought about by the Applicant's failure to achieve all CPs (as elaborated in the latter part of the Written Submissions) as per the terms of Clause 7.6.1 of the Resolution Plan and corresponding impact it has on the business plan and cashflow

projections provided therein, which in turn has a direct bearing on the financial capabilities of the Corporate Debtor to pay sums, especially the deferred considerations required to be paid out of the Corporate Debtor's cash balance, as currently committed under the financial proposal in the Resolution Plan.

50. It accordingly became incumbent to also provide for the Proposed Undertaking to be binding on the Applicant to avoid any future eventualities of dereliction of obligations as required of the Applicant by the lenders in light of alterations in the Resolution Plan. It was duly communicated that any such Proposed Undertaking in light of changed contours of the Resolution Plan would, however, be subject to an explicit approval by this Tribunal as well as the financial creditors/CoC, which are yet to be obtained [*See the Proposed Undertaking at Annexure O (Colly.) of the Rejoinder Vol. III at pg. 408*].

51. It was in light of the aforesaid understanding, that it was agreed by all present in the meeting conducted on 29th September 2022 meeting (including the Applicant) that an application would be filed with the Adjudicating Authority for apprising the stated facts and circumstances in the Resolution Plan implementation, including the differing views of

the Applicant and the MC Lenders based on representation by the authorised representative of the Monitoring Committee on CP compliance, and seeking necessary directions in relation to the Conditions Precedent under the Resolution Plan, subject to approval by the CoC as to the way ahead in the Resolution Plan implementation process (which may include the requirement of the Proposed Undertaking by the Applicant in a form agreeable to the financial creditors for safeguarding the interests of the creditors). This, in turn, was subject to this Tribunal directing a go-ahead in the Resolution Plan implementation in the first place, and thereafter approval from requisite majority of the Financial Creditors. It is therefore logical to conclude and also to note that at no point, the Respondents accepted, as misrepresented by the Applicant, that the CPs had been met. [*the 29th September 2022 JLM Minutes at Exhibit 6 (Colly.) of the Reply Vol. I at pg. 117*]

52. Despite the above, the Applicant filed the present IA No. 3398 of 2022 in complete volte face from the discussions and agreement in the aforesaid JLM as well as other discussions that have preceded the JLM. The IA has been unilaterally filed without consultation or agreement of

the MC Lenders as to the submissions and prayers contained therein, contrary to the agreement for good-faith in the Resolution Plan implementation given the current circumstances. The Applicant has misrepresented the fulfilment of CPs compliance with the CPs and the support of the financial creditors/MC Lenders in relation to the same. As may be noted from the JLM minutes, the draft of the joint IA (as originally intended) was required to be also confirmed by the financial creditors/MC Lenders, and only after an approval/confirmation as to its contents was received, was the Applicant required to file the said IA seeking necessary directions from this Tribunal as to the way forward in the Resolution Plan implementation. The agreement as to the contents of the IA by the Applicant and the Respondents thus formed the basis for the purported support and co-operation by the MC Lenders, subject to CoC approval, in considering the next steps in the implementation of the Resolution Plan, despite all the CPs not having been fulfilled. This Application is nothing but in furtherance of the Applicant's continuous attempt to usurp control over the Corporate Debtor due to its self-serving motive, while jeopardising the interests of the remaining stakeholders in the CIRP of the Corporate Debtor. It is submitted that the Applicant has misrepresented the support of the MC

Lenders/creditors and brought incomplete, and isolated events to the notice of this Tribunal in an attempt to garner a favourable view, not disclosed material events including in the RA's Status Report and has hence approached this Tribunal with unclean hands.

53. The Applicant has been unable to fulfil all the CPs prior to or before the expiry of the stipulated period of 270 days from the Resolution Plan Approval Date as approved by this Tribunal, as per the stipulation in the Plan Approval Order dated 22nd June 2021. Further, the Applicant has been continuously and on several occasions misleading this Tribunal and the Hon'ble NCLAT with submissions on fulfilment of CPs (despite being fully aware of the Monitoring Committee's disapproval of the CP compliances), and on that false premise, attempted to *mala fidely* obtain control and management of the Corporate Debtor. It is emphasised that these incomplete CPs are critical for and have a bearing not only on the successful recommencement of the Corporate Debtor as an aviation business, but also for its continued operations, and payment of committed considerations due to the financial creditors as per the Resolution Plan.

A. ***The treatment and pay-outs of Financial Creditors as per the Resolution Plan is critically dependant on the successful revival of the operations of Corporate Debtor, which in absence of the CP fulfilment as projected under the Resolution Plan, is rendered extremely doubtful***

54. It is extremely important to note that the majority proportion of the payments due to the Financial Creditors under the Resolution Plan, *inter alia,* includes redemption through issuance of debentures by the Corporate Debtor with maturity period spanning across 5 years from the Effective Date. These instruments are also provided by the Applicant to be payable only through the Corporate Debtor between the Effective Date and Year 5 of commencement of domestic operations, and therefore the financial commitments of the Applicant hinge critically on the successful recommencement of *Jet 2.0*. and continuation of its operations in the manner as envisaged in its Business Plan forming part of the Resolution Plan. It is important to note that such payments as provided to be sourced from the cash flows of the Corporate Debtor are without a corporate or a personal guarantee or any other credit enhancement comforts in favour of the creditors.

55. In such a circumstance, where the Corporate Debtor is sought to be recommenced prematurely by the Applicant without fulfilling the

Conditions Precedent, not only is the Corporate Debtor's resolution thrown into jeopardy, but also the deferred considerations owed to the assenting financial creditors including the Respondents herein.

56. The following table summarizes the *Treatment of Financial Creditors* as per the Resolution Plan and the Plan Approval Order:

TREATMENT OF ASSENTING FINANCIAL CREDITORS

[T*he Treatment of Financial Creditors as per Clause 6.4.4 of the Resolution Plan at Annexure A of the Rejoinder Vol. I at pg. 83 onwards and at the Plan Approval Order at Annexure 2 of the Application Vol. I at pg. 43 onwards*]

Sr. No.	**Head**	**Amounts Payable**	**Remarks**
1.	Cash Payment	Rs. 185 Crores (upfront)	**180th day from the Effective Date**
Deferred Consideration Payable by the Corporate Debtor			
Committed Cash Payments			
2.	Zero Coupon Bonds (ZCBs) (Series A) to be issued by the Corporate Debtor	Rs. 195 Crores (aggregate)	The Bonds are to be **redeemed by the Corporate Debtor** after the Closing Date within the **730th days of the Effective Date.**
3.	Non-Convertible	Net Present Value (NPV) of	30,00,000 NCDs of face value Rs. 1,000 each with guaranteed NPV

	Debentures (NCDs) to be issued by the Corporate Debtor	Rs. 391 Crores	of Rs. 391 Crores for the Assenting Financial Creditors. **The NCDs shall only be redeemed by the Corporate Debtor after the Closing Date and within 5 (five) years from the Effective Date.**
4.	Upside on Sale of Aircraft owned by the Corporate Debtor through Series B ZCBs to be issued by the Corporate Debtor	Rs. 60 Crores (aggregate)	**Payable on sale of aircrafts or redemption date within 365 days from the Effective Date.**
5.	Upside on Aeronautical Radio of Thailand (ATR) Inventory through Series C ZCBs to be issued by the Corporate Debtor	Rs. 15 Crores (aggregate)	**On sale of ATR inventories owned by the Corporate Debtor or relevant redemption date within 365 days from the Effective Date.**
6.	Upside on Aircraft Spares through Series D ZCBs to be issued by the Corporate Debtor	Rs. 50 Crores (aggregate)	**On sale of spares owned by the Corporate Debtor or relevant redemption date within 365 days from the Effective Date.**

Miscellaneous Payments			
7.	Upside on BKC Property	Rs. 10 Crores	N/A
8.	9.5% Equity Stake in Jet Airways	Rs. 3,485 Crores (estimated figure)	**Based on the conservative Price to Earnings (P/E) Ratio from Year 3 onwards until Year 5 of the Corporate Debtor's operations.**
9.	7.5% Equity Stake in Jet Privilege Pvt. Ltd.	As and when crystallised	N/A
10.	Positive Cash Balance	As and when crystallised	**Due on Effective Date**
11.	Savings on CIRP	As and when crystallised	**Due on Effective Date**
12.	Contingency Fund	As and when crystallised	**Due on Closing Date**
13.	100% Stake in Jet Lite Ltd.	As and when crystallised	N/A

57. As may be noted from the above, the source of the majority portion of the payouts envisaged for the financial creditors is the Corporate Debtor, as opposed to the cash proposed to be infused by the Applicant from its own funds in order to subscribe to the equity shares and acquire control of the Corporate Debtor. The deferred considerations

payable by the Corporate Debtor on debt instruments issued by it with a maturity of 5 (five) years, are therefore significantly dependant on the successful operations and business of the Corporate Debtor for it to be able to generate revenues and cashflows as estimated and provided for by the Applicant in its Business Plan of 5 years (the same period as which the debt instruments are proposed to be redeemed by).

58. Furthermore, these debt instruments are commonly secured by the same set of certain immoveable properties in Dubai (creation of which is again clouded with uncertainty) and certain credit card receivables. It is therefore emphasised that in the event the implementation of the Resolution Plan is approved to be proceeded with, especially (i) in absence of a corporate or personal guarantee for any non-payment or shortfall in payment of committed considerations towards the financial creditors in future ; (ii) dispute regarding the treatment of the positive cash balance of the Corporate Debtor including the Air Serbia Rentals; and (iii) without the CPs that have a direct bearing on the operational revivability being fulfilled, the same shall have adverse ramifications on the payouts to the creditors (including prominent public sector banks)

of the Corporate Debtor, especially that comprising deferred considerations.

B. ***The Applicant has failed to fulfil the CPs as per Clause 7.6.1 of the Resolution Plan***

59. It is highlighted that as per Clause 7.6.1, the conditions of *Slot Allotment Approval, International Traffic Rights Clearance* and *Submission and approval of Business Plan by DGCA and MoCA*, which CPs as set out by the Applicant itself as critical to be achieved prior to the commencement of the operations of the Corporate Debtor, are incomplete, and that the Applicant has misleadingly stated the same have been fulfilled as per the Resolution Plan. This is despite repeated indications by the Respondents of the importance of timely actions required to be taken by the Applicant for fulfilling its commitments towards achieving the CPs (including incurring necessary expenses towards the same) in the interest of effective implementation of the Resolution Plan and resolution of the Corporate Debtor.

Clause 7.6.1 (c): Slots Allotment Approval

60. As per Clause 7.6.1(c) of the Resolution Plan, as a Condition Precedent to achieving the Effective Date, the DGCA and Ministry of Civil Aviation ("**MoCA**") shall have approved the reinstatement of all the

suspended slots, along with the related bilateral rights and traffic rights, gradually as per the Business Plan; but with respect to the routes proposed to be recommenced by the Corporate Debtor immediately after the Effective Date, immediate approval was necessary.

Clause 7.6.1 (c):

> *Slots Allotment Approval – The DGCA and MoCA shall have approved the reinstatement of all the suspended slots (including the bilateral rights and traffic rights) back to Jet Airways/ Corporate Debtor. The slots (along with related bilateral rights and traffic rights)* ***can be allotted to the Corporate Debtor gradually as per its Business Plan with immediate slots allotment approval (along with related bilateral rights and traffic rights) for sectors on which Jet 2.0 proposes to recommence operations after the Effective Date.***

Paragraph 25 of the Plan Approval Order

> *25. Even otherwise the Corporate Debtor immediately after the approval of the Resolution Plan would not utilizing all the slots. It can only seek slots as and when it had the Aircraft and the attendant wherewithal and logistical support in place,* ***which according to the Resolution Plan would be in phases. Therefore, SRA would periodically seek allocation of slots and we are confident that the authorities concerned would consider them favourably.***

61. Therefore, it is categorical that while this Tribunal had relaxed the requirement for reinstatement of *all* slots to the Corporate Debtor on a historical basis, the Applicant was infact required, under the terms of the Resolution Plan (specifically Clause 7.6.1 read with Clause 8.2.6

and the Business Plan) and Plan Approval Order to procure those slots as CPs to achievement of the Effective Date with which it had proposed to recommencement domestic operations of the Corporate Debtor.

62. Heavy emphasis has been supplied on the terms of the Sub-Clauses 10.1 and 10.2 of the Resolution Plan dealing with Approvals/Waivers/ Extinguishments to prove that the prayers and reliefs sought by the Applicant for reinstatement of *all slots back to the* Corporate Debtor's kitty was to not be considered as conditions and that the Applicant was agreeable with the decision of this Adjudicating Authority in the event such reliefs/ waivers were not granted. Clauses 10.1 and 10.2 of the Resolution Plan are reproduced below –

> *"10.1. Notwithstanding anything to the contrary contained in this Resolution Plan, the Resolution Applicant agrees and confirms that there are no conditions, assumptions and/or qualifications for effectiveness of the Resolution Plan by the Resolution Applicant, until the approval of the Resolution Plan by the Adjudicating Authority. However, the following are the prayers to be placed before the Adjudicating Authority for approval of the Resolution Plan and these prayers should not be considered as conditions. We are and will be agreeable for whatever decision the Adjudicating Authority takes and we shall be bound by the same.*

10.2. The Resolution Applicant is aware that all the below mentioned Approvals/ Waivers/ Extinguishments/ Reliefs to be sought from the Adjudicating Authority may or may not be granted by the Adjudicating Authority and the same has been considered while submitting the Plan. It is reiterated that the Resolution Plan is unconditional and is not dependent on the granting of the below Approvals/ Waivers/ Extinguishments/ Reliefs.

63. It may be noted from the above, that while this Tribunal did not grant the prayer for automatic reinstatement of *all* slots to the Corotate Debtor based on the principle of historicity as a matter of right thereby requiring the Applicant to approach the relevant authorities for renewal of rights and benefits, it by no stretch of imagination, diluted or relaxed the requirement of obtaining at least those slots (including those required for CP fulfilment within 270 days from the Plan Approval Date) as set out in its Business Plan that it had proposed to recommence operations with immediately after the achievement of the Effective Date and which gradual procurement of slots per the said Business Plan was duly approved and infact directed by this Tribunal in paragraph 25 of the Plan Approval Order. Relevant extracts from the Plan Approval Order further evidencing this are set out below:

"23…Viewed from any perspective the slots cannot be allocated to the Corporate Debtor beyond the procedure prescribed under the guidelines.

Therefore, the claim of historicity advanced by the Corporate Debtor / SRA cannot be made available to it. Despite the temporary allotment of slots to the other Airlines, their restoration has to be worked out within the parameters prescribed under the guidelines

24…Keeping in view the purpose of Insolvency Resolution we trust that the authorities concerned including the Government of India shall take a holistic approach and provide necessary assistance to the SRA / Corporate Debtor in terms of the guidelines in allocation of slots as and when they are sought, so that the Airlines takes off the ground and possibly regain its lost glory. 25. Even otherwise the Corporate Debtor immediately after the approval of the Resolution Plan would not be utilising all the slots. ***It can only seek slots as and when it had the Aircraft and the attendant wherewithal and logistical support in place, which according to the Resolution Plan would be in phases. Therefore, the SRA would periodically seek allocation of slots and we are confident that the authorities concerned would consider them favourably.***

64. The aforesaid paragraph clearly indicates that this Tribunal had infact upheld and directed the Applicant to seek "periodical allocation of slots" "according to the Resolution Plan". In the same vein, it has directed the DGCA and MoCA to consider such allocation of slots to the Corporate Debtor in terms of the observation made at Para 24 & 25 of the Plan Approval Order. [*Order h. on Page 58 of 59 of the Plan Approval Order at Annexure 2 on pages 33-92 of the Vol. I of the Application, also reproduced below*]

"*The DGCA and the MoCA shall consider the Application/Representation of the Corporate Debtor for renewal/grant of Airport Operating Permit with due despatch. The appropriate Authority shall consider the allocation of slots to the Corporate Debtor in terms of the observation made at Para 24 & 25 supra.*"

65. This Tribunal in its Approval Order also recognized that the slots were integral to the operations of the Corporate Debtor. Relevant portions from the Approval Order are quoted below –

24. The facts and circumstances would indicate that presently the slots cannot be restored to the Corporate Debtor on a historic basis…Keeping in view the purpose of Insolvency Resolution we trust that the authorities concerned including the Government of India shall take a holistic approach and provide necessary assistance to the SRA/Corporate Debtor in terms of the guidelines in allocation of slots ***as and when they are sought****, so that the Airlines takes off the ground and possibly regain its lost glory." …*

25. Even otherwise the Corporate Debtor immediately after the approval of the Resolution Plan would not utilizing all the slots. It can only seek slots as and when it had the Aircraft and the attendant wherewithal and logistical support in place, ***which according to the Resolution Plan would be in phases. Therefore SRA would periodically seek allocation of slots and we are confident that the authorities concerned would consider them favourably.***

[*Resolution Plan Approval Order at Annexure 2 of the Application Vol. I at pg. 82*]

66. Therefore by no stretch of imagination, the aforesaid Plan Approval Order can be interpreted, as is being emphasized by the Applicant, to mean that this Tribunal had interfered with and relaxed the terms of the Resolution Plan so far as the slots that were identified to be obtained and sought by the Applicant in phases in terms of its Business Plan (that forms part of the Resolution Plan), including that which were required to be obtained as a Condition Precedent to the Effective Date, were concerned. The same would have had an overarching effect of interfering with the Business Plan of the Applicant that set the tone for the business revivability with details on proposed phase-wise operations, primarily the routes (slots) that Jet 2.0 proposed to commence and continue its operations in and corresponding revenue and cashflow generations based on the Applicant's assessments and forecasts of the same. Even if one were to admit otherwise, the same would have amounted to overstepping its jurisdiction as vested with this Tribunal under the terms of the Code and interfering with the 'commercial wisdom' and 'business decision' of the CoC.

67. Clause 8.2.6 of the Resolution Plan summaries the key features of the Business Plan with respect to the slots categorically stating that the Mumbai and Delhi are the slots that the Applicant proposed to restart and grow the operations of Jet 2.0 from. Relevant portions of Clause 8.2.6 of the Resolution Plan are reproduced below:

> *8.2.6. Slots*
>
> *(e)* ***Slots are an integral part of the valuation of any airline, and within India, the Corporate Debtor had rights to several highly sought-after landing and take-off slot times. The slot constrained airports of Mumbai and Delhi are both airports which we intend to restart and grow operations from.*** *We seek to reclaim all the slots as originally held by the Corporate Debtor and seek to enter into bilateral discussions with the DGCA to reinstate the slots to the Corporate Debtor).*
>
> *(f)* ***Our Business Plan envisages a flying schedule utilizing six narrow-body aircraft from the date on which flight operations will be restarted****. Then we shall increase to twenty-four aircraft after twelve months. We envisage a restart of international operations after completion of twelve months of operations.*

68. Further, the above read with the Applicant's Business Proposal [*Pages 273 and 275 of the Reply*] in the Resolution Plan, *inter alia* (as also detailed in Clause 10.11.2 of the Resolution Plan) provide that the Applicant **sought to recommence domestic operations of the**

Corporate Debtor with six routes from Mumbai and a single route to/from Delhi immediately upon achievement of the Effective Date, leading to 14 routes comprising 8 routes from Mumbai and 6 routes from Delhi by the end of year 1 from the Effective Date.

69. Even if one were to admit the position of the Applicant that the slots procurement for immediate operational commencement (and thereafter) was entirely a discretion reserved unto itself, even then the Applicant failed to procure those slots which the Applicant has admitted it had approached the authorities for. The Applicant, in its Affidavit-in- Rejoinder has categorically admitted that *inter alia* slots from Mumbai and Delhi were required and applied for by the Applicant, for the immediate recommencement of the domestic operations of the Corporate Debtor after Effective Date.

> "*8.2(c). After the Plan Approval Order,* ***the Applicant applied to the authorities for slots to/from Kochi, Bengaluru, Nagpur, Hyderabad, Delhi and, Mumbai airports as immediately required for recommencement of operations of Jet 2.0****…*"
> ***(emphasis supplied)***
> [*Rejoinder Vol. I, paragraph c) at pg. 7*]

70. It is submitted that as per Clause 8.2.6 (e) of the Applicant's Resolution Plan read with the Business Proposal [*Page 273of the Reply*], the domestic operations of the Mumbai and Delhi routes were categorically envisaged as the routes for the Corporate Debtor's initial network plan and therefore Delhi and Mumbai slots, per both the terms of 7.6.1 (c) as well as the Resolution Plan Approval Order, were required to be obtained for immediate recommencement of the operations of the Corporate Debtor within 270 days from the date of the Plan Approval Order.

71. Furthermore, it may be noted that Delhi and Mumbai, throughout the Resolution Plan, has been provided to constitute the majority of the sectors identified for the Corporate Debtor's flight operations for the subsequent years as well [*pages 273, 274 and 275 of the Reply*]. Based on these pre-determined routes of operations/flying schedules and slots, the Applicant had also laid down an extensive revenue and cash-flow projection for the Corporate Debtor for 5 Years (that intersect with the maturity and redemption periods of the debt instruments (as described above) redeemable/payable by the Corporate Debtor in 5 years). In doing so, it had assumed a majority of the revenues of the Corporate Debtor to be sourced from the passenger revenues (5254 out of 6174

constituting 85% of the revenues on an average) [*paragraph on Page 277 of the Reply*].

72. The 5 year Cash Flow Forecast envisaged, for example, a total revenue of INR 1263,22,40,584/- *out of which a majority share of revenues of amount INR* 1172,30,67,384/- were forecast and assumed to come from passenger revenues. These passenger revenues, on an average, therefore constituted 92% of the total revenues per year estimated for the Corporate Debtor basis Applicant's own revenue projections and cash flow forecast from networks / slots identified for Year 1 *viz*. Delhi and Mumbai routes [*page 282 of the Reply*]. It may further be noted that the estimation of these passenger revenues was in turn based on the proposed domestic and international flight operations of the Corporate Debtor. Such revenue forecasts (RASK – Revenue per Seat Kilometre) are a derivation of yield (meaning average revenue generated or earnings made by an airline by flying revenue passengers) and load factors which in layman terms means the percentage of available seating capacity that has been filled with passengers. Furthermore, there have been repeated emphasis by the Applicant on "***building network based on city-pair density starting with corporate friendly*** *(emphasis supplied)* ***metro-metro destinations (the "Initial Route Network***

Plan"), subsequently expanding to other destinations." **[***page 270 on Business Plan Summary for Jet 2.0*]. It may therefore very easily be assessed that the load factor and yields constituting the passenger revenues, as forecast and presented by the Applicant to come from metro-metro routes such as Delhi and Mumbai with extremely busy, frequent and dense traffic including from business travellers (that these hubs enjoy in huge proportions) may not be matched by smaller and non-metro destinations to/from Cochin, Nagpur, Hyderabad and Bangalore, slots for which have been currently obtained by the Applicant [*the Business Plan at Exhibit 8 of the Reply Vol. II at pg. 273*]. This in turn therefore renders the projections for revenues and cash flows of the Corporate Debtor for 5 years starting from Effective Date extremely uncertain, negatively impacting the wherewithal or the capability of the Corporate Debtor to make payments including the deferred consideration to the Financial Creditors.

73. It becomes important to highlight that it were precisely the (i) extensive Business Plan with identified sectors for operations (in the manner identified) including that required for achievement of Effective Date within 270 days from the date of Plan Approval Order as well as the

exponential growth from such sectors viz Delhi and Mumbai forming the majority of flying routes for Jet 2.0; (ii) the corresponding Techno-Economic feasibility and viability of the Resolution Plan based on the commercial and business projections based on estimated cash flow and revenue generations from operations from Delhi and Mumbai for the next 5 (five) years; and corresponding (iii) assessment of the Corporate Debtor's capacity to pay considerations as committed to be payable by the Corporate Debtor against issuances of debt instruments 5 (five) years, that formed the very basis for approval by an overwhelming majority of the CoC of the Resolution Plan. These were the very considerations, *viz.* procurement of Mumbai and Delhi sectors (inter alia international routes) forming majority of routes, revenue and cashflows estimation basis operations of the Corporate Debtor in these routes right from the Effective Date and corresponding assessment of the financial strength of the Corporate Debtor to pay committed considerations to the financial creditors (absent any guarantee or credit enhancement schemes) that formed the crux of A&M's study of the economic viability and debt serviceability of the Corporate Debtor as proposed in the Applicant's Resolution Plan.

74. The Corporate Debtor's financial health in turn dependant on its operational efficiency in major hubs such as Delhi and Mumbai for domestic operations especially, was the only basis to determine and conclude as to the debt serviceability of the Corporate Debtor, absent any corporate or personal guarantee to provide for any shortfall by the Applicant in debt servicing obligations as committed on behalf of the Corporate Debtor under the Resolution Plan.

75. The Hon'ble Supreme Court in a catena of cases has upheld the techno-economic analysis of a Resolution Plan as part of the CoC's larger assessment of the viability and feasibility as the 'Business Decision of the CoC' and therefore non-justiciable or challengeable before the adjudicating authorities [*Bank of Baroda & Anr.'* v. *'MBL Infrastructures Ltd. & Ors., (2022) 5 SCC 661*]. It has further been upheld in *Swiss Ribbons* v. *Union of India* (2019) 4 SCC 17 that it is the CoC and CoC alone, that is the best equipped to assess the viability and feasibility of the business of the Corporate Debtor based on a detailed market study including a techno-e comic valuation report, evaluation of business, financial projections etc. Relevant extract from the said order has been reproduced hereinbelow:

> "*44. Since the financial creditors are in the business of money lending, banks and financial institutions are best equipped to assess viability and feasibility of the business of the corporate debtor. Even at the time of granting loans, these banks and financial institutions undertake a detailed market study which includes a techno-economic valuation report, evaluation of business, financial projection, etc. Since this detailed study has already been undertaken before sanctioning a loan, and since financial creditors have trained employees…*"

76. Accordingly, any deviation by the Applicant in securing slots as provided in its Business Plan, especially the major and critical ones such as Delhi and Mumbai, including as part of CP fulfilment within 270 days from the date of Resolution Plan Approval Order per the terms of Clause 7.6.1 (c) of the Resolution Plan has a direct corresponding impact on the cashflow and revenue projections of the Applicant, in turn impacting the capability of the Corporate Debtor to meet its financial obligations including the deferred considerations required to be paid out of the Corporate Debtor's cash balance, as currently committed under the financial proposal contained in the Resolution Plan. This therefore alters the very basis of the Techno-Economic Evaluation of the Resolution Plan altering the CoC's

assessment of feasibility and viability, aspects that are key to approving any resolution plan by the financial creditors.

77. It is a matter of record, as also evidenced by the Applicant's self-admission in paragraph 8 (d) of the Rejoinder (Volume I) that the Applicant has failed to obtained an unconditional approval for Delhi and Mumbai. This is in contradiction with the Applicant's table set out in Annexure - D that evince procurement of slots in Delhi and Mumbai, and which, by the Applicant's self-admission, is not true. The contents of the submissions by the Applicant as also his conduct throughout the Resolution Plan implementation period has therefore not only been inconsistent and contradictory with the mandate of the Resolution Plan but also misleading. [*paragraph 8 (d) of the Applicant's Rejoinder at page 8 and corresponding first annexure in Annexure D (Colly). at pg. 358*].

78. Further, the Applicant has in the Rejoinder contended that since the MC Lenders have not '*allowed these CIRP Dues to be paid from the positive cash balance of the Corporate Debtor till date, the Applicant has not been able to receive unconditional slots approval for Delhi and Mumbai*, which contention is not only false but also against the Resolution Plan's express terms

and is an attempt to mislead this Tribunal. The Applicant has always attempted to wriggle out of its obligations under the Resolution Plan, and in the same vein, also filed IA 125/22 unnaturally praying for directions for CP related expenses to be paid from the positive cash balance of the Corporate Debtor. This Tribunal, in its wisdom, had rightly rejected this demand of the Applicant and had strongly observed that the burden of CP completion was on the Applicant and that it could not be transferred onto the CoC. The following extract from the order dated 22nd March 2022 passed by this Tribunal has been reproduced below:

> *iii.* ***It has been observed that many new heads of expenditures have been initiated and in case MC / CoC is required to pay these expenses, SRA can escape from completing the CPs and fulfilling his part of promise which can cause hurdle in the commencement of effective date and the blame for not completing CPs can shift to CoC which will be against the letter and spirit of the order of this Adjudicating Authority dated 22.06.2021 approving the Resolution Plan*** … ***It is thus clear that SRA took responsibilities of completing CPs and responsibility for all acts relating to completion of CPs including expenses to be incurred for completing CPs****…. In that view of the matter, prayer in this Application to issue directions to Respondent to pay and to continue*

to pay all expenses relating to CPs as elaborated in sub Para (b) of Para 35 of prayer is rejected….

[*22nd March 2022 NCLT Order at Annexure 8 of the Application Vol. I at pg. 149*]

79. As per the Implementation Schedule in the Resolution Plan, the *Payment of CIRP Costs as per Clause 6.4.1 was to be made* after 170 days post Effective Date, and at no point prior to the same. In fact, the airport dues were envisaged to be paid from the sums brought in by the Applicant itself as provided in Clause 6.3.1 (d) of the Resolution Plan. [*Clause 6.3.1(d) of the Resolution Plan at Annexure 3 of the Application Vol. I at pg. 62*]

80. As per the approved Resolution Plan and the order dated 22nd March 2022 passed by this Tribunal, any costs relating to completion of CPs could not be transferred onto the Corporate Debtor (by dipping into its positive cash balance) or the CoC, and that the Applicant had the full responsibility of paying necessary expenses for compliance of CPs. The Applicant has wrongly attempted to portray to this Tribunal that the burden of providing for the Mumbai and Delhi airport dues was on the Respondents, whereas given by express mandate of the Resolution Plan

as well as the aforesaid order, it was indeed the Applicant's responsibility. Without prejudice to the aforesaid, it is reiterated that any costs for fulfilment of CPs, and/or CIRP costs were not due to be paid from the positive cash balance of the Corporate Debtor prior to the Effective Date as unlawfully alleged. [*22 March 2022 Order at Annexure 8 of the Application Vol. I at pg. 149*]

81. Despite the above and the constant requests to the Applicant by the MC Lenders to fulfil its CP related obligations, the Applicant continued in its negligent and aberrant ways to fulfil the pre-requisites required in law and per the directions of the relevant authorities to procure the Delhi and Mumbai slots. This is despite the MC Lenders assuring the Applicant in good faith and larger interest of the resolution of the Corporate Debtor that any payment that the Applicant would have made towards the Mumbai and New Delhi airport dues, could later be reduced from the dues payable to the Financial Creditors after the Effective Date per the terms of Clauses 6.3.1 (d) and (e) of the Resolution Plan [*the 7th MC Meeting Extract in the Surrejoinder at para 6(g)(ii)(c) at pg. 13*]. It is essential to note that the Applicant, while turning down this offer by the Respondents, in fact cited its concerns

about the CPs not being fulfilled by itself and refused to accept the Respondents' proposal. This flimsy conduct of the Applicant is indicative of its intention to not front the requisite funds to achieve the CPs as per the Resolution Plan and mainly its own wavering belief regarding the achievement of all CPs.

82. In the present circumstance, as detailed hereinabove, the Applicant has been unable to obtain the requisite slots for its operations to and from Mumbai and Delhi within 270 days as per its Business Plan and requirements in Clause 7.6.1 (c) of the Resolution Plan owing to its own unwillingness and anomalies in implementing the Resolution Plan. The same is emphasised on account of the dependency of the viability of the Business Plan on routes from Mumbai and Delhi that formed the bedrock of revenue yields, thus significantly hampering the projections stated in the Business Plan. It is relevant to note that since the requisite slots for recommencement of operations after the Effective Date have not been obtained by the Applicant within the stipulated 270 days from the date of Resolution Plan Approval Order, the Condition Precedent as stipulated in Clause 7.6.1(c) continues to remain unfulfilled.

83. Consequently, any alteration brought about in the Business and Financial Proposal of the Resolution Plan on account of CP requirements not being fulfilled within 270 (two hundred and seventy) days as provided for under the Resolution Plan and other reasons set out above will therefore require re-assessment of the viability and feasibility of the Resolution Plan as its stands today and a fresh approval from the CoC.

Clause 7.6.1 (d): International Traffic Rights Clearance

84. As per Clause 7.6.1(d) of the Resolution Plan provides for procurement/receipt International Traffic Rights Clearance in compliance with applicable laws as conditions precedent. Further, as per Clause 8.2.6(f) of the Resolution Plan, the Business Plan of the Applicant envisages a flying schedule utilising six narrow-body aircraft from the date on which flight operations will restart. It further provides that the Applicant will increase its flying schedule to twenty-four aircraft after twelve months from the date of operation. Further, Clause 8.2.6(f) also mentions that a restart of international operations will be after twelve months of domestic operations.

85. In the 5th Meeting of the MC of the Corporate Debtor held on 9th August 2021, the legal counsel for the Applicant stated that *inter alia* the plan of the Applicant was to start operations with certain aircraft types, that they had been shortlisted for flying in the northern regions of India, along with international operations over the Asia Pacific region. Further, the Applicant also states that certain widebody aircraft had also been identified to be taken from Airbus S.A.S. and that it had also offered help to the Applicant in confirming airport slots for London (Heathrow), Abu Dhabi, Dubai, and France. *[the 5th MC Meeting Minutes at Exhibit A of the Surrejoinder at pgs. 35 & 36]*

86. It is pertinent to note that in the 6th Meeting of MC of the Corporate Debtor held on 23rd August 2021, the Applicant, while submitting the status and development in the achievement of all Conditions Precedent under the Resolution Plan, stated that it was in the process of obtaining international traffic rights through certain international airports to start operations as early as summer 2022. It is pertinent to note that the Applicant stated that it was in talks with Abu Dhabi, London (Heathrow), Dubai and Amsterdam airports for slot availability and was also in negotiation with aircraft manufacturers for their assistance

in international traffic rights negotiations. [*the 6th MC Meeting Minutes at Exhibit B of the Surrejoinder at pgs. 43*]

87. The Applicant engaged in further correspondence with the Respondents and assured the Respondents that the pending CPs would be completed within the mandate of the Resolution Plan. [*Letter dated 20th November 2021 at Exhibit C in the Surrejoinder at pg. 53 to 55*]

88. As per Clause 7.6.1.(d) of the Resolution Plan the clearance was to be received 270 days from the date of Resolution Plan Approval Order in compliance with applicable laws which in the present case is the National Civil Aviation Policy, 2016, as per which the International Traffic Right Clearance can be obtained after deployment of 20 aircraft or 20% of total capacity (in terms of average number of seats on all departures), whichever is higher for domestic operations as per Clause 8(b). [*the National Civil Aviation Policy at Exhibit 9 in the Reply Vol. II at pg. 295*]

89. The total revenue proposed to be generated as per business plan of the Applicant, does infact show revenue yields from international

operations starting from Year 1 itself [*second table in Page 277 of the Reply which showcases NB international to be one of the three revenue sources and basis for the revenue* assumptions *starting from Year 1 itself*]. The revenue assumptions projected by the Applicant under the Business Plan submitted by the Applicant as part of the resolution plan were stated to be contingent upon the generation of revenue from the international flights being 55% in Year 1 (adjusted) with subsequent increase to 70% and 82% in Year 2 and 3. It is therefore submitted that the total revenue proposed to be generated in as per Business Plan of the Applicant will not be achieved as projected by the Applicant on account of non-availability of international traffic license. This may in turn adversely impact the deferred payments to be made to the Creditors of the Corporate Debtor, provided to be paid by the Corporate Debtor per the financial proposal as specified above [*the Business Plan at Exhibit 8 in the Reply Vol. II at pg. 277, 280 & 282*].

90. The failure to obtain international traffic rights clearance by the Applicant therefore interferes with the business and cash flow projections as presented by the Applicant in its Resolution Plan, in turn altering the assessment of the Financial Creditors regarding the

commercial viability and feasibility of a resolution plan, under the Code, among others. The non-availability of international traffic license will in turn adversely impact the certainty of deferred payment considerations to be made to the Creditors of the Corporate Debtor.

91. Further, the Applicant is placing undue reliance on the Letter dated 10th May 2022 from the MoCA to the Corporate Debtor wherein it has simply been stated that the application of Jet Airways if it has a valid AoC and fulfils the above criteria (for International Traffic Clearance) will be examined for international scheduled operations at appropriate time. The Applicant has used the aforementioned Letter dated 10th May 2022 to avoid its obligations under Clause 7.6.1(d) and also that of the Plan Approval Order. This*, in effect,* seeks to modify the Resolution Plan against the interests of the revival of the Corporate Debtor, and the stakeholders in its CIRP.

92. At the time of submitting the Resolution Plan, the Resolution Applicant was aware of the prevailing laws and regulations concerning the initiation of commercial international operations by airline companies and the international traffic rights clearances. It is pertinent

to note that despite Clause 8(b) of the National Civil Aviation Policy, 2016, being good in law at the time of the CIRP of the Corporate Debtor, the Applicant failed to make provisions for fulfilment of the present condition precedent to achieve the Effective Date, both as per the scale of immediate operations in the Resolution Plan, as well as in the Business Plan. Hence, the Condition Precedent as stipulated in Clause 7.6.1(d) continues to remain unfulfilled. Non-fulfilment of the said Conditions Precedent within 270 days from the Resolution Plan Approval Order therefore modifies the Resolution Plan and accordingly shall, in law, require a re-assessment and fresh approval by the CoC for proceeding with the implementation of the Resolution Plan, which approval shall be placed for consideration before the CoC upon this Tribunal passing suitable directions.

Clause 7.6.1 (b): Submission and approval of Business Plan by DGCA and MoC

93. The Applicant, on 5th August 2021, addressed letter to the DGCA and MoCA communicating the Business Plan of the Resolution Applicant, for their consideration. The Applicant shared a copy of the letter issued by the MoCA on 9th May 2022 acknowledging the receipt of the aforesaid Business Plan. A copy of the 9th May 2022 letter is annexed

as Annexure 18 to the Application. *[the 9th May 2022 Letter at Annexure 18 of the Application Vol. II at pg. 364]*

94. As per Clause 7.6.1(b) of the Resolution Plan, the submission and approval of the Business Plan by the DGCA and MoCA are conditions precedent, and not simply the submission. It is relevant to note that since the requisite approvals of the Business Plan by the DGCA and MoCA have not been obtained by the Resolution Applicant, the Condition Precedent as stipulated in Clause 7.6.1(b) continues to remain unfulfilled.

C. ***The Proposed Undertaking to be entered into between the Applicant and the MC Lenders is for the successful revival of the Corporate Debtor, and in response to the current modification and deviation from the terms of the Resolution Plan in so far as securing all CPs by the Applicant is concerned and not in isolation of the events that have so far transpired in the Resolution Plan implementation process.***

95. It is submitted that the Proposed Undertaking to be entered into between the Applicant and the MC Lenders was in the spirit of the successful implementation of the Resolution Plan, and within the confines of the Resolution Plan and the IBC. The need for such an

Undertaking arose as a result of the modification and deviation brought about by the Applicant by not complying and adhering to the requirements of CP compliances thereby modifying the Business Plan and commercial viability of the Resolution Plan. Accordingly, in such a circumstance, if the Resolution Plan is permitted to be proceeded with as is, as also required by the Applicant in its prayers in the instant application, then the same will directly impinge upon the commercial wisdom of the CoC, which has already been upheld by the apex court of the country to be non-justiciable.

96. It is important to add that the non-completion of the CPs in terms of the Resolution Plan has already been upheld to be a modification of the Resolution Plan by this Tribunal vide its order dated December 22, 2021 in IA 2906/2019 filed by the Applicant to 'pre-pone' the Effective Date in its garb to usurp control of the Corporate Debtor without fulfilling the CPs. Dismissing the application and emphasising on the critical importance of all the CPs for the revival of the Corporate Debtor and the payouts to its creditors, the Tribunal had also upheld the direct linkage of all the CPs with the revenue generation and capacity of the Corporate Debtor through its operations in future, and

which as submitted above, in light of non-fulfilment of CPs by the Applicant stand disturbed. This in turn changes the considerations that the CoC had relied upon at the time of approving the Resolution Plan with an overwhelming majority. Relevant extract from this Tribunal's order dated in IA 2906/2019 are reproduced below:

> *"The close perusal of the approval of the Resolution Plan by AA indicates that there were certain CPs to be fulfilled before the effective date and time of 90 days was granted; extendable by further 180 days if needed, out of these 180 days, 90 days are over on 22.12.21.* ***The CPs have bearing on two important aspects, (a) bringing the money by the SRA; (b) actual starting of the business of the Corporate Debtor which can generate revenue. (Emphasis supplied).***
>
> ***We are of the considered view that once the Resolution Plan is approved by the AA, its terms and conditions cannot be changed. The only liberty given to the Applicant was for extension of effective date which was originally fixed as 90th day from the date of approval of Resolution Plan on 22.06.2021, which as such was extendable for further 180 days. As on today, further 90 days period is over. It is***

material to not that CPs referred aforestated are necessary and SRA is committed and bound by the same *and as such is required to put more efforts to comply the commitments given in the form of CPs within total time committed by SRA and as approved by AA on 22.06.2021.*

Applicant and all the stakeholders are directed to expedite the implementation to revive the Company especially after so many efforts have already been made by the stakeholders. Needless to state that all the concerned stakeholders to act for implementation of the Resolution Plan as originally approved. ***There is no change in the terms and conditions of the approved Resolution Plan including timelines for compliance with conditions precedent and effective date will be as per terms and conditions stated in approved Resolution Plan, not 22.12.2021."***

97. Further, it was always envisaged that this Undertaking would not only be approved by the CoC but also by this Tribunal. Such a Proposed Undertaking was conceived only due to the unfulfilled nature of the CPs and the continuing drain in value of the Corporate Debtor, whilst the Applicant attempted to exhaust all possible extensions/exclusions in trying to fulfil the CP compliance requirements under the Resolution Plan.

[Proposed Undertaking at Annexure O (Colly.) of the Application Vol. III at pg. 408]

98. Given the non-fulfilment of all the CPs that in turn have a direct impact on the revenue and cash flow projections of the Corporate Debtor as provided by the Applicant in its Resolution Plan, it becomes necessary that the Resolution Plan is only allowed to be proceeded **with due approval of the CoC and after the CoC re-assesses, in its commercial wisdom, the viability and feasibility of the Resolution Plan** which has now been modified on account of the deviation from Clause 7.6.1 of the Resolution Plan. The Financial Creditors were unanimously of the view that an opinion be sought from the Solicitor General of India in light of the given conundrum the fulfilment of CPs and it was advised that since the fulfilment of all the CPs was in doubt, the Resolution Plan as was originally approved by the Financial Creditors after series of deliberations and assessments on the technical and commercial aspects of the Resolution Plan, had now changed its form and structure and the cash flow projections and operational schedules and plans that formed the bedrock of its Business Plan had undergone modifications. It was advised that in such circumstances, that the

Resolution Plan could not be permitted to (and the Financial Creditors could not be forced to) be proceeded without a re-assessment of the changed contours of the Resolution Plan. It was essential that should the Financial Creditors decide to proceed with the implementation of the Resolution plan, they do so only pursuant to an undertaking provided by the Applicant vide which it inter alia, undertakes and commits to procure all CPs in strict compliance with the terms of the Resolution Plan after it gains control of the Corporate Debtor and in the event there is any shortfall in the cashflows of the Corporate Debtor in future to make payments as committed under the Resolution Plan, the Applicant makes good for any such shortfall.

99. The draft Proposed Undertaking, *inter alia*, required an unconditional affirmation and agreement from the Applicant in relation to:

a. fulfilment of the CPs and procurement of all slots (and related bilateral and traffic rights) as set out in the Resolution Plan and as approved in the Approval Order, as and when the Corporate Debtor has the aircrafts, attendant wherewithal, and logistical support in place, which according to the Resolution Plan would be in phases, with no deviation whatsoever;

b. procurement of the International Traffic Rights clearance for the Corporate Debtor, inter alia, by complying with the legal/regulatory requirements for the said clearance in such time as required to adhere to the Business Plan of the Applicant's Resolution Plan, with no deviation whatsoever; and

c. implementation of the Resolution Plan including (i) pay-outs towards CIRP costs, airport and parking charges, various creditors (ii) providing for any shortfall in meeting its financial obligations towards various stakeholders; and (iii) making necessary funds available to the stakeholders (including the Financial Creditors) in such manner as is acceptable to the Financial Creditors.

d. indemnifying and making good any and all direct, indirect or consequential claims, losses, damages, costs, expenses or liabilities incurred or likely to be incurred by the Financial Creditors and the former Resolution Professional of the Corporate Debtor (or reimburse such amounts as claimed by them) on account of or as a result of (i) breach of the said proposed Undertaking or any act/ omission/commission in deviation/ breach or violation of the terms contained therein; (ii) waiver/non-fulfilment of any of the Conditions Precedent as stipulated under the Resolution Plan; or (iii) implementation of the Resolution Plan in accordance with terms therein and as modified by the said proposed Undertaking, while also providing for any shortfall in meeting its financial obligations towards the stakeholders, including the Financial Creditors, and waived all rights or claims that the Applicant, may have in this

respect, whether actual or contingent, whether present or in future.

e. Reserving the positive cash balance on the Effective Date including recoveries from Air Serbia Rentals in favour of the Assenting Financial creditors in accordance with and as provide for under the terms of the Resolution Plan.

100. Certain other relevant clauses of the aforementioned Proposed Undertaking have been reproduced below for convenience:

> *2. That it shall procure the International Traffic Rights clearance for the Corporate Debtor, inter alia, by achieving compliance with the: legal/regulatory requirements for the said clearance. This includes compliance with the requirements under the National Civil Aviation Policy, 2016 and as directed by the Ministry of Civil Aviation, Government of India in its letter May 10, 2022 (among others) addressed, to the Corporate Debtor in this regard, in such time and within such, period as required to adhere to the Business Plan of the Successful Resolution Applicant's Resolution Plan, with no deviation whatsoever.*
>
> *6. That it shall ensure that it remains committed towards the implementation of the Resolution Plan in full and ensure availability of sufficient and requisite funds to make payments and meet its: obligations, financial or otherwise,* ***including in relation to commencement of business and operations of the Corporate Debtor as an aviation company, in accordance with the terms as***

envisaged under the Resolution Plan (and as modified by this Undertaking).

12. That to the extent there is any conflict between the provisions of the Resolution Plan and this Undertaking, the contents of this Undertaking shall prevail; save and except as set out expressly in this Undertaking,- (as modified by this Undertaking} read with Resolution Plan Approval Order shall continue to apply in full force effect without any changes thereto.

15. ***The Resolution Applicant understands and acknowledges that the foregoing understanding is subject to specific consent and approval by the Financial Creditors of the Corporate Debtor and the NCLT.*** *We further acknowledge and agree that the erstwhile Committee of Creditors/Assenting Financial Creditors reserves the right to negotiate (if required), by itself or through its advisors, terms of this Undertaking as submitted by the Resolution Applicant and any decision taken by the Assenting Financial Creditors shall be binding.*

[*Proposed Undertaking at Annexure O (Colly.) of the Application Vol. III at pg. 411 & 412*]

101. It is clarified that the present draft Proposed Undertaking only set out the considerations required to be committed by the Applicant in light of the deviations brought about in the CP compliance and consequently and the business and financial proposal of the Resolution Plan, all of

which directly impinge the commercial considerations and business wisdom as applied by the CoC while approving the Resolution Plan. The Proposed Undertaking was intended to undergo express approval of the CoC and this Tribunal per its very terms in Clause 15. Any direction to proceed with the implementation of the Resolution Plan can therefore be only subject to the approval and commercial wisdom of the financial creditors. Any action taken otherwise would operate beyond the scope of the IBC. In light of the above, it was agreed and decided by MC Lenders, subject to CoC approval and the Applicant in the 29th September 2022 meeting that an application be filed with this Adjudicating Authority for apprising the stated facts and circumstances in the Resolution Plan implementation as well as seeking necessary directions in relation to the CPs under the Resolution Plan, subject to necessary undertakings in a form agreeable to the Financial Creditors being obtained from the Applicant, upon appropriate directions being given by this Tribunal. It is humbly submitted that any approval of this Tribunal regarding continuation of the Resolution Plan implementation cannot be absolute and shall, in accordance with law, have to be subject to the approval of the financial creditors/erstwhile CoC members for re-assessment, in the business wisdom, of the viability and feasibility of

the Resolution Plan afresh. [*the 29th September 2022 JLM Minutes at Exhibit 6 (Colly.) of the Reply at pgs. 117 & 122*]

D. *The NCLAT Orders dated 21st October 2022 and 20th December 2022 operate beyond the scope of determining the completion of the CPs*

102. The common order dated 21st October 2022 passed by the Hon'ble NCLAT arose from five appeals filed by workmen and employees, and three appeals filed by Operational Creditors of the Corporate Debtor. All the Appellant therein were aggrieved by the Plan Approval Order passed by this Tribunal approving the Resolution Plan. It is to be noted that the fulfilment of the CPs under Clause 7.6.1 of the Resolution Plan were not under the adjudication or subject matters of appeal in these matters before the Hon'ble NCLAT. [*the 21st October 2022 Hon'ble NCLAT Order at Exhibit 7 in the Reply Vol. 2 at pg. 126*]

103. In the order dated 21st October 2022 passed by the Hon'ble NCLAT, several Questions were placed before it for adjudication, wherein Question IX as framed by the Hon'ble NCLAT read as follows:

> "*IX. Whether the Resolution Plan being contingent and conditional ought not to have been approved in view of the law laid down by the*

Hon'ble Supreme Court in "Ebix Singapore Pvt. Ltd. Vs. CoC of Educomp Solutions Ltd. & Anr., (2022) 4 SCC 401"

104. In answering the aforementioned Question IX, the Hon'ble NCLAT has recorded that the Applicant has completed all necessary CPs to the satisfaction of the MC. [*the 21st October 2022 Hon'ble NCLAT Order at Exhibit 7 in the Reply Vol. 2 paras. 25 & 109 at pgs. 160 & 244 respectively.*]

105. The Committee of Creditors of Jet Airways (India) Limited through State Bank of India filed IA No. 4771 of 2022 before the Hon'ble NCLAT for clarification of the aforementioned order dated 21st October 2022 regarding the status of CP fulfilment, wherein it was submitted *inter alia* that the observations relating to the CPs was beyond the scope of adjudication of the appeals to be decided in the 21st October 2022 common order.

106. *Vide* order dated 20th December 2022, in IA No. 4771 of 2022, the Hon'ble NCLAT observed that the observations made in Paragraphs 108 and 109 of the dated 21st October 2022 order were limited to and only for the purposes of answering the question framed as question 9, and that no further clarification was needed in that regard. The relevant

portion of the aforementioned 20th December 2022 Order has been reproduced below for convenience:

> *"**We had framed the questions which fell for consideration in the group of appeals and paragraph 108 & 109 are the paragraphs in which the question no. 9 was answered.***
>
> ***Our observations in paragraph 108 & 109 were only for the purposes of answering the question framed as question no. 9 and the submissions which are advanced before us by the parties."***

A copy of the aforementioned 20th December 2022 Hon'ble NCLAT Order has been annexed and marked hereto as **Annexure R-1.**

107. It is hence submitted that a conjoint reading of the 21st October and 20th December 2022 orders passed by the Hon'ble NCLAT makes it abundantly clear that the observations regarding the CPs made in the 21st October 2022 were confined only for the purposes of Question IX as framed by the Hon'ble NCLAT in the order which concerned the legal validity of the 'conditional' Resolution Plan. An effective adjudication on the status of the CPs was beyond the scope of the Hon'ble NCLAT adjudication in the said matter. It is hence submitted that this Tribunal, in its wisdom, notes that there has been no

adjudication on the direct fulfilment of the CPs, and that as mentioned in the foregoing paragraphs, the CPs continue to remain unfulfilled.

E. ***The Applicant's act of submitting a PBG did not mean and cannot be interpreted to mean acceptance of the same by the Respondents***

108. It is clarified that the mere submission of a PBG worth Rs. 87.50 Crores on 27th May 2022 by the Applicant did not in any way symbolise the Respondents' acquiescence to the Applicant's purported Effective Date of 20th May 2022. This submission did not imply any acceptance of the PBG, as the Respondents continued to maintain their stance on the CPs being incomplete. Any submission of PBG was only as per the RFRP and Resolution Plan and did not entail the successful completion of CPs. This was further immediately cemented in the 19th Monitoring Committee Meeting held on 14th July 2022, where it is clearly recorded that there were divergent views as to the completion of the Conditions Precedent. [*the 19th MC Meeting dated 14th July 2022 at Exhibit 4 of the Reply Vol. I starting from pg. 56 at pgs. 77 - 78*]

109. The RFRP originally envisaged the deposit of Rs. 150 Crores at once within 7 days of declaration of the Successful Resolution Applicant

(Clause 3.13 of the RFRP). Relevant extracts of the RFRP have been reproduced below:

> *3.13 Performance Security*
>
> *3.13.1.* ***The Successful Resolution Applicant shall furnish or cause to be furnished, an unconditional and irrevocable performance bank guarantee*** *or a demand draft, issued by any scheduled commercial bank in India or a foreign bank which is regulated by the central bank of a jurisdiction outside India which is compliant with the Financial Action Task force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding, provided that it is acceptable to the Resolution Professional (acting for the CoC) ("PBG Bank"),* ***of an amount of INR 150 Crores (Indian Rupees Hundred and Fifty Crores only)*** *or 10% of upfront amount (payable as per the resolution plan by the Successful Resolution Applicant), whichever is higher in favour of "State Bank of India", (that is, SBI) (in its capacity as an agent of the CoC (and acting on behalf of the Company)), within 7 (seven) days of declaration of the Successful Resolution Applicant, or by way of a direct deposit by way of the real time gross settlement system into a bank account held by the SBI Bank, the details of which shall be shared separately with the Successful Resolution Applicant ("Performance Security").*
>
> *3.13.2. It is hereby clarified that non-submission of the Performance Security by the Resolution Applicant, along with the acceptance of the Letter of Intent, shall lead to cancellation of Letter of Intent issued by the CoC, unless otherwise determined by the CoC at its sole discretion.*
>
> *3.13.7. SBI, in its capacity as an agent of the CoC (and acting on behalf*

of the Company), shall have the right to invoke the Performance Security on behalf of the CoC (and upon receiving approval from the CoC), (by issuance of a written demand to the Bank to invoke the Performance Security, if provided as a PBG). The Performance Security can be invoked and appropriated at any time, upon occurrence of any of the following conditions, without any reference to the Resolution Applicant:

i. any of the conditions under the Letter of Intent or the Successful Resolution Plan are breached;

ii. if the Resolution Applicant fails to re-issue or extend the Performance Security (if provided as a PBG), in accordance with the terms of this RFRP; or

iii. failure of the Successful Resolution Applicant to implement the Approved Resolution Plan to the satisfaction of the CoC, and in accordance with the terms of the Approved Resolution Plan.

110. However, the CoC members had offered a relaxation pursuant to the Applicant's request of deferred payment of the PBG amount while approving the Resolution Plan and accordingly relaxed such PBG requirements due to which the PBG was now to be submitted in two instalments. The first PBG tranche of Rs. 47.5 Crores was to be provided within 7 days from the date of receipt of Letter of Intent, and remaining sum of Rs. 102.5 Crores was to be provided on the 'Effective Date'. It was thus right of the CoC to receive such PBG, at once, within

7 days of the declaration of the Successful Resolution Application upon CoC approval to begin with, only to be modified upon the insistence of the Applicant and the CoC. In the present circumstances, with the uncertainty surrounding the CPs fulfilment and Effective Date and the unlawful contestation by the Applicant regarding the same, the basis for permitting the Applicant to submit the balance PBG upon achievement of Effective Date stood altered. It was the CoC's right to receive the entire sum of PBG in law and per the requirements of the RFRP. Accordingly, the submission of the second tranche of the PBG by the Applicant, in no manner whatsoever, can be stretched to imply acquiescence of the MC Lenders as to the fulfilment of CPs. It may further be important to note that the Effective Date as extended by this Tribunal *vide* its order dated 11 April 2022 was 25 May 2022. Accordingly, per the terms of Clause 6.4.12 of the Addendum to the Resolution Plan also [*page 2017 in Volume II of the Rejoinder*], it was the right of the CoC to receive the pending share of the PBG on May 25, 2022 the slated Effective Date, irrespective of the Applicant's failure to achieve CPs on the said date.

111. Further, presently, the limited remedy that the MC Lenders have against such a reneging Successful Resolution Applicant, is the invocation of such PBG (of entire 150 crores) if there is any default by the Applicant in future and/or non-implementation of the Resolution Plan. It is reemphasised that the failure of the Applicant to fulfil the CPs compounded with a perverse dilution of the Resolution Plan is obstructing the successful implementation of the same.

112. It is reiterated that the act of submission of PBG and the MC Lenders acceptance thereof does not amount to acceptance of the fact that the CPs have been satisfied, the Applicant chose to merely waive the relaxation by submitting the PBG before the Effective Date (achievement of which is currently disputed) on his own volition. It is emphasised that the Respondents reserve their right to invoke the PBG, as explicitly provided by Clause 9.4 of the Resolution Plan as extracted below:

> ***9.4. Implementation*** *– The performance guarantee provided by the Resolution Applicant can be invoked in accordance with the terms of the RFRP.*

[*Clause 9.4 of the Resolution Plan at Annexure A of the Rejoinder Vol. I at pg. 147*]

In any event, as per the Resolution Plan and Clause 3.13.7 of the

RFRP, the Respondent No. 1 reserves the right to invoke the PBG, *inter alia,* if the Applicant fails to renew/extend the PBG and/or it fails to implement the Resolution Plan to the satisfaction of the CoC.

113. Further, the renewal of the PBG, akin to the aforementioned submission of the PBG, was simply an act to secure the interests of the Respondents who were in parallel attempting to work with the Applicant to ensure the implementation of the Resolution Plan.

F. ***The MC of the Corporate Debtor is tasked with the management and supervision of the implementation of the Resolution Plan***

114. The Applicant, in its Application and Rejoinder has contended that the MC does not possess the power to supervise/authorise/certify the fulfilment of the CPs. It is respectfully submitted that by making such blatantly false submissions, the Applicant is trying to mislead this Tribunal against the provisions of the Resolution Plan and the Plan Approval Order.

115. Clause 7.8.5 of the Resolution Plan lays down the duties of the MC from the Plan Approval Date to the Closing Date. An extract of Clause 7.8.5 has been reproduced below:

***7.8.5. Duties of the Monitoring Committee** – From the Approval Date until the Closing Date, the Monitoring Committee shall:*

(a) be responsible for making all necessary filings with the relevant stock exchange in relation to this Resolution Plan;

(b) make best endeavours for achieving an early completion and fulfilment of the Conditions Precedent, including obtaining all necessary approvals wherever required for getting the licenses / Slots / Bilateral rights reinstated back to the Corporate Debtor;

(c) supervise the implementation of the Resolution Plan until the Closing Date;

(d) supervise the sale of assets of the Corporate Debtor as proposed in this Resolution Plan*…*

[The Resolution Plan at Annexure A of the Rejoinder Vol. I at pg. 119]

116. The Plan Approval Order confirms the aforementioned duties of the MC. The Resolution Plan Approval Order explicitly authorises the MC to supervise the implementation of the Resolution Plan and to file Status Reports of its implementation before this Tribunal, while no such authorisation is given to the Applicant. The following relevant paragraphs from the Resolution Plan Approval Order have been reproduced for convenience:

G. *MANAGEMENT AND SUPERVISION OF IMPLEMENTATION OF THE RESOLUTION PLAN:*

a. Monitoring Committee:

(i) The Monitoring Committee shall be appointed from the Approval Date until the Closing Date and the implementation of the Resolution Plan will be supervised by it during such period.

…

(iii) The duties of the Monitoring Committee shall be in accordance with clause 7.8.5 of the Resolution Plan.

…

l. The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall file Status Report of its implementation before this Authority from time to time, preferably every quarter.

[*The Resolution Plan Approval Order at Annexure 2 of the Application Vol. I at pg. 65 & para. l at pg. 90*]

117. It is further submitted and prayed that approval and directions of this Tribunal regarding implementation of the Resolution Plan implementation including continuation thereof, with or without the Proposed Undertaking, shall, in accordance with law, have to be subject to the approval of the financial creditors/erstwhile CoC members for re-assessment, in the business wisdom, of the viability and feasibility of the Resolution Plan and the implementation of the Resolution Plan on account of non-fulfilment of all the CPs by the

Applicant within a period of 270 days from the date of Plan Approval Order.

IA 3508 of 2020 EXCLUSION APPLICATION -

118. Under the terms of the Resolution Pan, the SRA is to infuse certain funds into the CD within 170 days from the Effective Date, make payments as per the terms of the Resolution Plan and take control of the CD within the first 180 days from the Effective Date. Such infusion of funds by the SRA is to be in the form of equity against fresh issuance of shares by the CD to the SRA. To enable such infusion, the CD (currently managed by the MC) is required to take certain steps- for instance, take secretarial steps for making CD active compliant in the records of Registrar of Companies and Ministry of Corporate Affairs, Government of India, appointment of directors for passing mandatory resolutions, applying to stock exchanges for taking in principle approval for issuance of shares to SRA and suspension of ongoing trading, providing bank account details of CD to enable the SRA to infuse funds and issuance of shares by CD to the SRA.

119. As detailed above, the SRA has written various letters/ emails to the MC and MC Lenders seeking implementation of the Resolution Plan

by infusing funds and requesting MC Lenders to take steps to enable the SRA to implement the Resolution Plan. However, as detailed above, the MC Lenders have taken a stand that certain CPs under the Resolution Plan have not been met and that this Tribunal is to certify the completion of CPs. In this backdrop, the SRA filed I.A. No. 3398 of 2022 (**Implementation Application**) seeking necessary directions from this Tribunal to enable the SRA to implement the Resolution Plan.

120. In light of the above, despite best efforts, the SRA could not bring in the first tranche into the CD and make payment to the stakeholders within 180 days from 20 May 2022 as per the Resolution Plan. Since the SRA is committed to comply with the timelines set out in the Resolution Plan, and since the SRA has been prevented from complying with such timelines on account of the stand taken by the MC Lenders, the present application L.A. No. 3508 of 2022 (**Exclusion Application**) has been filed by the SRA seeking exclusion of the period from 20 May 2022, till the date the Implementation Application is decided by this Tribunal, from the 180 days period granted under the Resolution Plan for infusion of the first tranche of funds and achieving the Closing Date.

121. In light of the above, vide IA 3508 of 2022 Applicant prays as follows:

- to allow the Application and exclude the period from 20 May 2022, till the date the Implementation Application is decided by this Tribunal, from 180 days period granted under the Resolution Plan for infusion of the first tranche of funds and achieving the Closing Date;

- to pass interim/ad-interim reliefs in terms of prayer above.

  The above relief is necessary to successfully implement the Resolution Plan, keeping in line with the objective of the Code.

Findings:

122. We note that the Hon'ble NCLAT in its order dated 21.10.2022, in an appeal filed by JAMEWA and after hearing the parties and considering the JAMEWA's objections on completion of CPs has already held that the SRA has complied all the necessary CPs to the satisfaction of MC. It would not be out of place to reiterate that the MC lenders took out IA 4771 of 2022 seeking clarification of the Hon'ble NCLAT's order observing completion of all necessary CPs to the satisfaction of the MC which was rejected vide order dated 20.12.2022.

    As such the findings of Hon'ble NCLAT in order dated 20.12.2022 is reinforced by the said authority.

However having considered the rival submissions and on perusal of record with regards to satisfactory compliance of conditions precedent (CPs) it is noted that there is no dispute so far as satisfactory compliance of CPs at serial no. (i) and (v) as per approved plan i.e.:- (i) Validation of Air Operator Certificate by Directorate General of Civil Aviation (DGCA) and Ministry of Civil Aviation (MoCA) and (v) Approval of demerger of ground handling business into all capital AGSL.

In this background we have thus considered if the remaining three CPs are duly complied with by the applicant or otherwise.

123. As regards to CP No. 2 i.e. **Submission and approval of business plan to DGCA and MoCA**:

The business plan was submitted to above Authorities to fulfil compliance of DGCA's Show Cause Notice (SCN) to CD of April 2019. SCN states that Air Operator Certificate will be issued after MoCA approves the business plan. Thus, with issuance of Air Operator Certificate, it is implied that the business plan has been approved. Even otherwise, guidelines for issuance of Air Operator Certificate being CAP 3100 clearly states that the DGCA will review the detailed business plan of

the Applicant before issuance of Air Operator Certificate and with issuance of Air Operator Certificate there is implied approval of MoCA. In the background of above we find that this CP is satisfactorily complied with the issuance of AOC.

124. As regards to CP No. 3 i.e. **Slots Allotment Approval**:

It is noted that plan approval order of this Tribunal dated 22nd June, 2021 stipulates that no historic slots will be granted to Corporate Debtor or SRA. Admittedly, there is no challenge to this order thereby accepting the fact that old slot cannot be reinstated. Accordingly, this CP needs to be read with plan approval order, where Corporate Debtor shall be provided with such slots for which it applies. There is no dispute that slots for which SRA applied were granted to them by the concerned Competent Authority including the slots in Delhi and Mumbai, on settling the old dues and as such it cannot be considered as non-allotment of slots, as SRA has received the slots it requested for in compliance with plan approval order. The SRA cannot get all previous slots as this condition needs to be read with plan approval order of this Tribunal.

In that view of the matter, above CPs is also found to be Satisfactorily complied with.

125. As regards to CP no. 4: **International Traffic Right Clearance**:

On perusal of the plan approval order dated 22nd June, 2021, it is found that no blanket approval can be granted upfront to the SRA as it has to approach the concerned authorities for grant of such approval as per applicable laws. As already stated above, the plan approval order has reached its finality, thus, accepting the fact that all the approval issued upfront cannot be reinstated. Accordingly, this condition precedent needs to be read with plan approval order. Even otherwise there is no dispute that under the approved plan, SRA has to re-commence with operation of six air crafts. The International Traffic Rights clearance is required to be obtained in compliance with the applicable laws which stipulates that minimum twenty air crafts are required to be deployed before applying for such clearance. In view of this, we find that this condition cannot be satisfied upfront and needs to be satisfied in compliance with applicable laws i.e. after the SRA has twenty air crafts in operation which can only be achieved once the operation is re-commenced successfully. Accordingly, this condition can

only be fulfilled after the SRA/Applicants re-commences its business and not prior to its commencement.

It goes without saying that plan approved by this Tribunal has to be implemented without any modification much less than on satisfaction of any other undertaking and thus, the effective date and completion date of condition precedent under the plan shall have to be read as 20th May, 2022.

126. In the background of above facts and for the reasons stated above we hold that in addition to CPs (I) & (V) which are admittedly complied, remaining CPs (II), (III), (IV) are also duly complied.

127. Application bearing **IA No. 3398 of 2022** is thus **disposed of** as **Allowed** in terms of prayer clause (a) thereof.

128. Upon hearing the submission of the counsel for the Applicant in **IA 3508 of 2022** and going through the pleadings and the circumstances involved in the applications in totality, we are of the view that this is a fit case for granting exclusion, in the interests of justice and in achieving the primary objective of maximization of assets and resolution of Corporate Debtor. We grant exclusion of period for 180 days i.e. till 16.11.2022 for taking control of the Corporate Debtor.

129. Application bearing **IA No. 3508 of 2022** is thus **disposed of** as **Allowed** in above terms.

Sd/- **Sd/-**

SHYAM BABU GAUTAM **JUSTICE P. N. DESHMUKH**
MEMBER (TECHNICAL) **MEMBER (JUDICIAL)**

13.01.2023
SAM