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

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Judgement Pronounced on: 05.07.2023+ **W.P.(C) 6569/2023 and CM Nos.25806-25807/2023**

ACCIPITER INVESTMENTS AIRCRAFT 2 LIMITED .. Petitioner

Through: Mr. Satvik Varma, Senior Advocate
with Mr. Ravi Nath, Mr. Ankur
Mahindru, Mr.Rohan Taneja, Mr.
AdityaKapur, Mr.Tanveer Oberoi,
Mr. Tushar Mudgil,Mr. Mehul Jain,
Mr. Tarun and Mr. Ankit, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Rajesh Gogna, CGSC for
R1/UOI.
Ms. Anjana Gosain, SPC with Ms.
Avshreya Pratap Singh Rudy, Ms.
Nippun Sharma, Advocates for R-
1/UOI/DGCA.
Mr. Ramji Srinivasan, Senior
Advocate with Mr. Anuj Berry, Mr.
Siddharth Ranade, Mr. Ramakant
Rai, Mr. Sourabh Rath, Ms. Somesh
Srivastava, Mr. Varun K. Tikmani,
Mr. Aryan Agrawal, Ms.Shruti
Pandey, Ms. Namrata Saraogi and
Ms. Drishti Kaushik, Advocates for
R-2/IRP.

+ **W.P.(C) 6626/2023 and CM Nos.26011-26012/2023**



EOS AVIATION 12 (IRELAND) LTD.

..... Petitioner

Through: Mr. Dayan Krishnan, Senior Advocate with Mr. Ravi Nath, Mr. Ankur Mahindru, Mr. Rohan Taneja, Mr. Aditya Kapur, Ms. Mehul Jain, Mr. Tarun Gumber and Mr. Ankit, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Rajesh Gogna and Ms. Avshreya Pratap Singh Rudy, Advocate (GP) for R- 1/ UOI.

Mr. Ramji Srinivasan, Senior Advocate with Mr. Anuj Berry, Mr. Siddharth Ranade, Mr. Ramakant Rai, Mr. Saurabh Rath, Ms. Somesh Srivastava, Mr. Varun K. Tikmani, Mr. Aryan Agrawal, Ms. Shruti Pandey, Ms. Namrata Saraogi and Ms. Drishti Kaushik, Advocates for R-2/IRP.

+ **W.P.(C) 7214/2023 and CM Nos.28114-28115/2023 & 30784/2023**

PEMBROKE AIRCRAFT LEASING 11 LIMITED Petitioner

Through: Mr. Mukul Rohtagi and Mr. Arun Kathpalia, Senior Advocates with Ms. Meghna Rajadhyaksha, Ms. Medha Sachdev, Mr. Rishabh Jaisani, Ms. Salonee Kulkarni, Ms. Riya Basu, Mr. Ajay Kumar, Mr. Kshitij Wadhwa, Mr. Aditya Dhupar and Ms. Diksha, Advocates.
Mr. Ajay Kumar, Ms. Anchal Nanda,



Mr. Hetram Bishnoi, Advocates.

versus

DIRECTORATE GENERAL OF CIVIL AVIATION
& ORS.

..... Respondents

Through: Ms. Anjana Gosain, SPC with Ms. Avshreya Pratap Singh Rudy, Ms. Nippun Sharma, Ms. Hetika Vadhera, Advocates for R-1/DGCA & R2/UOI.

Mr. Harish N. Salve, Senior Advocate with Mr. Anuj Berry, Mr. Siddharth Ranade, Mr. Ramakant Rai, Mr. Sourabh Rath, Ms. Somesh Srivastava, Mr. Varun K. Tikmani, Mr. Aryan Agrawal and Ms. Drishti Kaushik, Advocates for R-3/IRP.

+ **W.P.(C) 7369/2023 and CM Nos.28705-28706/2023**

SMBC AVIATION CAPITAL LIMITED AND ORS.... Petitioners

Through: Mr. Rajiv Nayyar, and Mr. Amit Sibal, Senior Advocates with Ms. Marylou Bilawala, Mr. Premaya Goyal, Ms. Sharleen Lobo, Ms. Neetika Sharma, Mr. Girish Shankar, Mr. Chiranjin Sharma, Mr. Vinamra Kopariha and Mr. Mayank Bharghav, Ms. Apoorva Kaushik, Advocates

versus

UNION OF INDIA AND ORS

... Respondents

Through: Mr. Rajesh Gogna, CGSC and Ms. Avshreya Pratap Singh Rudy,



Advocate (GP) for R-1/ UOI & R-2/DGCA.

Ms. Anjana Gosain, SPC with Ms. Avshreya Pratap Singh Rudy, Ms. Nippun Sharma, Ms. Hetika Vadhera, Advocates for R-3/AAI.

Mr. Milanka Chaudhury, Ms. Ashly Cherian, Ms. Harshita Agarwal and Ms. Ragini Sharma, Advocates for R-4, 6 and 8.

Mr. Sandeep Sethi, Senior Advocate with Mr. Anuj Berry, Mr. Siddharth Ranade, Mr. Ramakant Rai, Mr. Sourabh Rath, Ms. Somesh Srivastava, Mr. Varun K. Tikmani, Mr. Aryan Agrawal and Ms. Drishti Kaushik, Advocates for R-9/IRP.

+ **W.P.(C) 7663/2023 & CM APPL. 29679-29680/2023**

DAE SY 22 13 IRELAND DESIGNATED ACTIVITY
COMPANY

..... Petitioner

Through: Mr. Gaurav Mitra and Mr. Pai Amit
with Mr. Nimish Vakil, Ms. Bhavna
Duhoon & Mr. Rahat Bansal,
Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Rajesh Gogna, CGSC for R1/
UOI.
Mr. Anuj Berry, Mr. Siddharth
Ranade, Mr. Ramakant Rai, Mr.
Sourabh Rath, Ms. Somesh
Srivastava, Mr. Varun K. Tikmani,



Mr. Aryan Agrawal and Ms. Drishti Kaushik, Advocate for R-3/IRP.

+ **W.P.(C) 7773/2023 & CM APPL. 29997-29998/2023**

SFV AIRCRAFT HOLDINGS IRE 9 DAC LIMITED Petitioner

Through: Mr. Rajiv Nayyar and Mr. Amit Sibal, Senior Advocates with Ms. Marylou Bilawala, Mr. Premaya Goyal, Ms. Sharleen Lobo, Ms. Neetika Sharma, Mr. Girish Shankar, Mr. Chiranjin Sharma, Mr. Vinamra Kopariha and Mr. Mayank Bharghav, Ms. Apoorva Kaushik, Advs.

versus

UNION OF INDIA THROUGH THE MINISTRY OF CIVIL AVIATION & ORS. Respondents

Through: Ms. Anjana Gosain, SPC with Ms. Avshreya Pratap Singh Rudy, Ms. Nippun Sharma, Ms. Hetika Vadhera, Advocates for R-1/UOI & R-2/DGCA.

Ms. Anjana Gosain, SPC with Ms. Avshreya Pratap Singh Rudy, Ms. Nippun Sharma, Ms. Hetika Vadhera, Advocates for R-3/AAI.

Mr. Anuj Berry, Mr. Siddharth Ranade, Mr. Ramakant Rai, Mr. Sourabh Rath, Ms. Somesh Srivastava, Mr. Varun K. Tikmani, Mr. Aryan Agrawal and Ms. Drishti Kaushik, Advs for R-5/IRP.

+ **W.P.(C) 7774/2023 & CM APPL. 30005-30006/2023, 32445/2023**



ACG AIRCRAFT LEASING IRELAND LIMITED Petitioner

Through: Mr. Nitin Sarin, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Chetan Sharma, ASG, Mr. Apoorv Kurup, CGSC, Mr. Ojaswa Pathak & Mr. Akhil Hasija, Advocates for R-1/UOI.

Ms. Avshreya Pratap Singh Rudy, Advocates for R-2/DGCA.

Mr. Anuj Berry, Mr. Siddharth Ranade, Mr. Ramakant Rai, Mr. Sourabh Rath, Ms. Somesh Srivastava, Mr. Varun K. Tikmani, Mr. Aryan Agrawal, Mr. Shreyas Edupuganti and Ms. Drishti Kaushik, Advocates for R-3/IRP.

+ **W.P.(C) 8088/2023 & CM APPL. 31155-31156/2023**

GY AVIATION LEASE 1722 CO LIMITED
& ORS.

.... Petitioners

Through: Mr. Rajiv Nayar, and Mr. Amit Sibal, Senior Advocates with Ms. Marylou Bilawala, Mr. Premaya Goyal, Ms. Sharleen Lobo, Ms. Neetika Sharma, Mr. Girish Shankar, Mr. Chiranjin Sharma, Mr. Vinamra Kopariha and Mr. Mayank Bharghav, Ms. Apoorva Kaushik, Advocates.

versus

UNION OF INDIA THROUGH THE MINISTRY OF CIVIL
AVIATION & ORS. Respondents



Through: Mr. Digvijay Rai, Ms. Anjana Gosain, Ms. Nippun Sharma, Ms. Hetika Vadhera & Mr. Archit Mishra, R-3/AAI.

Mr. Chetan Sharma, ASG, Mr. Apoorv Kurup, CGSC with Ms. Avshreya Pratap Singh Rudy and Mr. Akhil Hasija, Advocates for UOI.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Court Hearing/ Hybrid Hearing (as per request)]

JUDGMENT

TARA VITASTA GANJU, J.:

CM No. 25806/2023 [Application for Interim Relief] in W.P.(C) 6569/2023

CM No. 26011/2023 [Application for Interim Relief] in W.P.(C) 6626/2023

CM No. 30784/2023 [Application for Interim Relief] in W.P.(C) 7214/2023

CM No. 28705/2023 [Application for Interim Relief] in W.P.(C) 7369/2023

CM No. 29679/2023 [Application for Interim Relief] in W.P.(C) 7663/2023

CM No. 29997/2023 [Application for Interim Relief] in W.P.(C) 7773/2023

CM No. 32445/2023 [Application for Interim Relief] in W.P.(C) 7774/2023

CM No. 31155/2023 [Application for Interim Relief] in W.P.(C) 8088/2023

PREFACE:

1. The Petitioners before this Court are the lessors and owners of Aircrafts that have been leased to Go Air (India) Ltd. [hereinafter referred to as "Respondent/Go Air"] who is being represented before this Court by the Resolution Professional [hereinafter referred to as 'RP'] appointed by an order of the National Company Law Tribunal, Special Bench, New Delhi [hereinafter referred to as "NCLT"].



2. The grievance of the Petitioners as articulated in the present Petitions are *inter-alia* that the Respondent/DGCA has failed to deregister their Aircraft(s) in contravention of Sub-Rule (7) of Rule 30 of the Aircraft Rules, 1937 [hereinafter referred to as “the Aircraft Rules”].

BRIEF FACTS:

3. The facts, being similar in all the Petitions, have been collated and are briefly set forth below:

3.1 Separate Lease Agreement(s) were entered between the Respondent/Go Air and the Petitioners to lease one or more Aircraft to the Respondent/Go Air, on the terms and conditions as set forth therein [hereinafter referred to as “the Lease Agreement(s)”]. In all, the Respondent/Go Air had leased 30 Aircraft from these 8 Petitioners.

3.2 For ease of reference, certain relevant details *qua* the Petitioners are reproduced in the table below:

S. No	Petition No. & Case Title and Interim Application Details	Details of the Aircraft Leased	Lease Agreement Date(s)	IDERA Date(s)	Lease Agreement Termination Date(s)	Date of De-registration Application lodged with DGCA	Whether an Appeal has been filed in the NCLAT?
1	WP(C) 6569/2023-ACCIPITER INVESTMENTS AIRCRAFT 2 LTD V UOI CM APPL. 25806/2023 FOR INTERIM RELIEF	AirbusA320-214 MSN 5811 IRM VT-GOO	04.10.13	23.02.18	02.05.23	04.05.23	YES, appeal filed Co App (AT) (Ins) 631/23



2	WP(C) 6626/2023- EOS AVIATION 12 (IRELAND) LTD. Vs. UOI CM APPL. 26011/2023 FOR INTERIM RELIEF	AirbusA320-271N MSN 11111 IRMVT-WDB	08.09.22	03.10.22	02.05.23	03.05.23	YES, appeal filed Co App (AT) (Ins) 633/23
3	WP(C) 7214/2023- PEMBROKE AIRCRAFT LEASING 11 LTD VS DGCA AND ORS CM APPL. 30784/2023 FOR INTERIM RELIEF	Airbus A320NEO MSN 7858 IRMVT-WGN	02.05.18	04.05.18	02.05.23	03.05.23	NO
4	WP(C) 7369/2023- SMBC AVIATION CAPITAL LIMITED AND ORS Vs. UNION OF INDIA AND ORS CM APPL. 28705/2023 FOR INTERIM RELIEF	1. Airbus A320-214 MSN 5675 IRM VT-GON	24.07.13	25.07.13	02.05.23 [For all Aircraft]	04.05.23 [For all Aircraft]	YES, appeal filed Co App (AT) (Ins) No. 593 of 2023
	2. Airbus A320-271N MSN 7047 IRM VT-WGA	02.05.16	25.05.16				
	3. Airbus A320-271N MSN 7074 IRM VT-WGB	02.05.16	20.06.16				
	4. Airbus A320-271N MSN 8498 IRM VT-WGY	09.10.18	23.10.18				
	5. Airbus A320-214 MSN 5990 IRM VT-GOQ	30.10.18	13.02.14				
	6. Airbus A320-271N MSN 8656 IRM VT-GOP	09.10.18	27.12.18				
	7. Airbus A320-214 MSN 5809 IRM VT-WGA	30.09.12	13.03.19				
	8. Airbus A320-271N MSN 7330 IRM VT-WGE	24.01.17	24.01.17				
	9. Airbus A320-214 -MSN 6072	01.05.14	28.12.20				



		IRM VT-GOR					
		10. Airbus A320-271N MSN 7205 IRM VT -WGD	01.12.16	06.12.16			
5	WP(C) 7663/2023- DAE SY 22 13 IRELAND DESIGNATED ACTIVITY COMPANY Vs. UOI & ORS CM APPL. 29679/2023 FOR INTERIM RELIEF	1. Airbus A320-271N MSN 11160 IRM VT -WDD 2. Airbus A320-271N MSN 11052 IRM VT -WDA	08.08.22 [for both aircraft]	18.01.23 [for both aircraft]	02.05.23 and 04.05.23	05.05.23	NO
6	WP(C) 7773/2023- SFV AIRCRAFT HOLDINGS IRE 9 DAC LIMITED Vs. UOI THROUGH THE MINISTRY OF CIVIL AVIATION & ORS. CM APPL. 29997/2023 FOR INTERIM RELIEF	Airbus A320 -271N MSN 11130 IRM VT-WDC	05.08.22	11.10.22	03.05.23	05.05.23	YES, appeal filed Co App (AT) (Ins) No. 603 of 2023
7	WP(C) 7774/2023- ACG AIRCRAFT LEASING IRELAND LIMITED Vs. UNION OF INDIA & ORS. CM No. 32445/2023 FOR INTERIM RELIEF	1. Airbus A320-271N MSN 7594 IRM VT-WGI 2. Airbus A320-271N MSN 7737 IRM VT-WGJ 3. Airbus A320-271N MSN 7753 IRM VT-WGK 4. Airbus A320-271N MSN 7859 IRM VT-WGM	16.11.17 [For all Aircraft]	26.07.18 01.08.18 09.10.18 06.09.18	02.05.23	04.05.23	YES, appeal filed Co App (AT) (Ins) No. 649/23
8	WP(C) 8088/2023- GY AVIATION LEASE 1722 CO LIMITED & ORS. Vs. UOI CM APPL. 31155/2023 FOR INTERIM RELIEF	1. Airbus A320-271N MSN 7813 IRM VT-WGL 2. Airbus A320-271N MSN 8146 IRM VT-WGP 3. Airbus A320-271N MSN 8152 IRM VT-WGQ 4. Airbus A320-271N	16.11.17 11.05.18 11.05.18 17.07.18	18.10.18 [For all Aircraft]	03.05.23 [For all Aircraft]	04.05.23	YES, appeal filed Co App (AT) (Ins) No. 604 of 2023



		MSN 8209 IRM VT-WGR				
		5. Airbus A320-271N MSN 8273 IRM VT-WGS	17.07.18			
		6. Airbus A320-271N MSN 8382 IRM VT-WGT	30.08.18			
		7. Airbus A320-271N MSN 8458 IRM VT-WGV	11.05.18			
		8. Airbus A320-271N MSN 8464 IRM VT-WGW	11.05.18			
		9. Airbus A320-271N MSN 8482 IRM VT-WGX	11.05.18			
		10. Airbus A320-271N MSN 8503 IRM VT-WGZ	18.10.18			

3.3 Pursuant to the execution of the Lease Agreement(s), the Respondent/Go Air also executed and submitted before the Respondent/DGCA, an Irrevocable De-Registration and Export Request Authorisation [hereinafter referred to as “IDERA”] for each Aircraft, as is defined in Rule 3(28A) of the Aircraft Rules, on dates as mentioned in the table hereinabove.

3.4 The IDERA, being almost identical in all the cases, is extracted from W.P. (C) 6626/2023 and reproduced below:

*“IRREVOCABLE DE-REGISTRATION AND EXPORT REQUEST
AUTHORISATION*

[DATED]

To Directorate General of Civil Aviation

Re: Irrevocable De-Registration and Export Request Authorisation



The undersigned is the registered operator of the Airbus Model A320-271N aircraft bearing manufacturer's serial number 11111 and registration number VT-WDB (together with all installed, incorporated or attached accessories, parts and equipment, the 'aircraft').

This instrument is an irrevocable de-registration and export request authorisation issued by the undersigned in favour of Eos Aviation 12 (Ireland) Limited ("the authorised party") under the authority of Article XIII of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment. In accordance with that Article, the undersigned hereby requests:

i. recognition that the authorised party or the person it certifies as its designee is the sole person entitled to:

a) procure the de-registration of the aircraft from the Indian aircraft register maintained by the Directorate General of Civil Aviation for the purposes of Chapter III of the Convention on International Civil Aviation, signed at Chicago, on 7 December 1944, and

b) procure the export and physical transfer of the aircraft from India; and

confirmation that the authorised party or the person it certifies as its designee may take the action specified in clause (i) above on written demand without the consent of the undersigned and that, upon Such demand, the authorities in India shall Co-operate With the authorised party With a view to the speedy completion of such action..

The rights in favour of the authorised party established by this instrument may not be revoked by the undersigned without the written consent of the authorised party.

GO AIRLINES (INDIA) LIMITED

By: [sd/-]

Its: [designation]"

3.5 The IDERA, it is explained, has come into play pursuant to the Convention of International Interests in Mobile Equipments on Matters



specific to Aircraft Equipment [hereinafter referred to as “Cape Town Convention”]. India became a signatory to the Cape Town Convention on 31.03.2008.

3.6 It is contended by the Petitioners that in consonance with the Cape Town Convention and the Aircraft Rules, subject to the fulfilment of the provisions of Sub-Rule (7) of Rule 30 of the Aircraft Rules, the registration authority, in this case, the Respondent/DGCA, does not require the consent of the lessee prior to deregistration and significant export of an Aircraft.

3.7 Over the last several months, the Respondent/Go Air defaulted in payment(s) of the lease rental amounts to the Petitioners. The Petitioners sent individual notices of default to the Respondent/Go Air, *inter-alia*, requesting payment of arrears in lease rental due to them. Since, no complete payment was received by the Petitioners, the Lease Agreement(s) *qua* all 30 aircrafts were terminated by the Petitioners on 02.05.2023, 03.05.2023 and 04.05.2023.

3.8 The notice of default and termination sent by the Petitioners to Respondent/Go Air [hereinafter referred to as “Termination Notice”] *inter-alia* stated that the Respondent/Go Air was to immediately cease operation of the Aircraft; and the Petitioners were “*assuming*” possession of the Aircraft. The Termination Notice further directed the lessee to provide the necessary assistance and cooperation for deregistration and export of Aircraft.

3.9 As a necessary corollary to the Termination Notice, Application(s) for deregistration of the Aircraft with immediate effect, under Rule 30(7) of the



Aircraft Rules, were filed by the Petitioners for deregistration of the Aircraft with the Respondent/DGCA [hereinafter referred to as “Deregistration Application”]. Along with the Deregistration Application, the requisite documents were also enclosed by each Petitioner.

3.10 In the meantime, the Respondent/Go Air initiated proceedings before the NCLT, under Section 10 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as “IBC”] for initiation of voluntary Corporate Insolvency Resolution Process [hereinafter referred to as “CIRP”].

3.11 By its order dated 10.05.2023, the NCLT admitted the Petition filed by the Respondent/Go Air and as a consequence of which a ‘moratorium’ was imposed under Sub-Section (1) of Section 14 of IBC *qua* the Respondent/Go Air.

3.12 The Order dated 10.05.2023 was challenged in Appeal before the National Company Law Appellate Tribunal [hereinafter referred to as “NCLAT”]. By its order dated 22.05.2023, the NCLAT, *inter-alia*, upheld the order of the NCLT.

3.13 In the meantime, by letters dated 11.05.2023 and 12.05.2023, the Petitioners were informed by the Respondent/DGCA that the Deregistration Application has been rejected/application cannot be processed in view of the order dated 10.05.2023 passed by the NCLT, New Delhi. Aggrieved, the present Petitions have been filed.

SUBMISSIONS OF THE PETITIONERS:

4. Following were the brief submissions made by learned Counsels for



the Petitioners. For the sake of brevity, overlapping submissions have been noted only once:

4.1 Submissions of Mr. Dayan Krishnan, Senior Advocate:

(i) Mr. Krishnan has submitted that the Petitioner executed a Lease Agreement(s) *qua* Aircraft A320-271N bearing Serial No. 11111 and Registration No. VTWDB with Respondent/Go Air on 08.09.2022. Subsequently, since the Respondent/Go Air defaulted in payment of the lease rental for the aircraft, a default notice dated 17.03.2023 was sent. Since the default was not remedied by the Respondent/Go Air, the Petitioner chose to terminate the Lease Agreement(s) on 02.05.2023. Consequently, in terms of the provisions of Rule 30(7) of the Aircraft Rules, the Petitioner applied for deregistration of the aforesaid Aircraft with the Respondent/DGCA.

(ii) Mr. Krishnan avers that Rule 30(7) of the Aircraft Rules, makes it mandatory for the Respondent/DGCA to deregister the Aircraft if the requisite documentation as enlisted therein, is provided to the Respondent/DGCA. There is no discretion/quasi-judicial powers with the Respondent/DGCA for the deregistration of an Aircraft, there is also no need for a consent from the Respondent/Go Air, as per the Aircraft Rules. Rule 30(7) of the Aircraft Rules is reproduced below:

“(7) The registration of an aircraft registered in India, to which the provisions of the Cape Town Convention or Cape Town Protocol apply, shall be cancelled by the Central Government, within five working days, if an application is received from IDERA Holder prior to expiry of the lease along with:—

(i) the original or notarised copy of the IDERA; and



(ii) a certificate that all Registered Interests ranking in priority have been discharged or the holders of such interest have consented to the deregistration and export:

Provided that the deregistration of an aircraft by the Central Government under sub-rule (6) or sub-rule (7) shall not affect the right of any entity thereof, or any inter-governmental organisation, or other private provider of public services in India to arrest or detain or attach or sell an aircraft object under its laws for payment of amounts owed to the Government of India, any such entity, organisation or provider directly relating to the services provided by it in respect of that object.”

(iii) Relying on the judgment in the case of ***Awaz 39423 Ireland Ltd. & Ors. v. Directorate General of Civil Aviation & Anr.***¹, it is submitted that the deregistration of an aircraft is only a ‘ministerial act’. The relevant paragraphs of the ***Awaz*** case relied upon are below:

“21.1 As would be evident upon a careful reading of the proviso to sub-rule (1) that, in case of a leased aircraft, the COR should include inter alia the factum of the validity of the lease. In the cases under discussion, the lease is no longer valid; the lease agreements having been terminated.

21.2 The Central Government, which in this case, would be the DGCA, upon termination of the lease is required to cancel the registration of an aircraft, inter alia, under clause (iv) of sub-rule (6) of Rule 30 if, the lease is not in force.

.....

22.1 In my opinion, a bare perusal of the unamended clauses of sub-rule (6) of Rule 30 would show that all that the DGCA is required to do is to ascertain whether circumstances exist, once it is found circumstances exist as contemplated in the relevant clause, and the DGCA is found wanting, a writ of mandamus could issue to compel performance. The fulfilment of ministerial act and, therefore, vesting of a minor discretion in that behalf, if it can be called one ought not to deter a court from not issuing a writ of mandamus. The observations of

¹ 2015 SCC OnLine Del 8177



the Supreme Court in this behalf in the case of Sharif Ahmad v. Regional Transport Authority, Meerut (1978) 1 SCC 1 being apposite, are extracted hereinafter:

“.... It may describe any duty, the discharge of which involves no element of discretion or independent judgment. Since an order of mandamus will issue to compel the performance of a ministerial act and since, moreover, wrongful refusal to carry out a ministerial duty may give rise to liability in tort, it is often of practical importance to determine whether discretion is present in the performance of a statutory function. The cases on mandamus show, however, that the presence of a minor discretionary element is not enough to deter the courts from characterising a function as ministerial.

We think that the Regional Transport Authority, pursuant to the order of the Appellate Tribunal, had merely to perform a ministerial duty and the minor discretionary element given to it for finding out whether the terms of the Appellate Order had been complied with or not is not enough to deter the Courts from characterising the function as ministerial. On the facts and in the circumstances of this case by a writ of mandamus the said authority must be directed to perform its function....”

(iv) Mr. Krishnan further sought to rely on paragraphs 22.4 and 25.4 of the judgment in the ***Awaz*** case to state that once an IDERA has been submitted, the Respondent/DGCA has no option but to deregister the Aircrafts.

(v) Mr. Krishnan further submits that even though the Respondent/Go Air has filed for Corporate Insolvency under the provisions of the IBC and a moratorium under Section 14 of the IBC has been imposed by order dated 10.05.2023 of the NCLT, and, since NCLT is not entitled to hear pleas in relation to the deregistration of the Aircraft, there is no alternative remedy



available to the Petitioner except to approach this Court under Article 226 of the Constitution of India.

(vi) It is further submitted that upon termination of the Lease Agreement(s), the Aircraft does not meet the mandatory requirements for flying under the Aircraft Act, 1934 and the Aircraft Rules and hence, can no longer be used by the lessee, i.e. in this case the Respondent/Go Air. In the interim period, it has been prayed that the directions be passed against the Respondent/Go Air, to not, in any manner, operate and fly the Aircraft and permit inspection by the Petitioner or their Authorised Representatives.

4.2 **Submissions of Mr. Satvik Verma, Senior Advocate:**

(i) Mr. Verma submits that the Respondent/DGCA has not challenged the applications of deregistration or the IDERA as filed by the Petitioner, which clearly enunciates that the all the documentation in respect to the deregistration is in consonance with the laws. Thus, Respondent/DGCA has no right to delay the procedure of mandatory deregistration and within 5 working days of receiving the Deregistration Application, the Aircraft must be deregistered. He further submits that the deregistration of an Aircraft is a right of a Lessor and if the deregistration is not allowed, the Aircraft and the Aircraft's Engines will not be maintained.

(ii) Mr. Verma further also emphasises para 26 of the *Awes* case to submit that once an IDERA has been submitted, the Respondent/DGCA has no option other than to deregister the Aircraft as below:

“26. In passing, a reference was also made to the fact that the issue with regard to the petitioners' entitlement to terminate the lease agreements, would require determination by a competent court of law,



and therefore, no relief could be given in the present petitions. This argument, in my view, is misconceived, because it ignores the provisions of Convention and the Protocol, which proceed on documentary evidence vis-a-vis the remedy sought under Article IX of the Protocol. Upon fulfilment of the ingredients set out in Article IX of the Protocol, the petitioners become entitled to the reliefs encapsulated therein. Entitlement to termination of the subject lease agreements is not an ingredient of Article IX of the Protocol. All that the petitioners have to demonstrate qua this aspect, is that, they have exercised their right under IDERA, and thus, proceeded to terminate the subject lease agreements. There is no dispute that this aspect has been taken care of by the petitioners. The submission is, accordingly, rejected.”

(iii) Mr. Verma submits that it is on account of continuing defaults that the Petitioners terminated the Lease Agreement(s) and the Respondent/Go Air has not challenged the termination of the Lease Agreement(s) before any forum and has, therefore, accepted the same.

(iv) It is further submitted that in the event that interim protection is not granted to the Petitioners, it will lead to cannibalisation of the Aircraft, which is lying parked on the Tarmac and will cause grave loss to the Petitioners.

4.3 Submissions on behalf of Mr. Rajiv Nayyar, Senior Advocate:

(i) Mr. Nayyar represents two Petitioners each of whom have 10 aircrafts, on lease to Respondent/Go Air. It is submitted that the Lease Agreement(s) for all 20 Aircrafts belonging to both Petitioners were terminated on 02.05.2023 i.e., 8 days prior to the date the NCLT admitted the Petition for voluntary insolvency as filed by the Respondent/Go Air.

(ii) Mr. Nayyar draws the attention of the Court to the aircraft bearing no. MSN 6072 which is a subject matter of W.P.(C) 7369/2023 to submit that



the Lease Agreement dated 01.05.2014 between SMBC Aviation Capital Limited and Respondent/Go Air expired by efflux of time on 13.05.2023. Mr. Nayyar submits that the mandatory maintenance/engine runs of MSN 6072 are required to be conducted by Respondent/Go Air and permission in this regard needs to be granted by Respondent/DGCA for this mandatory maintenance on an urgent basis.

(iii) Mr. Nayyar further submits that unless immediate steps are taken for operation and maintenance of all the Aircrafts including MSN 6072, irreparable loss and damage shall be caused to the Petitioner.

(iv) Lastly, it is submitted that the lease in all 20 aircrafts owned by the Petitioners have been terminated either by termination or by the efflux of time and what is paramount in the lease conditions, is on termination, no other subsisting right remains with the lessee. Relying on Sub-Rule 6(iv) of Rule 30 of the Aircraft Rules and the *Awass* case, Mr. Nayyar submits that once the lease in respect of an Aircraft is terminated or has expired, the registration of such Aircraft, in any event, is required to be cancelled by the Respondent/DGCA in accordance with law.

4.4 **Submissions of Mr. Amit Sibal, Senior Advocate:**

(i) Mr. Sibal submits that the Respondent/DGCA is in breach of its administrative duty under Cape Town Convention. Mr. Sibal also relies on the judgment in the *Awass* case, to submit that the act of deregistration is a ‘*ministerial*’ act which is to be carried out by the Respondent/DGCA under the provisions of the Aircraft Rules.

(ii) Mr. Sibal reiterates the urgency *qua* Aircraft MSN 6072 and submits



that the certificate of registration in respect of the said Aircraft had expired on 13.05.2023 and the certificate of air worthiness had expired on 17.05.2023 and in this regard, there are several overdue mandatory maintenance tasks for the Aircraft which can only be carried out by the representatives of the Petitioner and hence urgent interim relief is to be granted *inter-alia* to protect the Aircraft(s).

4.5 Submissions of Mr. Arun Kathpalia, Senior Advocate:

(i) Mr. Kathpalia submits that the expeditious deregistration of the Aircraft is necessary as the engine(s) of the Aircraft need to be maintained regularly. The attention of the Court has been drawn to the letter dated 06.03.2023 [which is annexed as Annexure P-16 in the case file of W.P.(C) 7214/2023] to submit that the Aircraft, i.e., Airbus A320NEO with MSN 7858 has been grounded since 12.03.2023 and is in the common bay area at the International Airport, and is not being maintained at all. Hence, urgent leave for the maintenance of the Aircraft is sought. It is submitted that 17 boxes of the documents *qua* this Aircraft as well as the engine of the Aircraft have already been returned to the Petitioner by Respondent/GoAir on 03.05.2023.

(ii) Mr. Kathpalia relies on Rule 3 (28A) of the Aircraft Rules to submit that now there is no uncertainty *qua* the definition of the IDERA and that it is the requisite document for the deregistration of the Aircraft.

(iii) Mr. Kathpalia additionally argues that Rule 30(7) of the Aircraft Rules employs the term "*shall*" in contrast to "*may*" in Rule 30(6). In this regard, reliance is placed on the Judgment of the Supreme Court in



*Wellington Associates Ltd v Kirit Mehta*² to submit that the legislature has deemed it fit to use the word “*may*” in Rule 30(6) and “*shall*” in Rule 30(7) and the provision has to be construed accordingly. Hence, in compliance with the Aircraft Rules, it is a mandatory obligation of Respondent/DGCA to deregister the Aircraft within a period of 5 days from the date of receipt of a Deregistration Application.

(iv) Mr. Kathpalia further submits that the Petitioner in this Writ Petition has not filed any appeal to the NCLAT and further the NCLAT has no jurisdiction over the Respondent/DGCA, so reliance by Respondents on the NCLT/NCLAT order is misplaced.

4.6 **Submissions of Mr. Mukul Rohtagi, Senior Advocate:**

(i) Mr. Rohtagi seeks to rely on Section 18(f) of IBC to submit that the moratorium can be imposed on an asset owned by the Corporate Debtor, but the Interim Resolution Professional/Resolution Professional [hereinafter referred to as ‘IRP’ or ‘RP’ (as the case may be)] has no right to take over the assets of a third party such as the Aircraft(s) of the Petitioners.

(ii) Relying on the Explanation (a) to Section 18 of the IBC, it submitted that the term “*assets*” as defined in Section 18 does not include “*assets*” owned by a third party held under trust or contractual agreement. The Aircraft are assets belonging to the Petitioners previously held under contractual agreement with Respondent/Go Air, and pursuant to the termination, no rights remain that can be exercised by an IRP/RP. Hence,

²(2000) 4 SCC 272



the provisions of Section 18 are not applicable to the Aircraft under Lease Agreement.

4.7 Submissions of Mr. Gaurav Mitra, Advocate:

Mr. Mitra, submits that the termination of Lease Agreements and the filing of Deregistration Application of the Aircraft was done, prior to the public announcement of the insolvency by the Respondent/Go Air through the IRP. The moratorium under Section 14 of the IBC protects only those “assets” that are available with the Corporate Debtor, on the date of the moratorium. Therefore, the Aircrafts will have to be deregistered.

4.8 Submissions on behalf of Mr. Nitin Sarin, Advocate:

Mr. Sarin submits that urgent interim directions are required to be passed so that the employees of Respondent/Go Air are prohibited from entry or access to the Aircraft, in any manner, other than for mandatory maintenance/engine runs of the Aircraft.

SUBMISSIONS OF RESPONDENT/GO AIR:

5. Learned Counsel for Respondent/Go Air were initially represented by the IRP and thereafter by the RP.

5.1 Submissions on behalf of Mr. Harish N. Salve, Senior Advocate:

(i) Mr. Salve submits that IBC is a complete code in itself, and the Tribunals constituted under the code, i.e., the NCLT and the NCLAT have exclusive jurisdiction to adjudicate upon the issues pertaining to insolvency and the corporate entities that are undergoing the CIRP.

(ii) Mr. Salve further submits that the decisions of the NCLT are



appealable before the NCLAT and the decisions of the NCLAT are appealable before the Supreme Court. While relying on the Order of the NCLAT dated 22.05.2023, he submits that as some of the Petitioners have already filed appeals before the NCLAT, and that the NCLAT have directed those Petitioners to approach the adjudicating authority under the IBC, i.e., the NCLT. Thus, the Petitioners cannot take an alternate remedy of filing a Writ Petition before a High Court for deregistration of their Aircrafts, as the remedy available to the Petitioners if they are aggrieved with the orders of NCLAT lies only before the Supreme Court.

(iii) Mr. Salve relies on Section 63 of the IBC to submit that the Civil Courts have no jurisdiction, if the NCLT or the NCLAT is already seized of the insolvency of a Corporate Debtor.

(iv) Relying on the judgment in the matter of *Anand Rao Korada Vs. Varsha Fabrics (P) Ltd. and Ors.*³, Mr. Salve further submits that the Supreme Court have time and again frowned upon the High Court when the proceedings under the IBC have been stalled or impeded.

(v) Mr. Salve submits that in terms of Section 14(1)(d) of the IBC, the moratorium as imposed prohibits recovery of any property by an owner or lessor whether such property is “occupied by” or “in possession of” the Corporate Debtor. Reliance in this regard is *inter-alia* placed on the extract judgment (paragraph 23) of the Supreme Court in the case of *Rajendra K. Bhutta vs. MHADA*⁴ to state that the Aircraft at present are in the

³(2020) 14 SCC 198

⁴AIR 2020 SC 3274



possession/occupation of Respondent/Go Air and hence the moratorium as imposed cannot be breached:

“23. The conspectus of the aforesaid judgments would show that the expression “occupied by” would mean or be synonymous with being in actual physical possession of or being actually used by, in contradistinction to the expression “possession”, which would connote possession being either constructive or actual and which, in turn, would include legally being in possession, though factually not being in physical possession. Since it is clear that the joint development agreement read with the deed of modification has granted a licence to the developer (corporate debtor) to enter upon the property, with a view to do all the things that are mentioned in it, there can be no gainsaying that after such entry, the property would be “occupied by” the developer. ...”

(vi) Mr. Salve also submits that if the Aircrafts are returned by the Respondent/Go Air to the Petitioners, there will be no assets left with the Respondent/Go Air, thus defeating the very object of the IBC that is to treat the Corporate Debtor as a “going concern”.

(vii) Mr. Salve further submits that part of the duties of the IRP is to take control and custody over the assets of the Corporate Debtor and Section 18(f)(vi) of the IBC also includes assets whose ownership is subject to determination by a Court or authority, which in the present circumstances would include the Aircraft as well. If the airline [i.e. Respondent/GoAir] is shut down and the Aircraft returned to the Petitioners, over 7,000 employees will be left without a job.

5.2 Submissions on behalf of Mr. Sandeep Sethi, Senior Advocate:

(i) Mr. Sethi, supplementing the arguments made by the Learned Senior Counsel, Mr. Harish N. Salve, and relying on the judgments as mentioned in



the compilation of the Judgments that was handed over in Court, submits that, the Lease Agreement pertain to contractual rights and obligations of the parties, and a Writ Court cannot adjudicate upon such contractual rights.

(ii) Mr. Sethi further submits that the Respondent/DGCA is covered under the term “*other authority*”, as set forth Section 14 (1) (a) of the IBC, therefore, a moratorium under the IBC will also apply to the Respondent/DGCA. He also submits that there is no definition of the term “*asset*” in the IBC and, the definition as envisaged under the Income Tax Act, 1960 can also be used. He relies on the extracted paragraph in Judgment of the Supreme Court in the case of *Victory Iron Works Ltd. v Jitendra Lohia & Anr.*⁵, in this regard as follows:

“28. As we have pointed out earlier, the word “asset” is not defined, either in IBC or in any of the seven enactments referred to in Section 3(37) of the Code. But the word “asset” is defined in Section 102(2) of the Income Tax Act, 1961 to include “property or right of any kind”. Though Section 102 applies as such to Chapter X-A of the Income Tax Act, the definition throws light on the fact that property or right of any kind is considered to be an asset.”

(iii) The Orders of the NCLT/NCLAT are “*orders in rem*” and have not been challenged by the Petitioners before any forum and that the Writ Court is not the appropriate remedy for its challenge.

5.3 Submissions on behalf of Mr. Ramji Srinivasan, Senior Advocate:

(i) Mr. Srinivasan, submits that the registration of an Aircraft is mandatory for it to be used and flown, and that the same is important for the Corporate Debtor, in this case the Respondent/Go Air, to treat the Corporate

⁵2023 scconline SC 260



entity as a “going concern”.

(ii) It is also submitted that termination of the Lease Agreement(s) would completely eliminate the existence of the Corporate Debtor, and hence all proceedings should be kept in abeyance till the IBC proceedings are finally adjudicated. Reliance is placed on the judgment of a Division Bench of this Court in *Tata Steel BSL Ltd. v. Venus Recruiter (P) Ltd.*⁶. Paragraph 62 of the *Tata Steel* case is reproduced below:

“62. In light of the aforesaid, it becomes evident that the phrase “arising out of” and “in relation to” is to be given wide import. Therefore, the Ld. Single Judge erred in holding the writ petition was maintainable. An appeal ought to have been preferred by Respondent No. 1 before the NCLAT under Section 61 of the IBC and the NCLAT itself was the appropriate forum to decide the controversy posed before the Ld. Single Judge.”

(iii) Mr. Srinivasan, further submits that the insolvency of a Party cannot be used as a smokescreen, resulting in termination of an Agreement between Parties. He relies on the Judgment of the Supreme Court in the case of *TATA Consultancy Services Ltd. v. SK Wheels (P) Ltd. (Resolution Professional)*⁷ in this regard.

(iv) Mr. Srinivasan submits that the IDERA is just a power of attorney with the Petitioner and in no way an acceptance or consent for deregistration of the Aircraft.

(v) Mr. Srinivasan also submits that as some of the Petitioners approached the NCLT/NCLAT and availed of their remedies, and seeking the same reliefs, those Petitioners cannot now approach this Court under the

⁶2023 SCC OnLine Del 155

⁷(2022) 2 SCC 583



garb of Article 226 of the Constitution. He also reiterates the judgment of the Supreme Court in the case of *Anand Rao Korada* case and *Abhilash Lal v Harsh Ghanhurde & Ors.*⁸ to submit that the jurisdiction of a Civil Court has been barred in various circumstances on matters in which the NCLT/NCLAT is empowered under the IBC to pass an order.

(vi) He further submits that Rule 32 A (Export of aircraft) and Rule 30 (7) (Deregistration of aircraft) of the Aircraft Rules should always be read together, and states that the safety of the Aircraft is of the utmost of importance and that the deregistration and the export of the Aircraft can only be done when the Aircraft is safe, subject to the Respondent/DGCA approvals.

6. **SUBMISSIONS OF RESPONDENT/DGCA:**

Submissions by Ms. Anjana Gosain, Advocate:

(i) Ms. Anjana Gosain submits that the Deregistration Applications were received either on the DGCA Portal and/or a hard copy was handed over by the Owners/Lessors of the Aircrafts as set out on the dates above.

(ii) Ms. Gosain, while acknowledging that there is no quarrel with respect to the mandatory imposition of deregistration under Rule 30 (7) of the Aircraft Rules, submits that proceedings *qua* on the Deregistration Applications commenced from 04.05.2023, however, the 5 working days as is envisaged in the provision had not lapsed when the CIRP Order on 10.05.2023 was passed by the NCLT. This affected the process of

⁸[Order dated 29.03.2023 in Civil Appeal No. 2405/2023]- Supreme Court of India



deregistration.

(iii) Ms. Gosain further submits that the Respondent/DGCA is required to comply with the directions of a Court and once the NCLT order was passed, the procedure for deregistration could not continue. In this regard, Ms. Gosain seeks to rely on Section 238 of the IBC to submit that the IBC has an overriding effect on all other laws and in the event of any inconsistency, the IBC is to prevail. It is contended that Respondent/DGCA is neither supporting the Lessor nor the Lessee, they are just performing their duties in accordance with law.

7. REJOINDER SUBMISSIONS ON BEHALF OF THE PETITIONERS:

7.1 In Rejoinder, learned Senior Counsel(s): Mr. Mukul Rohtagi, Mr. Rajiv Nayyar, Mr. Dayan Krishnan, Mr. Arun Kathapalia and Mr. Amit Sibal, made submissions as below:

(i) The inherent powers of this Court under Article 226 cannot be curtailed by the IBC or other statute. In any event, the Petitioners in W.P.(C) 7214/2023 and W.P. (C) 7663/2023 have only approached this Court under the Writ Jurisdiction and did not approach the NCLT/NCLAT.

(ii) The termination of the Lease Agreement is not a result of the Insolvency of the Respondent/Go Air, but it is because of the repeated defaults in payment of lease rentals in respect to the Aircraft leased to Respondent/Go Air. In fact, some payments have not been made since the year 2020.



(iii) Admittedly, the Aircrafts are grounded as the Lease Agreements are terminated, therefore, a huge financial loss running into several crores would be caused to the Petitioners if the maintenance *qua* the Aircrafts is not done regularly. It is further submitted that the Petitioners for the time-being are only seeking interim relief *qua* maintenance and preservation of the Aircraft.

(iv) The Petitioners had issued 10 termination notices prior to the date of moratorium i.e., 10.05.2023. Under Aircraft Rules, the Respondent/DGCA is obligated to perform its statutory duties and when a Deregistration Application is received by the Respondent/DGCA, the Respondent/DGCA is bound to deregister the Aircraft. There is no concept of keeping the Deregistration Applications in abeyance as has been sought to have been done by Respondent/DGCA.

(v) The Petitioners aren't seeking recovery of money from the Corporate Debtor, but are seeking deregistration under a separate statute, i.e., the Aircraft Act and Rules thereunder. It is further submitted that for the applicability of Section 14 of the IBC, the property is to either be in '*occupation of*' or the '*possession of*' the Corporate Debtor, however, in this case, the property, i.e., the Aircraft is neither occupied and nor in constructive or other possession of the Respondent/Go Air.

(vi) The Petitioners seek to rely on the judgment of the Supreme Court in *Embassy Property Developments Pvt. Ltd. v. State of Karnataka &Ors*⁹, *inter-alia* to submit that the term 'possession' referred to under Section

⁹(2020) 13 SCC 308



14(1)(d) of the IBC refers only to legal possession and not forced/illegal possession.

(vii) Relying on, Section 5(11) and 5(12) of the IBC, it is further submitted that there is a difference between (Insolvency) initiation date and Insolvency commencement date. Insolvency proceedings may have been initiated prior to the date of the filing of the Deregistration Application but the Commencement Date of the Insolvency is the date when the NCLT admits the Application, which is 10.05.2023. Therefore, as the termination of Lease Agreement(s) and Deregistration Applications were filed prior in time, the Moratorium as imposed would not apply to the Petitioner.

(viii) The Respondent/DGCA is not a civil Court/Arbitrator but a statutory body which should perform its obligatory duties by de-registering the Aircrafts.

ANALYSIS:

8. I have heard the learned Senior Counsels and learned Counsels appearing for the Parties. The prayers made in the Petitions which are pending adjudication are similar to the extent that all 8 Petitioners pray for issue of a Writ of mandamus to Respondent/DGCA to direct deregistration of the respective Aircrafts owned by them [the details of which are set forth in the paragraph 3.2 above], and also to facilitate the export and physical possession of these Aircrafts.

8.1 Pending disposal of the present Petitions, the Petitioners have prayed that they be granted interim relief, with a view that these Aircrafts which are



no longer in a position to be operational or used for flying, be preserved. It is contended by the Petitioners that if the mandatory maintenance and preservation tasks are not regularly carried out, the Aircraft will become unworthy of flying and as such, the Petitioners will incur losses to the tune of several hundred thousand US Dollars.

8.2 Although, the parties before the Court have almost substantially argued the matter, the Court by this judgment, is deciding the interim applications as filed by the Petitioners.

9. CM No. 32445/2023 in W.P.(C) 7774/2023 was filed on 05.06.2023, i.e., after Judgment in the Application seeking Interim relief was reserved. It was contended by the learned Counsel for the Petitioner in the matter that the Application seeking Interim Relief was not filed on account of an inadvertent oversight of the offices of the Learned Counsel for the Petitioner in W.P.(C) 7774/2023. For the reasons as set forth in order dated 03.07.2023, this Application was also reserved for Judgment.

10. One of the salient features of the Lease Agreement(s) as executed by the Petitioners was that, in the event of default in payment of lease rental, the Petitioners would have the right to terminate the Lease Agreement(s) and to retake possession of the Aircraft.

10.1 *Inter-alia* in terms of the Lease Agreement(s), the following were set forth as the events of default: *Non-payment of lease rental; Voluntary Bankruptcy; and Involuntary Bankruptcy.*

10.2 Clauses 12.1 and 12.4 sets forth these events as under :-



12.1 Payments

(i) Lessee fails to make payment of any Scheduled Amount to Lessor when due and such failure continues for five Business Days from the date when the same became due; or"

.....

12.4 Involuntary Bankruptcy, Etc.

A proceeding is commenced or a petition is filed, in either case, without the consent or application of Lessee, seeking (1) relief in respect of Lessee or of substantially all of its property or assets under any applicable bankruptcy, insolvency, liquidation, administration, receivership or similar Law, including any equivalent proceedings in Lessee Jurisdiction, (2) the appointment of a conciliator, receiver, trustee, custodian, administrator, sequestrator, examiner, insolvency resolution professional or similar official for Lessee or for substantially all of its property or assets, or (3) the liquidation, reorganization, dissolution, administration, examinership, corporate insolvency resolution process or winding up of Lessee, and such proceeding or petition continues undismissed for 60 days, save in respect of any frivolous or vexatious petition, which Lessee is contesting in good faith by appropriate proceedings and in respect of which adequate reserves have been made available by Lessee;....."

10.3 Admittedly, the Respondent/Go Air was in default of its rental payment obligations under the Lease Agreements *qua* all 8 Petitioners.

10.4 Amongst the remedies available to a Lessor, pursuant to an event of default as provided under the Lease Agreement(s), is de-registration by the Aviation Authority, i.e., the Respondent/DGCA and export of the Aircraft out of the Respondent/GoAir's jurisdiction. Clause 13.1.3 of the Lease Agreement(s) in this regard provides as follows:

"13.1.3 Specific Remedies

Without limiting the generality of the foregoing Lessor will have the right:

...

...(4) without need of any consent, authorization or action of Lessee, to cause the Aircraft to be deregistered by the Aviation Authority, and to be



made ready for export and to be exported out of the country where the Aircraft is for the time being situated and the Lessee Jurisdiction, and to cause all rights of Lessee in respect of the Aircraft and this Lease Agreement and each other Operative Document under or in connection with or resulting from the registration of the Aircraft or the recordation of the Operative Documents with the Aviation Authority or otherwise, to be terminated and extinguished, and thereafter to notify Lessee of the same;....”

10.5 Therefore, in view of the unambiguous provisions of the Lease Agreement, the Petitioners had the authority to apply for deregistration of the Aircraft by filing an Application with the Aviation Authority, without the consent of the Lessee, which is what was done by them.

11. The provisions of the Aircraft Act, 1934 and the Aircraft Rules *inter-alia* provide that no person shall use and operate an Aircraft unless it is in accordance with the Aircraft Rules.

11.1 Rule 5 of the Aircraft Rules provides for the registration etc. of an Aircraft and states that unless an Aircraft has been registered and it bears its nationality and registration marks on the Aircraft, it shall not be flown.

11.2 The registration and marking of an Aircraft is provided for in Rule 30 of the Aircraft Rules. The relevant extract reads as follows:

“30. Certificate of Registration –

(1) ...

(2).An aircraft may be registered in India in either of the following categories, namely:—

Category A—Where the aircraft is wholly owned either—

(i)....

...

(iv) by a company or corporation registered elsewhere than in India:



Provided that such company or corporation has given the said aircraft on lease to any person mentioned in sub-clause (i), sub-clause (ii) or sub-clause (iii); and]...”

11.3 Rule 30(6)(iv) of the Aircraft Rules provides as follows:

(6) The registration of an aircraft registered in India may be cancelled at any time by the Central Government, if it is satisfied that –

(i)

.....

(iv) the lease in respect of the aircraft, registered in pursuance of sub-clause (iv) of clause (a) of sub-rule (2) [has expired or has been terminated in accordance with terms of lease or];”

[Emphasis supplied]

11.4 Thus, once an event of default has occurred and the Petitioners’ have terminated the Lease Agreement(s) and commenced the process of de-registration of the Aircraft, such Aircraft cannot be flown.

12. The arguments of the Petitioners can, thus be summed up as follows:

(i) The provisions of Rule 30 (7) of the Aircraft Rules makes it mandatory for deregistration of Aircraft, once the requisite documentation is provided by the Applicant.

(ii) The assets belonging to a third party are specifically excluded under the provisions of the Explanation (a) to Section 18 of the IBC and that the provisions of Section 14 of the IBC cannot be made applicable in such cases.

(iii) Once a Lease is terminated, the lessor [Petitioners herein] are in *de facto* possession of the Aircraft and as such, the Aircraft is not operational in terms of the Aircraft Rules. However, there then is an imminent danger to



the very valuable asset of the Petitioners being irreparably damaged on account of non-conduct of the maintenance activities.

(iv) The five working days *qua* Deregistration Application would expire on 09.05.2023 in the matters where Petitioners had sent the notice for termination on 02.05.2023 and on 10.05.2023, where the Termination Notice was sent on 03.05.2023. However, the Respondent/DGCA has failed to comply with the provisions of the Aircraft Rules up to the date of filing of the present Petitions.

13. The Respondent/DGCA while contesting the Petitions has, in sum, submitted that it is unable to deregister the 30 Aircraft of the Petitioners on account of the moratorium as imposed by the NCLT by its order dated 10.05.2023 and that it has informed the Petitioners of the same *inter-alia* by its communication dated 12.05.2023.

14. The Respondent/Go Air, represented by IRP/RP and has briefly raised the following objections to the present Petitions:

(i) The Petition is not maintainable in view of the fact that the Order of the NCLT dated 10.05.2023 was challenged before the NCLAT and the NCLAT has not interfered with such order. The right, if any, to challenge these orders lies before the Supreme Court, if the Petitioners are aggrieved by the orders of the NCLAT.

(ii) The settled law is that the Courts do not interfere with the proceedings under the IBC where a moratorium is imposed and that the Petitioners may approach the NCLT in terms of the provisions of the IBC for adjudication of its disputes with Respondent/Go Air Airlines/RP. This



Court in its Writ jurisdiction cannot go into disputed questions of fact, as are apparent in the present case.

(iii) The issues raised by the Petitioners ought to be considered by the NCLT and the Petitioner is barred from pursuing parallel proceedings in view of the findings by the Supreme Court in the *Anand Rao* case.

(iv) The provisions of Section 14(1)(a) and Section 14(1)(d) read with Section 238 of the IBC prohibit the initiation or continuation of proceedings against the Corporate Debtor and the Petitioners are barred from recovery of any property when such property is occupied by or in possession of the Corporate Debtor.

(v) In the event, the assets of the Corporate Debtor are alienated in the pendency of the proceedings, pertaining to the IBC, it would seriously jeopardise the interest of all stakeholders of the Corporate Debtor (Go Air Airlines) herein.

15. The purport of Rule 30 (7) of the Aircraft Rules has been dealt with by a Coordinate Bench of this Court in the *Awaz* case wherein after analysis of the provisions of the Aircraft Rules, this Court held that the Respondent/DGCA has to proceed in accordance with Rule 30 (7) of the Aircraft Rules and the Court cannot interfere even on grounds of equity; keeping in mind, the protection of private business transaction law in India, international conventions such as Cape Town Convention must be followed; the disputes *qua* validity of the termination of the lease are not relevant for the purposes of deregistration and the contention that public interest will be impinged if the deregistration is granted is not a valid ground for refusal.



15.1 It is apposite to refer to the following extracts of the *Awas* case in this regard below:

“22.4 A bare reading of the aforesaid would show that with the insertion of sub-rule (7) in Rule 30, the doubt, if any, as to whether the DGCA had any discretion in the matter has got removed. **Upon the creditor fulfilling the conditions prescribed in clause (i) and (ii), of sub-rule (7), of Rule 30, the DGCA is mandatorily required to cancel the registration.**

22.4[sic:22.5]Therefore, **keeping in mind the aforesaid, in my view, a mandamus shall issue to the DGCA to act in a particular manner, as the conditions prescribed for acting in that manner, as required by law, stand fulfilled.** Any other **direction would** only frustrate the object and purpose with which the amendment has been brought about in Rule 30. I am, thus, **persuaded to direct the DGCA to de-register the aircraft objects, which are subject matter of the captioned writ petitions.**

.....

25.4 There is another aspect, which has to be kept in mind, while dealing with such like matters; which is that, a court ought not to proceed in a manner which retards funnelling of much needed private finance for business transactions in India. This is not to say where legitimate legal rights surface under the Municipal Law, the court would ignore them. **Sans such legitimate legal rights, the courts must prod the concerned statutory authorities to act in consonance with the provisions of international conventions, to which the contracting State is a party.** [see *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 and *Jolly George Varghese v. The Bank of Cochin* (1980) 2 SCC 360].

26. In passing, a reference was also made to the fact that the issue with regard to the petitioners' entitlement to terminate the lease agreements, would require determination by a competent court of law, and therefore, no relief could be given in the present petitions. **This argument, in my view, is misconceived, because it ignores the provisions of Convention and the Protocol, which proceed on documentary evidence vis-a-vis the remedy sought under Article IX of the Protocol. Upon fulfilment of the ingredients set out in Article IX of the Protocol, the petitioners become entitled to the reliefs encapsulated therein. Entitlement to termination of the subject lease agreements is not an ingredient of Article IX of the Protocol. All that the petitioners have to demonstrate qua this aspect, is**



that, they have exercised their right under IDERA, and thus, proceeded to terminate the subject lease agreements. There is no dispute that this aspect has been taken care of by the petitioners. The submission is, accordingly, rejected.

27. I am also not impressed by the submissions advanced on behalf of the Spicejet that **de-registration and/or re-possession of the aircraft objects would impinge upon public interest.** As indicated above, there is as much if not more public interest in ensuring that treaty obligations are honoured, and that, the parties adhere to their respective contractual obligations. The very fact that India has ratified the Convention and Protocol, gives rise to the presumption that it has been done in, the larger public interest, as against a narrow interest of one particular airline. The argument that passages have been booked with Spicejet, does not improve the case put forth by the respondents as this is a risk that every unsecured creditor will take vis-a-vis its transactions with the airline. This interest cannot come in the way of a larger public interest, which is the obligation undertaken by the contracting State to honour its commitments under the Convention and the Protocol.”

[Emphasis supplied]

16. Under sub-section (4) of Section 14 of IBC, an order for moratorium has effect from the date of such order till the completion of the CIRP as follows:-

"14. Moratorium

(1)

(4) **The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:**

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

[Emphasis supplied]



16.1 There is no dispute that the order of moratorium in this case was passed by NCLT on 10.05.2023, hence, it came into effect from 10.05.2023.

16.2 The Respondent/Go Air has relied upon on the Judgment in the case of **Rajendra K. Bhutta** case to argue that Section 14(1)(d) of the IBC prohibits recovery of any property where such property is occupied by or in possession of the corporate debtor. The Judgment of the Supreme Court is, however distinguishable on facts. In the **Rajendra K. Bhutta** case, the termination notice to the corporate debtor was issued after the CIRP had already commenced, a few months earlier. A similar position was there in the **Anand Rao Korada** case as the order of the Court in selling assets of the corporate debtor was after the imposition of the moratorium.

16.3 Further, and in any event, upon termination of the Lease Agreements by the Petitioners, constructive possession of all 30 Aircrafts was taken by the Petitioners on 02/03.05.2023, in terms of the provisions of the Lease Agreements.

16.4 The argument which is raised by the Respondents *qua* adjudication of the disputes before the NCLT and that this Court under its inherent powers in Article 226 of the Constitution of India, 1950, should not interfere with the CIRP process, cannot be sustained. The Petitioners before the Court seek a writ of mandamus against the Respondent/DGCA for breaching its duty as prescribed in the Aircraft Act and are well within their rights to do so. The scope and ambit of the powers of this High Court under Article 226 has been the subject matter of a catena of judgments. The principles of law therein have been succinctly enunciated in the judgment of the Supreme



Court in the case of ***Radha Krishan Industries v. State of H.P.***¹⁰ as follows :-

"27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with..."

¹⁰(2021) 6 SCC 771



16.5 As discussed hereinabove, the provisions *qua* registration/deregistration of an Aircraft are *inter-alia* subject matter of the Aircraft Act and Aircraft Rules framed thereunder and the Petitioners have approached this Court alleging on a failure of the Respondent/DGCA to comply with these provisions and are well within their rights to do so.

16.6 The NCLT and the NCLAT are statutory bodies constituted under the provisions of Sections 408 and 410 respectively of the Companies Act, 2013 and have the powers to adjudicate upon matters which relate to the IBC.

16.7 This Court agrees with the submissions of the Petitioners that the NCLT does not have the power of judicial review over administrative action. Reliance is placed upon on the following extract of the *Embassy* case :-

*"29. Therefore as rightly contended by the learned Attorney General, the decision of the Government of Karnataka to refuse the benefit of deemed extension of lease, is in the public law domain and hence the correctness of the said decision can be called into question only in a superior court which is vested with the power of judicial review over administrative action. **The NCLT, being a creature of a special statute to discharge certain specific functions, cannot be elevated to the status of a superior court having the power of judicial review over administrative action. Judicial review, as observed by this Court in Sub-Committee on Judicial Accountability v. Union of India** [Sub-Committee on Judicial Accountability v. Union of India, (1991) 4 SCC 699] **flows from the concept of a higher law, namely, the Constitution.** Para 61 of the said decision captures this position as follows : (SCC pp. 738-39)*

"61. But where, as in this country and unlike in England, there is a written Constitution which constitutes the fundamental and in that sense a "higher law" and acts as a limitation upon the legislature and other organs of the State as grantees under the Constitution, the usual incidents of parliamentary sovereignty do not obtain and the concept is one of "limited government".



Judicial review is, indeed, an incident of and flows from this concept of the fundamental and the higher law being the touchstone of the limits of the powers of the various organs of the State which derive power and authority under the Constitution and that the judicial wing is the interpreter of the Constitution and, therefore, of the limits of authority of the different organs of the State. It is to be noted that the British Parliament with the Crown is supreme and its powers are unlimited and courts have no power of judicial review of legislation."

30. *The NCLT is not even a civil court, which has jurisdiction by virtue of Section 9 of the Code of Civil Procedure to try all suits of a civil nature excepting suits, of which their cognizance is either expressly or impliedly barred. **Therefore NCLT can exercise only such powers within the contours of jurisdiction as prescribed by the statute, the law in respect of which, it is called upon to administer.....**"*

[Emphasis supplied]

17. The 30 Aircrafts are 'assets' owned by the Petitioners which were previously under a contractual agreement i.e., the Lease Agreement(s) with the corporate debtor. Explanation (a) to Section 18 of IBC excludes assets owned by a third party in trust or contractual agreement as follows:-

"18. *Duties of interim resolution professional.—(1) The interim resolution professional shall perform the following duties, namely—*

(a)

....

(g)

*Explanation.—For the purposes of this[section], the term "**assets**" shall **not** include the following, namely—*

(a) **assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;**

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator."

[Emphasis supplied]



17.1 Thus, *prima facie*, the IRP is not required to take control of the same under the provisions of the IBC.

18. The Petitioners have submitted that the Aircrafts at present are lying parked in a general common bay area for Aircrafts around the Country including at the International Airports at Delhi and Mumbai. These Aircrafts also contain documents, records, materials and highly valuable accessories which may be accessed by third parties. These documents, records, materials, accessories and parts of the Aircrafts could be removed and/or damaged, so as to cause huge losses to the Petitioners. Further, the Aircraft MSN 7858 does not contain an engine or the Auxiliary Power Unit of the Aircraft, and hence is inoperable. 17 boxes of documents required for the maintenance of this Aircraft are also not in possession of the Respondent/GoAir, being already returned to the Lessor - Pembroke Aircraft Leasing 11 Limited on 03.05.2023.

19. The Petitioners have made out a strong *prima facie* case in view of the provisions of the Aircrafts Rules as discussed herein. The balance of convenience is also in favour of the Petitioners. The Petitioners are suffering irreparable losses as the value of these Aircrafts are diminishing on a daily basis.

20. There can also be no denial of the fact that the Aircrafts of the Petitioners are extremely valuable and highly sophisticated equipment and require regular maintenance for their preservation.

20.1 Therefore, with a view to obviate any further losses, the following directions are being passed:



- (i) The Petitioners, their employees, agents, officers and/or representatives shall be permitted by the Respondent/DGCA and the appropriate Airport Authorities to access the Airport(s) where the 30 Aircrafts are parked [details of the Aircraft(s) is reproduced in the table in paragraph 3.2 herein] *inter alia* to inspect their respective Aircrafts, within the next 3 days;
- (ii) The Petitioners, their employees, agents, officers and/or representatives shall be permitted to carry out inspection and all maintenance tasks of the Aircraft, its engines and other parts and components, of all 30 Aircrafts [as are set forth in table at paragraph 3.2 herein], at least twice every month, until the final disposal of the Writ Petitions;
- (iii) Respondent/GoAir, its directors, employees, agents, officers and or representatives or the IRP/RP(s) or any person acting on their behalf, are hereby restrained from removing, replacing, taking out any accessories, parts, components or spares, etc. or any relevant operational or other Manuals /records, documentation from any of the 30 Aircraft, except with prior written approval of the Lessor of such Aircraft;
- (iv) **The following additional directions shall be applicable to Aircraft MSN 6072:**

Respondent/DGCA shall permit the Respondent/RP to carry out the mandatory maintenance/engine runs of this Aircraft until its de-registration.

21. These directions are passed *qua* the interim applications and shall not impact the merits of these Petitions.



22. Interim Applications: CM Nos. 25806/2023, CM Nos. 26011/2023, CM Nos. 30784/2023, CM Nos. 28705/2023, CM Nos. 29679/2023, CM Nos. 29997/2023, CM Nos. 32445/2023 and CM Nos. 31155/2023 are accordingly disposed of.
23. Pleadings in the Writ Petitions being W.P.(C) Nos. 6569/2023, W.P.(C) Nos. 6626/2023, W.P.(C) Nos. 7214/2023, W.P.(C) Nos. 7369/2023, W.P.(C) Nos. 7663/2023, W.P.(C) Nos. 7773/2023, W.P.(C) Nos. 7774/2023 and W.P.(C) Nos. 8088/2023 be completed in the meantime as is stated in orders dated 01.06.2023 and 05.07.2023.
24. Parties shall act based on the digitally signed copy of the judgment.

(TARA VITASTA GANJU)
JUDGE

JULY 05, 2023
r/ha/yg

सत्यमेव जयते