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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order: 07.03.2024

+ **CONT.CAS(C) 1767/2023**

DAE (SY 22) 13 IRELAND DESIGNATED ACTIVITY COMPANY
..... Petitioner

Through: Mr. Kevic Setalvad, Sr. Advocate with Mr. Nimish Vakil, Mr. Pai Amit, Mr. Abhiyudaya Vats, Mr. Anshul Syal, and Ms. Bhavana Duhoon, Advocates in W.P.(C) 7663/2023.

Mr. Nitin Sarin, Mr. Mukul Katyal and Ms. Priyam Jinger, Advocates in W.P.(C) 7774/2023.

Mr Jayant Mehta, Senior Adv with Mr. Ameya Gokhale, Advocate in W.P.(C) 10327/2023, W.P.(C) 7214/2023, W.P.(C) 10386/2023 and W.P.(C) 9594/2023.

Mr. Chiranjivi Sharma, Advocate in W.P.(C) 7369/2023, W.P.(C) 7773/2023, W.P.(C) 8088/2023, W.P.(C) 9900/2023 and W.P.(C) 9901/2023.

Versus

GO AIRLINES (INDIA) LTD Respondent

Through: Mr. Diwakar Maheshwari, Mr. Shreyas E., Ms. Pratibha Agarwal, Ms. Pratiksha Mishra, Advocates for Resolution Professional

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing]

TARA VITASTA GANJU, J.: (ORAL)

1. The present Contempt Petition has been filed by the Contempt

Petitioner *inter alia* alleging wilful and deliberate violation of judgment dated 12.10.2023 passed by this Court [hereinafter referred to as “12.10.2023 Judgment”] with the following prayers:

“(a) Respondent be held guilty of contempt of this Hon’ble Court for deliberately and wilfully violating Judgment dated 12th October 2023 (read with Orders dated 5th & 12th July 2023) passed by this Hon’ble Court in CM Appl. No. 47071 of 2023 in WP (C) No. 7663 of 2023, and be directed to pay a fine in terms of Section 12 of the Contempt of Courts Act, 1971;

(b) Respondent be held to be deemed to have committed contempt, and be directed to undergo civil imprisonment and pay a fine in terms of Section 12 of the Contempt of Courts Act, 1971;

(c) Respondent be directed to forthwith purge the contempt and provide to the Petitioner / its representatives full and proper access to and inspection of all the Aircraft Documents/Records in respect of MSN 11160/VT-WDD and MSN 11052/VT-WDA, in terms of the Order and Judgment dated 12th October 2023 read with Orders dated 5th and 12th July 2023;

(d) Respondent be directed to forthwith purge the contempt and schedule the monthly inspection of the Petitioner’s Aircraft MSN 11160/VTWDD and MSN 11052/VT-WDA, in terms of the Judgment dated 12th October 2023 read with Orders dated 5th and 12th July 2023;

(e) Respondent be directed to purge the contempt and maintain the Petitioner’s Aircraft bearing MSN 11160/VT-WDD and MSN 11052/VT-WDA in accordance with its statutory and contractual obligations in terms of Judgment dated 12th October 2023 read with Orders dated 5th and 12th July 2023;

(f) For interim/ ad-interim reliefs in terms of prayers (a) to (e) above;

(g) For costs of the present Petition;

(h) For such further and other reliefs as the nature and circumstances of the case may require.”

2. It is contended on behalf of the Contempt Petitioner that this Petition

was necessitated since directions passed in the 12.10.2023 Judgment with a view to protect and preserve the 54 Aircrafts which form the subject matter of Writ Petitions pending before this Court [hereinafter referred to as “the Aircrafts”], were not being complied with by the Respondent/RP

2.1 More specifically, it is contended by the Contempt Petitioner that the Respondent/RP wilfully failed to:

- (a) Undertake regular maintenance of the Aircrafts; and
- (b) Provide the monthly inspection of the Aircrafts; and
- (c) Provide the Aircraft Records and documents.

3. In the 12.10.2023 Judgment, passed by this Court, it was held as follows:

“17.3 The Respondent/RP of Go Air was directed in the 05.07.2023 Order, to maintain the Aircraft, to preserve their value and integrity. This intent was reflected by the DB Order as well. The extent that these directions are being complied with, will require examination.

18. It is clear from the aforesaid discussion that the term Aircraft includes Aircraft Documents, the inspection granted to the Petitioners/Lessors would necessarily have to include Aircraft Documents to facilitate and make the inspection of the Aircraft meaningful.

19. In any event, it has now been more than five months, since the Aircraft were grounded by the Respondent/RP of GoAir. A review of the documents and photographs filed by the Petitioners/Lessors show the evident cannibalization of the Aircraft. The Petitioners/Lessors have made out a prima facie case and it has become necessary for this Court to pass additional directions to protect these highly valuable

equipment during the pendency of the present case.

19.1 It is also deemed necessary that the Petitioners/Lessors be permitted to contract a 24 hour security services for all the Aircraft, to be provided at the expense of the Petitioners/Lessors.”

3.1 As a consequence thereof, the following directions were passed by this Court in the 12.10.2023 Judgment:

“20. In view of the foregoing discussions, the following directions are passed :

20.1 The Respondent/RP of Go Air shall within the next fourteen days provide access to the Petitioners/Lessors of the following documentation in relation to the Aircraft, the Airframe, its engines and other parts and components:

- (a) Records pertaining to removal of all parts and components including engines, Air Frame, etc;*
- (b) Records relating to the storage of the Aircraft;*
- (c) Historical records and hardcopy records in relation to the Aircraft which may be located at a storage facility including any online records;*
- (d) Updated technical records, Aircraft status documents and statements in relation to the Aircraft;*
- (e) Any other document or record as required to ascertain the airworthiness of the Aircraft, its engine(s), the Airframe and all parts and components of the Aircraft.*

20.2 The Petitioners/Lessors are permitted to contract a 24 hour security service for all the Aircrafts at their own expense. Respondent No.3/DGCA shall permit, the duly verified security personnel/security agency so appointed by the Petitioners/Lessors, access at the various airports in and around the country, where the Aircraft are lying parked.

20.3 The Respondent/RP of Go Air shall continue to maintain the Aircraft as already directed.”

4. On 05.12.2023, the learned Senior Counsel appearing on behalf of the

Contempt Petitioner contended that there was non-compliance of the directions of the Court as reflected in the Judgement dated 05.07.2023 [hereinafter referred to as “05.07.2023 Judgement”], which was taken in an Appeal to the Division Bench and was modified by an order dated 12.07.2023 [hereinafter referred to as the “DB Order”] as well as the directions passed by this Court in the 12.10.2023 Judgment. It was, thus, contended that the Aircrafts, which form the subject matter of the Petitions pending before this Court, are not being maintained in accordance with the specified guidelines. It was further contended that the monthly inspection as was directed by the Court in the 05.07.2023 Judgement, was not being provided to the Petitioners/Lessors.

- 4.1 Learned Counsel for the Petitioners in *W.P.(C) 7774/2023, W.P.(C) 10327/2023, W.P.(C) 7214/2023, W.P.(C) 10386/2023, W.P.(C) 9594/2023, W.P.(C) 7369/2023, W.P.(C) 7773/2023, W.P.(C) 8088/2023, W.P.(C) 9900/2023 and W.P.(C) 9901/2023* [hereinafter referred to as “Other Petitioners/Lessors”] submitted that they are facing similar issues of non-compliance by the Respondent/RP of the directions passed by this Court.
- 4.2 At the request of the learned Senior Counsel appearing for the Respondent/RP on 05.12.2023, the matter was adjourned on that date to file an affidavit with respect to the issues raised in the Contempt Petition. Thereafter, not one but four separate affidavits were filed by the Respondent/RP on 11.12.2023, 22.12.2023, 23.01.2024 and on 12.02.2024.

5. The Other Petitioners/Lessors have also filed their respective affidavits setting out their contentions with respect to non-compliance of the Orders passed by this Court from time to time. It is contended therein that the records and the documents of the Aircrafts for parts removed from the Aircrafts; record pertaining to storage of the Aircrafts, maintenance history and updated technical records have also not been provided to the Petitioners/Lessors. It is also contended that the maintenance of the Aircrafts is not being carried out in terms of the directions passed by the Court.

5.1 So far as concerns the monthly inspection as was directed, it has been contended by the Contempt Petitioner and Other Petitioners/Lessors that no inspection of the Aircrafts has been provided since August/September 2023.

6. With respect to the interim directions passed by this Court by 12.10.2023 Judgment, the Respondent/RP in its Affidavit dated 11.12.2023 has set forth the fact that the Respondent/RP has started collating the Aircraft records and has initiated the process of sharing the same and considering the volumes and logistics involved, it had sought time to collate the same.

6.1 The Respondent/RP has also filed detailed affidavits along with tabular charts on 22.12.2023, 09.01.2023, 23.01.2024 and 12.02.2024, setting forth steps taken by the Respondent/RP in compliance of the orders passed by this Court.

7. The Contempt Petitioner on 29.02.2023 filed an affidavit once again

setting forth that the Respondent/RP has wilfully violated the 12.10.2023 Judgment passed by this Court as read with 05.07.2023 Judgement and the DB Order. In essence, the Contempt Petitioner had relied on admissions made by the Respondent/RP in its affidavit dated 11.12.2023, that since the Respondent/RP was unable to meet critical operational expenses and pay the salaries of engineers, the Respondent/RP was not in a position to maintain the Aircrafts as well.

8. A perusal of the affidavit of the Respondent/RP dated 11.12.2023 shows that the affidavit avers that technical persons required for carrying out maintenance tasks were not being paid since July 2023 and owing to non-payment of salaries, various personnel of the engineers and records team resigned or did not report to work. It is further contended in the affidavit of the Respondent/RP dated 11.12.2023, that out of 4,621 employees as on 10.10.2023, approximately 2,278 employees remain on the rolls of the Company, out of which none are reporting to work.

8.1 The relevant extract is reproduced below:

*“42. In the above mentioned circumstances, since July 2023, the Corporate Debtor has been unable to pay the salaries of its employees and workers on account of **a cash crunch as a result of which salaries of employees have not been paid for a period of 5 months (which includes the month of April, July, August, September and October 2023)** which has led to non-reporting of employees and staff to corporate offices and various stations where the aircraft are currently parked and stored. **Over this period, various personnel of the engineering and records team who were required to undertake maintenance activities have either***

gradually resigned or are not reporting to work due to non-payment of salaries. As on insolvency commencement date the number of employees on the rolls of the Corporate Debtor stood at approx. 4,621. However, as of 10.10.2023, approx 2,278 employees remain on the rolls of the Company, out of which none are at present reporting to work.

43. It is pertinent to note that procedure prescribed for maintenance of the aircraft and engines under the AMM requires technical personnel and engineers to be present physically at the aircraft. Accordingly, without adequate support of the relevant personnel of the engineering and the Continuing Airworthiness Management Organization team (“CAMO”) at various airport stations, the Corporate Debtor has been unable to undertake regular maintenance.”

[Emphasis supplied]

9. The sum and substance of the contentions of the Respondent/RP is that there has been no wilful disobedience of the judgments and orders of this Court, but that the Respondent/RP has been taking all the steps to effectuate such compliance. However, due to circumstances outside the control of the Respondent/RP, the compliance of the Orders passed by this Court and the Division Bench of this Court could not be done.
10. On the last date of hearing, after substantially hearing the learned Counsel appearing on behalf of the Petitioner as well as on behalf of the Respondent/RP, this Court passed the following directions:

“...3. Learned Counsel for the Respondent/RP seeks some time to return with instructions as to whether, given what has been submitted by the Respondent/RP in its Affidavit/Additional Affidavits’ filed before this Court on 11.12.2023, 22.12.2023, 23.01.2024 and 12.02.2024, a consent order can be passed reverting to the position as

obtained in para 20.1 of the judgment dated 05.07.2023, qua maintenance of the Aircraft which form subject matter of the petitions pending before this Court.”

11. This Court has heard the parties at length. This Court had by the 05.07.2023 Judgement *inter alia* directed that all maintenance tasks of the Aircrafts would be undertaken by the Petitioners/Lessors twice every month. The 05.07.2023 Judgement was challenged by the Respondent/RP before the Division Bench of this Court. During the proceedings, it was contended on behalf of the Respondent/RP that the directions in terms of the 05.07.2023 Judgment would prevent renewed functioning of Go Airlines. It was based on these submissions that the directions passed in the 05.07.2023 judgment *qua* maintenance of the Aircrafts was modified by the Division Bench of this Court. Paragraph 11 of the DB Order in this regard states as follows:

“11. Mr. Kaul and Mr. Srinivasan have emphatically elaborated on the necessity for this Court’s interference with the impugned directions, stating that the Committee of Creditors has approved GoAir’s revival scheme and resultantly, GoAir has petitioned the DGCA for reinstatement of the airline’s operations, of which they expect an immediate approval. In the event such an approval is granted, they submit that directions in paragraph No. 20.1 of the impugned judgement would prevent GoAir’s renewed functioning.”

- 11.1 Quite clearly when making submissions on 12.07.2023, the Respondent/RP was well aware of his reduced work force on account of non-payment of salaries since April, 2023. In these circumstances for the Respondent/RP to contend otherwise has led to cannibalization or deterioration of the Aircrafts on account of no proper maintenance

in accordance with the applicable guidelines.

12. Section 2 (b) of the Contempt of Courts Act, 1971 defines civil contempt which reads as follows:

“2. Definitions.—In this Act, unless the context otherwise requires,—

(b) “civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;”

- 12.1 It is trite that the contempt proceedings are intended to ensure compliance of the orders of the Court and adherence to the rule of law. However, whether disobedience can be deemed wilful in a particular instance depends on the specific facts and circumstances surrounding that case. Even instances of negligence or carelessness can constitute disobedience, especially when the individual has been made aware of the Court's orders.

13. After examining the Affidavits filed by the Contempt Petitioner and other Petitioners/Lessors, as well as the detailed Affidavits filed by the Respondent/RP, it is clear that the Respondent/RP is unable to undertake regular maintenance of the Aircrafts. The directions; (a) to provide access and the inspection of all the Aircrafts records and documents; (b) monthly inspection of the Aircrafts from August/September, 2023 onwards; and, (c) carrying out the maintenance and obligation with respect to the Aircrafts in accordance with the guidelines as specified are not being adhered to by the Respondent/RP. Thus, clearly, the Court Orders are not being

complied with, by the Respondent/RP.

14. The Respondent/RP cannot plead difficulties on implementation of 12.10.2023 Judgment after contempt proceedings have been filed by a party seeking to enforce obedience of the orders passed by the Court from time to time. In any event, the directions passed by this Court in 12.10.2023 Judgment are a culmination of various directions passed by this Court from 05.07.2023 onwards, which directions have been passed in proceedings where the Respondent/RP has been represented.
15. *Prima facie*, the orders of this Court have been wilfully disobeyed by the Respondent/RP. Issue Notice to show cause as to why proceedings of contempt be not initiated against the Respondent/RP.
16. At this stage, learned Counsel for the Respondent/RP submits that he has just received instructions from the Respondent/RP, that the Respondent/RP is willing to revert to the position as obtained in paragraph 20.1 *qua* maintenance of the 05.07.2023 Judgment for the Aircrafts.
17. Learned Senior Counsel appearing on behalf of the Contempt Petitioner as well as Other Petitioners/Lessors request for an accommodation to take instructions to see if it is possible to work out the modalities of the concession given today. It is, however, contended that this accommodation being taken is without prejudice to the Petitioner's rights to proceed with the present Contempt Petition.

18. List on 15.03.2024.
19. Parties to act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

MARCH 7, 2024/g.joshi

