

# Pembroke Aircraft Leasing 11 Limited vs Directorate General Of Civil Aviation & ... on 26 April, 2024

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved

Judgment pronounced on:

+ W.P.(C) 6569/2023 & CM APPL. 36850/2023  
ACCIPITER INVESTMENTS AIRCRAFT  
2 LIMITED

versus

+ UNION OF INDIA & ANR.  
W.P.(C) 10327/2023  
BLUESKY 31 LEASING COMPANY LIMITED..... Petitioner  
versus

+ DIRECTORATE GENERAL OF CIVIL AVIATION  
& ORS.  
W.P.(C) 6626/2023 & CM APPL. 36930/2023  
EOS AVIATION 12 (IRELAND) LTD.  
versus

+ UNION OF INDIA & ANR.  
W.P.(C) 7214/2023, CM APPL. 37054/2023 & CM APPL.  
36915/2023  
PEMBROKE AIRCRAFT LEASING 11 LIMITED... Petitioner  
versus

+ DIRECTORATE GENERAL OF CIVIL AVIATION  
& ORS.  
W.P.(C) 7369/2023, CM APPL. 36931/2023 & CM APPL.  
38321/2023  
SMBC AVIATION CAPITAL LIMITED AND

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W.P.(C)6569/2023 & other connected matters

ORS

..... Peti

versus

+ UNION OF INDIA AND ORS  
W.P.(C) 7663/2023, CM APPL. 36929/2023  
DAE SY 22 13 IRELAND DESIGNATED ACTIVITY  
COMPANY

..... Respond

versus

+ UNION OF INDIA AND ORS  
W.P.(C) 7773/2023 & CM APPL. 36891/2023  
SFV AIRCRAFT HOLDINGS IRE 9 DAC  
LIMITED

..... Respond

versus

UNION OF INDIA THROUGH THE MINISTRY OF CIVIL

..... Peti

AVIATION & ORS. .... Respond

+ W.P.(C) 7774/2023 & CM APPL. 36909/2023, 53422/2023  
ACG AIRCRAFT LEASING IRELAND LIMITED... Petitioner  
versus  
UNION OF INDIA & ORS. .... Respon

+ W.P.(C) 10386/2023  
BLUESKY 19 LEASING COMPANY LIMITED ..... Petitioner  
versus  
DIRECTORATE GENERAL OF CIVIL AVIATION  
& ORS. .... Respond

+ W.P.(C) 8088/2023 & CM Appls.36928/2023  
GY AVIATION LEASE 1722 CO LIMITED

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& ORS ..... Peti

versus  
UNION OF INDIA THROUGH THE MINISTRY OF CIVIL  
AVIATION & ORS. .... Respondent

+ W.P.(C) 9432/2023  
BOC AVIATION (IRELAND) LIMITED ..... Petiti

versus  
DIRECTORATE GENERAL OF CIVIL AVIATION  
AND ORS ..... Respondent

+ W.P.(C) 9594/2023 & CM APPL. 39368/2023  
JACKSON SQUARE AVIATION IRELAND  
LIMITED ..... Petiti

versus  
DIRECTORATE GENERAL OF CIVIL AVIATION  
AND ORS. .... Respondent

+ W.P.(C) 9900/2023  
SKY HIGH XCV LEASING COMPANY LIMITED  
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+ W.P.(C) 9901/2023  
STAR RISING AVIATION 13 LIMITED ..... Petiti

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

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Advocates who appeared in this case:

For the Petitioners/ Lessors: Mr Mukul Rohtagi, Mr Rajiv Nayya, Mr. Dayan Krishnan, Mr. Arun Kathpalia, Mr Kevic Setalvad, Mr Satvik Varma, Mr Amit Sibal, Sr. Advocates with Mr. Ravi Nath, Ankur Mahindro, Mr Nitin Sarin, Mr. Rohan Taneja, Mr. Pranaya Goyal, Mr. Aditya Kapur and Mr. Mehul Jain, Mr Ameya Gokhale, Meghna Rajadhyaksha, Mr. Vaijayant Paliwal, Ms. Medha Sachdev, Mr. Rishabh Jaisani, Ms. Riay Basu, Mr. Harit Lakhani, Ms. Meh Nayak, Mr. Ajay Kumar, Mr. Hetram Bishnoi, Ms. Anchal Nanda and Mr. Ambarish Deenadhayalraj, Advs. Ms. Marylou Bilawala, , Mr. Dhruv Khanna, Ms. Sharleen Lobo, Mr. Chiranjivi Sharma, Ms. Pr Desai, Ms. Apoorva Kaushik, Mr. Vasu Gupta, Ms. Saakshi Malpek Ms. Nehal Gupta and Mr. Uday Mathur. Mr. Nimish Vakil, Mr. Ami Pai, Ms. Bhavana Duhoon, Mr. Anshul Syal and Mr. Abhiyudaya Va Mr Mukul Katyal, Ms Priyam Jinger, Mr. Soumil Gonsalves, Mr. Hetram Bishnoi and Ms. Aanchal Nanda, Advocates.

For the Respondent/DGCA and Respondent/UOI: Mr Vikarmjeet Banerjee and Mr. Chetan Sharma Additional Solicitor General of with Ms. Anjana Gosain and Ms. Nippun Sharma, Mr Rajesh Gogna, Ms. Avshreya Pratap Singh Rudy, Mr. Amit Acharya, Mr Apurv Kar with Mr Naveen Kapoor, Law Officer (DGCA).

For the Respondent/RP of Go Airlines: Mr Neeraj Kishan Kaul, S Advocate with Mr. Diwakar Maheshwari, Mr. Pratiksha Mishra, Mr Vishnu Sriram, Mr. Shreyas Edupugnati, Mr. Pratibha Agarwal and K. Lakshmi, Advocates.

For the Respondents/Airports Authority of India: Mr. Digvijay Standing Counsel with Mr. Archit Mishra and Mr. Vivek Gupta, Advocates.

For the Intervenor/CoC: Mr. Gopal Jain, Sr. Advocate with Mr. Dheeraj Nair, Mr. Angad Baxi, Ms. Vishrutyi Sahni and Ms. Stan Dolker, Advocate.

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CORAM:

HON'BLE MS JUSTICE TARA VITASTA GANJU

JUDGMENT

TARA VITASTA GANJU, J.:

## PREFACE:

1. This Judgment shall dispose off the 14 Petitions filed by the Petitioners. The Petitioners/Lessors here are the lessors and owners of Aircraft [hereinafter referred to as "Petitioners/Lessors"] 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 "Respondent/RP of Go Air"] appointed by an order of the National Company Law Tribunal, Special Bench, New Delhi [hereinafter referred to as "NCLT"].

2. The principal grievance of the Petitioners/Lessors as articulated in the present Petitions is 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"].

## FACTUAL MATRIX:

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

3.1 Separate Lease Agreements were entered between Respondent/Go Air and the Petitioners/Lessors to lease one or more Aircraft to Respondent/Go Air, on the terms and conditions as set forth therein [hereinafter referred to as "the Lease Agreements"]. In all, Respondent/Go Air had leased 54 Aircraft from these 14 Petitioners/Lessors for a period of 10 years each commencing on the date as set forth in the table in Paragraph 3.2.

3.2 For ease of reference, relevant details with respect to the Petitioners/Lessors are reproduced below:

S.No. Petition No. & Details of the Lease IDERA Lease Date of De-

	Case Title	Aircraft Leased	Agreement Date(s)	Date
1	WP(C) 6569/2023- ACCIPITER INVESTMEN TS AIRCRAFT 2 LTD V UOI	Airbus A320-214 MSN 5811 IRM VT-G00	04.10.13	23.0
2	WP(C) 6626/2023- EOS AVIATION 12 (IRELAND) LTD. Vs. UOI	AirbusA320-271N MSN 11111 IRM VT-WDB	08.09.22	03.1
3	WP(C) 7214/2023- PEMBROKE AIRCRAFT LEASING 11 LTD VS DGCA AND ORS	Airbus A320NE0 MSN 7858 IRM VT-WGN	02.05.18	04.0
4	WP(C) 7369/2023- SMBC AVIATION	Airbus A320-214 MSN 5675 IRM VT-GON Airbus A320-271N	24.07.13 02.05.16	25.0 25.0

		CAPITAL LIMITED AND ORS Vs. UNION OF	MSN 7047 IRM VT-WGA Airbus A320-271N MSN 7074	02.05.16	20.0
		INDIA AND ORS	IRM VT-WGB Airbus A320-271N MSN 8498 IRM VT-WGY Airbus A320-214 MSN 5990 IRM VT-G0Q Airbus A320-271N MSN 8656 IRM VT-GOP Airbus A320-214 MSN 5809 IRM VT-WGA Airbus A320-271N MSN 7330 IRM VT-WGE Airbus A320-214 - MSN 6072 IRM VT-GOR Airbus A320-271N MSN 7205 IRM VT -WGD Airbus A320- 271N MSN 11160 IRM VT -WDD Airbus A320- 271N MSN 11052 IRM VT -WDA	09.10.18 30.10.18 09.10.18 30.09.12 24.01.17 01.05.14 01.12.16 08.08.22	23.10 13.02 27.12 13.03 24.01 28.12 06.12 18.01
5		WP(C) 7663/2023- DAE SY 22 13 IRELAND DESIGNATE D ACTIVITY COMPANY Vs. UOI & ORS	MSN 11160 IRM VT -WDD Airbus A320- 271N MSN 11052 IRM VT -WDA	[for both aircraft]	[for aircr
6		WP(C) 7773/2023- SFV AIRCRAFT HOLDINGS IRE 9 DAC LIMITED Vs. UOI THROUGH	Airbus A320 -271N MSN 11130 IRM VT-WDC	05.08.22	11.10

DGCA& ORS.

7	WP(C) 7774/2023- ACG AIRCRAFT	Airbus A320-271N MSN 7594 IRM VT-WGI Airbus A320-271N	16.11.17 [For all Aircraft]	26.07   01.08
	LEASING IRELAND LIMITED Vs. UNION OF INDIA & ORS.	MSN 7737 IRM VT-WGJ Airbus A320-271N MSN 7753 IRM VT-WGK Airbus A320-271N MSN 7859 IRM VT-WGM		09.10.   06.09.
8	WP(C) 8088/2023- GY AVIATION LEASE 1722 CO LIMITED & ORS. Vs. UOI	AirbusA320-271N MSN 7813 IRM VT-WGL Airbus A320-271N MSN 8146 IRM VT-WGP Airbus A320-271N MSN 8152 IRM VT-WGQ Airbus A320-271N MSN 8209 IRM VT-WGR Airbus A320-271N MSN 8273 IRM VT-WGS Airbus A320-271N MSN 8382 IRM VT-WGT Airbus A320-271N MSN 8458 IRM VT-WGV Airbus A320-271N MSN 8464 IRM VT-WGW Airbus A320-271N MSN 8482 IRM VT-WGX Airbus A320-271N MSN 8503 IRM VT-WGZ	16.11.17   11.05.18   11.05.18   17.07.18   17.07.18   30.08.18   11.05.18   11.05.18   11.05.18   18.10.18	18.10. [For a Aircra
9	W.P. (C)	Airbus A320NE0	21.12.19	24.12.



	9432/2023	MSN 9332		
	BOC	IRM T-WJO		
	AVIATION			
	(IRELAND)			
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10	W.P. (C)	Airbus	19.07.16	31.10
	9594/2023	A320NEO		
	JACKSON	MSN 7172		
	SQUARE	IRM VT-WGC		
	AVIATION	Airbus	19.07.16	11.0
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	LIMITED v	MSN 7507		
	DGCA	IRM VT-WGF		
		Airbus	02.10.17	03.1
		A320NEO		
		MSN 7563		
		IRM VT-WGG		
		Airbus	02.10.17	03.1
		A320NEO		
		MSN 7571		
		IRM VT-WGH		
		Airbus	08.11.18	29.1
		A320NEO		
		MSN 8613		
		IRM VT-WJB		
		Airbus	08.11.18	19.1
		A320NEO		
		MSN 8621		
		IRM VT-WJC		
		Airbus	08.11.18	19.1
		A320NEO		
		MSN 8643		
		IRM VT-WJD		
		Airbus	16.11.18	19.1
		A320NEO		
		MSN 8650		
		IRM VT-WJE		
11	W.P. (C)	Airbus A320 -271N	12.04.2019	03.0
	9900/2023	MSN 8583 VT-		
	SKY HIGH	WJA		
	XCV	Airbus A320-	12.04.2019	15.0
	LEASING CO. 271N-	MSN 8720		
	LTD. & ANR VT-WJG			
	v UOI through Airbus A320-		12.04.2019	03.0

	DGCA	271N MSN 8736 VT-WJH Airbus A320- 271N MSN 8445 VT-WGU Airbus A320- 271N MSN 8757 VT-WJI Airbus A320- 271N MSN 8850	12.04.2019	22.1
			12.04.2019	04.0
			12.04.2019	31.0
12	W.P.(C) 9901/2023 STAR RISING AVIATION 13 LIMITED v UOI through DGCA	VT-WJK Airbus A320-271N MSN 9264 VT- WJN Airbus A320- 271N MSN 9358 VT-WJP Airbus A320- 271N MSN 9375 VT-WJQ Airbus A320- 271N MSN 8785 VT-WJR	14.10.2019	14.1
			14.10.2019	07.1
			14.10.2019	18.1
			09.12.2019	10.1
13	W.P.(C) -  BLUESKY 31 LEASING COMPANY LIMITED V DGCA	Airbus A320-  VT-WJJ Airbus A320- 271N MSN 9200 VT-WJL	27.09.2019	27.0
14	W.P.(C) - 10386-2023 BLUESKY 19 LEASING COMPANY LIMITED v DGCA	Airbus A320- 271N MSN 9218 VT-WJM Airbus A320- 271N MSN 9412 VT-WJS Airbus A320- 271N MSN 9598 VT-WJT	27.09.2019 (Notation and amendment agreement on 18.06.20)	10.0 20

3.3 Pursuant to the execution of the Lease Agreements,  
Respondent/Go Air also executed and

Respondent/DGCA, an Irrevocable De-Registration and Export Request  
Authorisation [hereinafter referred to as "IDERA"] for each Aircraft, on dates as

mentioned in the Table hereinabove.

3.4 The IDERA, is defined in Rule 3(28A) of the Aircraft Rules and it is explained, has come into play in pursuance of the adoption of the Convention of International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment [hereinafter referred to as "Cape Town Convention"] and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment [hereinafter referred to as "Cape Town Protocol"]. India acceded to the Cape Town Convention and Cape Town Protocol on 31.03.2008.

3.5 It is contended by the Petitioners/Lessors 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, Respondent/DGCA, does not require the consent of the lessee prior to deregistration and export of an Aircraft.

3.6 Owing to defaults in payment of lease rental amounts under the Lease Agreements by Respondent/Go Air, the Petitioners/Lessors sent individual notices of default to Respondent/Go Air, inter-alia, requesting payment of arrears in lease rental due to them. Since the complete payment was not received by the Petitioners/Lessors, the Lease Agreements qua all 54 Aircraft were terminated by the Petitioners/Lessors on various dates, between 02.05.2023 and 04.05.2023, as set forth in the Table in Paragraph 3.2 above.

3.7 The notice of default and termination sent by the Petitioners/Lessors to Respondent/Go Air [hereinafter referred to as "Termination Notice"] inter-alia stated that Respondent/Go Air was to immediately cease operation of the Aircraft; and the Petitioners/Lessors 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.

3.8 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/Lessors for deregistration of the Aircraft with Respondent/DGCA [hereinafter referred to as "Deregistration Application"] on the dates as set forth in the Table above, along with the requisite documents by each Petitioner/Lessor.

3.9 In the meantime, 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"].

3.10 By its order dated 10.05.2023 [hereinafter referred to as "Insolvency Commencement Order"], the NCLT admitted the Petition filed by Respondent/Go Air and as a consequence of which, a 'moratorium' was imposed under Sub-Section (1) of Section 14 of the IBC qua Respondent/Go Air. The relevant extract of this order is below:

"48. Hence, in view of the unpaid debt subsisting above Rs. 01 Crore and the default committed by the Corporate Applicant towards the same, and the Corporate Applicant being not disqualified under Section 11 of IBC 2016, we have no other option but to admit the present Application under Section 10 of IBC 2016. Accordingly, the Application of the Corporate Applicant is admitted. As a necessary consequence, the moratorium in terms of Section 14(1) (a), (b), (c) & (d) is declared, and the following prohibitions are imposed:

"(a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including the execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating, or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(c) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor."

49. As proposed by the Corporate Applicant, this Bench appoints Mr. Abhilash Lal as IRP having IBBI Registration IBBI/IPA-001 /IPP00344/2017-2018/ 10645 (Email: abhilash.lal@gmail.com) subject to the condition that no disciplinary proceeding is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week of this order. This Adjudicating authority orders that:

(a) Mr. Abhilash Lal (Email: abhilash.lal@gmail.com) as IRP having IBBI Registration IBBI/IPA-001/IP-P00344/2017-

2018/10645 is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The IRP is directed to take the steps as mandated under the IBC specifically under Sections 15, 17, 18, 20, and 21 of IBC, 2016.

(b) The IRP will ensure to take all necessary steps including the execution of the Arbitral Award to keep the Corporate Debtor as a going concern and run its services smoothly.

(c) The IRP also shall ensure that retrenchment of employees is not resorted to as a matter of course. In any event, any such decision/ event should be brought to the attention of this Adjudicating Authority.

50. It is further ordered that the Suspended Board of Directors and Ex-Management of the Corporate Applicant/ Corporate Debtor shall extend all necessary support and cooperation to the IRP and his team in keeping the Corporate Applicant/Corporate Debtor as "a going concern" and running its operations/ services smoothly."

3.11 The Insolvency Commencement Order was challenged in an Appeal by the Petitioners/Lessors before the National Company Law Appellate Tribunal [hereinafter referred to as "NCLAT"]. The NCLAT by its order dated 22.05.2023, upheld the order of the NCLT admitting the Petition for insolvency filed by Respondent/GoAir and the declaration of a moratorium on 10.05.2023. However, NCLAT directed that the NCLT adjudicate the claims of the Petitioners/Lessors and Respondent/RP of Go Air in relation to the applicability of moratorium on the Aircraft.

3.12 This Court is informed that these proceedings before the NCLT are still pending.

3.13 In the meantime, by letters/orders dated 11.05.2023 and 12.05.2023, the Petitioners/Lessors were informed by Respondent/DGCA that the Deregistration Application(s) have been rejected/application(s) cannot be processed in view of the Insolvency Commencement Order passed by the NCLT. Aggrieved, the present Petitions have been filed.

4. This Court by its common Judgment dated 05.07.2023 [hereinafter referred to as "05.07.2023 Judgment"] decided the interim applications seeking maintenance of the Aircraft as filed by 8 Petitioners/Lessors (who were parties at that time). The following directions were passed:

"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.

4.1 Aggrieved with the 05.07.2023 Judgment, Respondent/RP of Go Air, filed an Appeal before the Division Bench of this Court. The Division Bench declined to interfere with these directions except for a minor modification to Paragraph 20.1(ii) of the 05.07.2023 Judgment.

Reliance is placed on the following Paragraphs of the Division Bench order dated 12.07.2023 [hereinafter referred to as "DB Order"] which is reproduced below:-

"14. The impugned interim directives primarily pertain to the inspection and maintenance of the aircrafts, which are designed to prevent cannibalisation and preserve their value and integrity. In our opinion, no severe prejudice would be inflicted upon GoAir in the event the matter is relegated to the learned Single Judge for final disposal of the writ petitions, especially in light of the fact that DGCA would require a minimum of fifteen days to decide on re-commencement of GoAir's flights. We thus deem it appropriate in the interest of justice to refrain from entertaining the appeals at this juncture. The learned Single Judge is however requested to endeavour to decide the writ petitions as expeditiously as possible, preferably on the next scheduled date of hearing.

....

16. In the meantime, direction (ii) contained in paragraph No. 20.1 of the impugned judgement is modified to the extent that GoAir, through RP, is permitted to carry out all maintenance tasks of the thirty subject aircrafts, their engines and other parts and components, which are parked at various airports, with due permissions mandated under extant rules/ law. The Lessors are also free to carry out periodic monthly inspections of the aforesaid aircrafts in accordance with law."

[Emphasis supplied] 4.2 The DB Order was then challenged by Respondent/RP of Go Air before the Supreme Court. The Supreme Court by its order dated 07.08.2023, dismissed the appeal as filed by the Respondent/RP of Go Air, directing that the jurisdictional issue raised in the appeal can be raised in the proceedings before this Court. The relevant extract is below:

"1. Proceedings under Article 226 of the Constitution are pending before a Single Judge of the High Court of Delhi. The petitions are being argued on a day to day basis. The jurisdictional issues which are sought to be raised in these proceedings can be addressed before the High Court.

2. The Special Leave Petitions are dismissed...."

5. Although, final arguments in this matter commenced on 03.08.2023, given the fact that the parties appearing before the Court filed multiple Applications including for interim relief to prevent the flying of the Aircraft; seeking directions for protection of and to prevent the cannibalisation of the Aircraft and, thereafter, a Contempt Petition in view of the fact that the Respondent/RP of Go Air was not complying with the directions of this Court; the hearing has spanned over several months. These Applications were decided at various stages during the course of final hearing and have been enunciated below to complete the factual matrix.

CM APPL.38321/2023 [Application seeking Urgent Directions]

6. CM Appl. 38321/2023, was filed by the Petitioners/Lessors in W.P.(C)7369/2023 on 27.07.2023, stating that Respondent/RP of Go Air had operated and had flown two Aircraft for more than 30 minutes on 25.07.2023 and 28.07.2023, stating them to be "handling flights", which were required for the maintenance and airworthiness of the Aircraft. The Petitioners/Lessors were alerted regarding such operation by the aid of the Flight Radar 24 Application.

6.1 This Court by its order dated 28.07.2023, held that since the Lease Agreements had been terminated and had the process of deregistration of the Aircraft had commenced, flying of the Aircraft would be contrary to the provisions of the Aircraft Act and Rules. Relying on Paragraph 3(A)(4) of the Airbus Manual, it was held a maintenance/handling flight is requisite once in every two years during its storage period and undisputedly the period of two years has not passed since the Aircraft have been grounded. It was thus directed that status quo be maintained in respect of handling/non-revenue flights of the Petitioners/Lessors Aircraft in the case of the Petitioners/Lessors in W.P.(C)7369/2023. The relevant extract is reproduced below:

"12. The document termed as the "Airbus Manual" (which appears to only be an extract of the complete Airbus Manual) has been relied upon to submit that during the parking period such flights require to be undertaken at intervals of 3 months. This document also does not help the case of the Respondent No.9/RP, as Paragraph 3 of this document itself contains multiple options qua storage and maintenance. Paragraph 3(A)(4) also states that a maintenance/handling flight is requisite every two years, during a storage period, so that the Aircraft is preserved. It cannot be disputed by the either party that these Aircrafts have not been grounded for two years. Therefore, reliance placed on the Airbus Manual extract, as has been done by the Respondent No.9 /RP of Go Airlines, cannot be accepted either.

13. Thus, the contention of the Respondent No.9/RP of Go Airlines, that the reason, 2 of the 10 Aircrafts have been flown by Go Airlines is that these were handling flights forming part of the scheduled maintenance activity for the Aircraft, is misconceived.

14. The Respondent No.9/RP of Go Airlines has also not been able to show any urgency or any grave imminent threat to these Aircrafts to suddenly and without any prior notice, compel the Respondent No.9/RP of Go Airlines to fly these Aircrafts. Prima facie, the term "scheduled maintenance" cannot be understood to include flying the Aircrafts even if it is a non-commercial flight. Thus, Respondent No.9/RP of Go Airlines cannot be permitted at this stage, to continue with these handling/maintenance flights.

15. In view of the foregoing discussion, let status quo be maintained in respect of handling/non-revenue flights of the Petitioners Aircrafts [as reproduced in paragraph 7.1 hereinabove] till the next date of hearing."

CM APPL. 36850/2023 and connected Applications [Applications for impleadment of CoC]

7. Applications were filed on behalf of the Committee of Creditors [hereinafter referred to as "CoC"] as appointed for Respondent/Go Air seeking impleadment of the CoC in the present Petitions, stating that the implementation of the any decision taken by this Court in the present Petitions may adversely affect the CoC and would thus, prejudice the CoC's ability to take independent autonomous decisions to ensure that the corporate debtor i.e., Respondent/Go Air remains a going concern. These Applications have been decided hereinafter.

CM APPL. 36012/2023 in W.P.(C) 9432/2023 and other connected Applications [Application seeking interim directions]

8. The Petitioners/Lessors in W.P.(C) 9432/2023, W.P.(C) 9594/2023, W.P.(C) 9900/2023, W.P.(C) 9901/2023, W.P.(C) 10327/2023 and W.P.(C) 10386/2023 had also approached the Court seeking parity with the 05.07.2023 Judgment (as modified by the DB Order). This Court by its orders dated 21.07.2023, 27.07.2023 and 04.09.2023 passed the following directions:

"6. In view of the submissions of the parties, the following directions are passed:

(i) The Petitioners, its 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 5 Aircrafts [details of which is reproduced in the table at paragraph 2 above] inter alia to inspect these 5 Aircraft, at the earliest;

(ii) The Respondent/GoAir through RP is permitted to carry out all maintenance tasks of the Aircrafts, their engines and other parts and components with due permissions under law. The Petitioners, its employees, agents, officers and/or representatives shall be permitted to undertake a periodic monthly inspection of all



these 5 Aircraft, until final disposal of this Petition;

(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 the Aircrafts, except with prior written approval of the Petitioners;"

CM APPL.53422/2023 [Application to bring on record subsequent events and urgent directions] & Notification No. S.O. 4321(E) dated 03.10.2023

9. On 03.10.2023, the Ministry of Corporate Affairs issued a notification under Section 14(3) of the IBC [hereinafter referred to as "the MCA Notification"] wherein aircraft, aircraft engines and airframes were kept outside the purview of the IBC. The MCA Notification declared that the provisions in relation to moratorium as set forth under Section 14 of the IBC shall not apply to agreement governed by the Cape Town Convention and Cape Town Protocol.

9.1 Subsequently, the Petitioner/Lessor in W.P.(C) 7774/2023, filed an Application bearing number CM APPL. 53422/2023 to place on record the MCA Notification and averred that in view of the MCA Notification, it is incumbent on Respondent/DGCA to deregister the Aircraft in accordance with the Aircraft Rules. It was contended by the Petitioners/Lessors that they were constrained to approach this Court in view of the fact that the Respondent/DGCA has failed to deregister the Aircraft and now that the MCA Notification has excluded aircraft/aircraft engines/airframes from applicability of the provisions of IBC, the Petitions filed by the Petitioners/Lessors now need to be allowed by this Court with directions to the Respondent/DGCA to deregister the Aircraft.

9.2 Respondent/RP of Go Air vehemently opposed this Application. It was stated that NCLT alone has the jurisdiction to interpret the MCA Notification and that moratorium can only be ended by the procedure prescribed for in the IBC. In addition, the MCA Notification will not do away with the vested rights of the corporate debtors under the IBC to seek resolution as a resumption plan for revival of the corporate debtor has already been approved. It was further contended that the MCA Notification did not apply to the present Petition as it did not have retrospective effect as do notifications of such nature as it has been passed as a delegated legislation and as it is not clarificatory, can only be prospective and not retrospective in its application.

9.3 In response to the Application, Respondent/DGCA filed an Affidavit dated 01.11.2023, wherein it was stated that the MCA Notification is to be construed to have a retrospective effect because the same is clarificatory in nature.

9.4 In view of the fact that final arguments were being heard, this Court by its order dated 10.11.2023 directed that the issue qua the effect of the MCA Notification will be decided along with the main Petition.

## Cannibalisation of the Aircraft parts/Maintenance of Aircraft not being done by Respondent/RP of Go Air

10. On 04.09.2023, several Petitioners/Lessors filed applications contending that the Aircraft were not being maintained by the Respondent/RP of Go Air as per aviation practices and that it was necessary for the Court to pass urgent directions for inspection of the Aircraft.

10.1 The Petitioners/Lessors had also contended that the Aircraft are sophisticated and highly technical equipment, thus a "walk-around"

inspection is not sufficient. Unless the essential Aircraft documents and the Aircraft "part removal" maintenance documents are provided, the inspection would be a futile exercise. It was further contended that there is corrosion on the surface of the Aircraft and algae forming on the body of the Aircraft and that the parts of the Aircraft had also been removed.

10.2 The Applications were opposed by the Respondent/RP of Go Air and once again it was contended that only the NCLT had jurisdiction to decide on the assets of the corporate debtors and not this Court. It was further submitted that similar prayers had been made by the Petitioners/Lessors before the NCLT and that the Petitioners/Lessors are forum shopping.

10.3 With a view to protect the Aircraft and to prevent further cannibalisation, this Court by its judgment dated 12.10.2023 passed directions to maintain and observe the integrity of the Aircraft. The relevant extract is reproduced below:

"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.

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."

Contempt Petition [CONT.CAS(C) 1767/2023]

11. The Petitioner/Lessor in W.P.(C) 7663/2023 filed a Contempt Petition (bearing number CONT.CAS(C) 1767/2023) on 30.11.2023 [hereinafter referred to as "Contempt Petition"] wherein it was contended that Respondent/RP of Go Air is not complying with the 05.07.2023 Judgment as amended by the DB Order and the order dated 12.10.2023. It was averred the Aircraft, 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 and that Respondent/RP of Go Air is not providing documents relating to the Aircraft to the Petitioners/Lessors.

11.1 The Respondent/RP of Go Air, on the other hand, stated that there has been no willful disobedience of the judgments and orders of this Court, but that the Respondent/RP of Go Air has been taking all the steps to effectuate such compliance. However, due to circumstances outside the control of the Respondent/RP of Go Air, the compliance of the orders passed by this Court and the Division Bench of this Court could not be done.

11.2 By an order of this Court dated 07.03.2024, notice was issued against Respondent/RP of Go Air to show cause as to why contempt proceedings be not issued against Respondent/RP of Go Air for non- compliance of the orders of this Court. No reply was filed by Respondent/RP of Go Air, on the date the judgment in this matter was reserved by this Court.

#### SUBMISSIONS OF THE PETITIONERS/LESSORS:

12. Learned Counsels appearing on behalf of the Petitioners/Lessors, made the submissions which have been set out below, in brief:

A. Deregistration is mandatory under Rule 30 (7) 12.1 The Petitioners/Lessors aver that Rule 30(7) of the Aircraft Rules, is clear. It is mandatory for the Respondent/DGCA to deregister the Aircraft if the requisite documentation as enlisted therein and the IDERA, is provided to the Respondent/DGCA. There is no discretion with the Respondent/DGCA for deregistration of an Aircraft, nor is consent required from the Respondent/Go Air. The act is a ministerial act to be exercised by Respondent/DGCA. In any event, the Respondent/DGCA cannot keep the Deregistration Applications in abeyance as has been done and such act of the Respondent/DGCA is arbitrary and amenable to exercise of jurisdiction by this Court.

12.2 The legislative intent behind the use of the word "may" in Rule 30(6) of the Aircraft Rules and "shall" in Rule 30(7) of the Aircraft Rules shows that Rule 30(7) 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. The Respondent/DGCA is in breach of its administrative duty under Cape Town Convention and the Cape Town Protocol as well. Reliance was placed on the judgment in the *Awas 39423 Ireland Ltd. & Ors. v.*

Directorate General of Civil Aviation & Anr.1, 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, mandatorily.

B. Termination not arising out of or as a consequence of Insolvency, hence not barred by the provisions of the IBC 12.3 It was further averred by the Petitioners/Lessors that the termination of the Lease Agreements was on account of the continuous defaults in payment of lease rental by the Respondent/Go Air which has resulted in the Lease Agreements being terminated by the Petitioners/Lessors on the dates as mentioned in the Table in Paragraph 3.2, hereinabove. This termination of the Lease Agreements was not a result of the voluntary insolvency application, filed by Respondent/Go Air before the NCLT. The Petitioners/Lessors have also submitted that the termination of the Agreements have not been challenged by the Respondent/RP of Go Air. Therefore, as the termination of Lease Agreements and Deregistration Applications were filed prior to the Moratorium as imposed, would not apply to the Petitioners/Lessors.

12.4 The Petitioners/Lessors rely on the Civil Aviation Requirements, issued by the Respondent/DGCA, Section 2, Airworthiness Series F Part I Issue II, dated 10.09.1998 [hereinafter referred to as "Civil Aviation Manual"] Clause no 7.6, to submit that for an Aircraft to be air-worthy requires a valid and subsisting Lease Agreement which is 2015 SCC OnLine Del 8177 not available in the present case.

12.5 Section 14(1)(d) of the IBC prohibits the recovery of any property by an owner or lessor where such property is 'occupied by' or 'in the possession' of the corporate debtor, during the period of moratorium. However, in this case, the property, i.e., the Aircraft are neither occupied and nor in constructive possession of the Respondent/Go Air. Relying on Embassy Property Developments Pvt. Ltd. v. State of Karnataka & Ors<sup>2</sup>; it has been submitted that the term "possession" contemplated in Section 14(1)(d) of the IBC must necessarily mean lawful possession.

C. Termination not challenged by Respondent/RP of Go Air 12.6 The legality of the Termination Notice is not a subject matter of the present Petition and the Respondent/RP of Go Air has not challenged the Termination Notice in any Court of law. In any event, a challenge to the Termination Notice(s) would be subject to the jurisdiction of the Courts in England in terms of the Lease Agreement.

D. NCLT has no powers to Deregister an Aircraft - Powers can only be exercised by a High Court 12.7 The present Petitions seek a Writ of mandamus from this Court and are maintainable as the Petitioners/Lessors seek judicial review upon a failure of a statutory body to perform its functions/statutory duty under Article 226 of the Constitution of India, 1950 [hereinafter referred to as "the Constitution"]. The NCLT, on the other hand, does not have any powers in adjudicating and granting the prayers of deregistration of (2020) 13 SCC 308 the Aircraft. The NCLT is not a civil Court but a statutory body constituted under the provisions of Sections 408 of the Companies Act, 2013 and can exercise only such powers within the defined boundaries of jurisdiction as outlined by the statute. Seeking judicial review of governmental decisions, such as those made by the Respondent/DGCA, extends beyond the scope of the IBC and necessitates that Writ Court jurisdiction be invoked.

12.8 It has also been argued that the Petitioners/Lessors aren't seeking recovery of money from the corporate debtor, but are seeking deregistration under a separate statute, i.e., the Aircraft Act and Aircraft Rules thereunder. The Petitioners/Lessors, in unison, therefore, rely on Embassy case, to submit that the NCLT will not be the correct forum for the grant of the prayer of deregistration.

12.9 Even otherwise, Section 14 of the IBC altogether is not applicable as the termination as well as IDERA Application were filed prior to the imposition of moratorium. Attention in this regard was drawn to the Judgment of the NCLAT in Neesa Leisure Ltd through its resolution professional Mr. Amit Jain v. Rajasthan State Industrial & Investment Corporation 3, which judgment has been upheld by the Supreme Court<sup>4</sup>.

12.10 It is only in the case of an inconsistency that Section 238 of the IBC prevails, allowing for a harmonious interpretation of seemingly 2022 SCC OnLine NCLAT 4697 Civil Appeal No. 1256/2023

titled as Neesa Leisure Limited v. Rajasthan State Industrial and Investment Corporation, Order dated 04.12.2023 conflicting provisions to be implemented by the Court. Thus, while analysing the overriding effect of the IBC, the Court should not hinder the enforcement of provisions under the Aircraft Act and Rules. This aligns with the Supreme Court's ruling in Municipal Corporation of Greater Mumbai (MCGM) v. Abhilash Lal & Ors<sup>5</sup>, emphasizing that Section 238 of the IBC does not affect rights vested in parties by other legislations. Explanation (a) to Section 18 of the IBC clarifies that assets held under trust or contractual agreements by third parties are not within the purview of "assets" as defined in the Section 14 of the IBC. As such, the Aircraft, previously held under a contractual agreement, are not subject to the provisions of Section 18 of the IBC. Additionally, Section 63 of the IBC provides that the Suits or proceedings in which NCLT or NCLAT have jurisdiction cannot be entertained by Civil Courts. However, this Court is exercising its jurisdiction not as a Civil Court but under its writ jurisdiction under Article 226 of the Constitution.

12.11 The Petitioners/Lessors while relying on Paragraph 11 of the Respondent/DGCA's Counter-Affidavit, asserted that no shortfalls actually existed in the Deregistration Applications as had there been any deficiencies, it was the duty of the Respondent/DGCA to communicate these to the Petitioners/Lessors. Instead, the Petitioners/Lessors received letters from the Respondent/DGCA dated 12.05.2023 declining to deregister the Aircraft stating that the deregistration request cannot be processed in view of the ongoing CIRP proceedings of Respondent/Go Air. This action of the Respondent/DGCA was (2020) 13 SCC 234 violative of the Article 14 of the Constitution. The Respondent/DGCA has not followed the principles of natural justice by not giving an opportunity of being heard to the Petitioners/Lessors, before passing its order/direction by the letter dated 12.05.2023.

12.12 It is contended by the Petitioners/Lessors that Respondent/DGCA has taken into consideration irrelevant and extraneous factors in making the decision not to deregister the Aircraft. The impugned decision is also liable to be set aside on the grounds of the Wednesbury principle of unreasonableness which states that the Court can interfere with a decision if it is so unreasonable that no prudent decision maker would in law come to it. Reliance has been placed on Vinod Kumar v. State of Haryana & Ors.<sup>6</sup> and TATA Cellular v. Union of India<sup>7</sup> in this regard.

12.13 The Petitioners/Lessors have submitted that both equity as well as the law in the present case, are in favour of the Petitioners/Lessors. It has also been submitted by the Petitioners/Lessors that the revival of the corporate debtor and that the return of the Aircraft would cause hardships to the corporate debtor could not possibly be used as a defense to not deregister the Aircraft(s). The Petitioners/Lessors rely on the Judgment of the Supreme Court in Popat Bahiru Govardhane & Ors v. Special Land Acquisition Officer & Anr.<sup>8</sup> which has held that hardship or inconvenience of a specific party, shall not bar the Court (2013) 16 SCC 293 (1994) 6 SCC 651 (2013) 10 SCC 765 to uphold and enforce the law.

12.14 The Petitioners/Lessors have also drawn the attention of the Court to the erstwhile Twitter handle, now "X" account of Respondent/Go Air and submitted that the public communication dated 02.05.2023 only mentions that the Respondent/Go Air has decided to suspend operations of Respondent/Go Air due to "serviceable issues/operational issues". There is no mention of any

voluntary insolvency proceedings and, therefore, submits that the Petitioners/Lessors could not have, in any circumstances known that the Respondent/Go Air is going to file proceedings under the IBC at the time of sending out its Termination Notices to Respondent/Go Air. Thus, it is contended that the termination could not have, in any circumstance be a result of the CIRP/motivated by the initiation of the CIRP.

E. Condition of Aircraft/Cannibalisation 12.15 The Petitioners/Lessors have submitted that the Aircraft that are the subject matter of these Petitions have been grounded and are lying in the "Long Term Storing Unit" in respective Airports all around India. These Aircraft are admittedly not being flown by the virtue of the grounding notices. The Aircraft are not being maintained in the prescribed manner and are being cannibalised at the various Airports. Reliance is placed on the contentions as set forth in CM Appl. 47257/2023 and CM Appl. 47071/2023 as well.

F. Prayer on directions for Export of Aircraft 12.16 At the outset, learned Counsel for the Petitioners/Lessors in W.P.(C) 6569/2023, W.P.(C) 6626/2023, W.P.(C) 7214/2023, W.P.(C) 7663/2023, W.P.(C) 7774/2023, W.P.(C) 9594/2023, W.P.(C) 10327/2023 and W.P.(C) 10386/2023 have contended that the Petitioners/Lessors would limit their prayers in the Petition(s) to the deregistration of the Aircraft by the Respondent/DGCA. Rule 32A of the Aircraft Rules, which deals with the export of an Aircraft is an event subsequent to its deregistration and for the export of the Aircraft to happen, deregistration is a prerequisite. Reliance was placed on the Standard Operating Procedure dated 16.11.2018 issued by the Respondent/DGCA [hereinafter referred to as "SOP"] that the SOP emanates from Rule 32A of the Aircraft Rules, clauses 1 to 4 of the SOP deal with deregistration, clauses 5 to 8 of the SOP deal with payments of outstanding clause 9 of the SOP contemplates repossession and export. Hence, the stage of export as per the SOP has not been reached yet, and that these Petitioners/Lessors would seek liberty to urge this prayer at a subsequent stage.

12.17 However, the Petitioners/Lessors in W.P.(C) 9432/2023, W.P.(C) 7369/2023, W.P.(C) 7773/2023, W.P. 8088/2023, W.P.(C) 9900/2023 and W.P.(C) 9901/2023 have asked for the grant of the prayer of the export of their respective Aircraft. It is contended that export of an Aircraft is a natural consequence of the deregistration. It has also been submitted that this Court while deciding the case in Awas case has granted both the prayers of the deregistration and the export of the Aircraft together. If the deregistration of the Aircraft is allowed then the Aircraft has to be exported.

#### SUBMISSIONS OF THE RESPONDENT/RP OF GO AIR:

13. The following submissions were made on behalf of the Respondent/RP of Go Air:

A. This Court lacks jurisdiction to adjudicate - Only NCLT has the power/Issue of maintainability/Jurisdiction to be decided by this Court 13.1 At the outset, while citing the order dated 07.08.2023 passed by the Supreme Court, it was contended that the issue of jurisdiction is required to be decided by this Court in the first instance.

13.2 A combined reading of Sections 13 and 14 of the IBC state that, it shall be the NCLT, which is the authority that is empowered to enforce a moratorium. Therefore, all issues in relation to the same shall be dealt only with the NCLT. The issues raised in the present Writ has also been raised before the NCLT/NCLAT that has been specially crafted with exclusive jurisdiction to adjudicate upon the issues pertaining to insolvency and the corporate entities that are undergoing the CIRP, these pleas cannot be raised again before this Court, seeking similar reliefs. The Petitioners/Lessors having availed their alternative remedy and failed, cannot now approach this Court. There are complicated issues of facts and law that are being gone into by the NCLT, the same shall not be adjudicated by this Court under Article 226 of the Constitution.

13.3 Since, it was the NCLT that passed the Insolvency Commencement Order that has been relied upon by the Respondent/DGCA in the impugned communication, it can only be the NCLT that shall have the exclusive jurisdiction to hear the cases in relation to this impugned communication.

B. The DGCA did not deregister the Aircraft in view of the moratorium imposed by NCLT's order of 10.05.2023. Not a ministerial Act and only NCLT has jurisdiction to decide this issue 13.4 As a result of the moratorium imposed by the Insolvency Commencement Order, the Respondent/DGCA did not process the Deregistration Applications. This act of the Respondent/DGCA is thus, not a ministerial act. The Respondent/DGCA exercises powers as a quasi-judicial body and this power has been exercised by it in the present case which cannot be termed as a ministerial act.

13.5 In any event, the Deregistration notices and the applications filed thereto shall be treated to be nullity in as the same were only motivated by insolvency of Respondent/Go Air. The Petitioners/Lessors are using the Termination Notices as a smokescreen, which is not permitted in law, reliance in this regard was placed on the judgment of the Supreme Court in the case of TATA Consultancy Services Ltd. v. SK Wheels Pvt Ltd. Resolution Professional, Vishal Ghisulal Jain<sup>9</sup>.

13.6 This is not a case where the Respondent/DGCA has failed to exercise its jurisdiction under a statute. This is a case where Respondent/DGCA has exercised its jurisdiction by keeping the Deregistration Applications in abeyance in view of the Insolvency Commencement Order. The said action of Respondent/DGCA is well (2022) 2 SCC 583 reasoned and in accordance with law. It was contended that no Court can issue a mandamus for directions to a governmental body to refrain from enforcement of a provision of law or to act in contravention of the Rules to compel the authorities to violate the law, as is being suggested by the Petitioners/Lessors. In this regard, reliance was placed on Life Insurance Corporation of India v. Asha Ramchandrar Ambekar (mrs) and Anr<sup>10</sup>, State of West Bengal v. Subhash Kumar Chatterjee and Ors<sup>11</sup> and M.I. Builders Pvt Ltd. v. Radhey Shyam Sahu and Ors<sup>12</sup>.

C. Nexus between Insolvency and Deregistration Notices - The Pratt & Whitney engine failure Issue 13.7 There is a clear nexus between the insolvency and deregistration notices and application. There were defects in the Pratt and Whitney engines which are in the Aircraft, which ultimately resulted in



the defaults of the lease rentals to the Petitioners/Lessors. Arbitrations and other legal proceedings were filed by the Respondent/Go Air against Pratt and Whitney, which also resulted in Awards in favour of Respondent/Go Air but did not translate into any fruitful result for Respondent/Go Air. For the last 3 years, there were no default notices from either of the Petitioner/Lessors. It was after the filing of the abovementioned application for voluntary insolvency that the Petitioners/Lessors sent the Termination Notices. This fact was highlighted before the NCLT and the NCLT was pleased to initiate the (1994) 2 SCC 718 (2010) 11 SCC 694 (1999) 6 SCC 464 insolvency process for the Respondent/Go Air. The Insolvency Commencement Order was then taken in Appeal to the NCLAT and all these facts were again raised before the NCLAT by the Petitioners/Lessors which challenge was dismissed by the NCLAT by its order dated 22.05.2023, which has not been challenged by the Petitioners/Lessors. These facts clearly show that the termination notices that were sent by the Petitioners/Lessors were arising out of the Insolvency application filed by the Respondent/Go Air and thus are to be heard by the NCLT.

D. Section 60(5) of the IBC cannot be given a narrow interpretation. The IBC has the widest amplitude to deal with all types of matters and the forum for adjudication is the NCLT and NCLAT 13.8 The attention of this Court was then brought to the Termination Notices that were sent to the Respondent/Go Air. It was contended that 11 out of the 14 Petitioners/Lessors have stated that the reason for the termination was on account of the insolvency that has been initiated by the Respondent/Go Air. The termination by the Petitioners/Lessors is directly linked to the insolvency declaration.

13.9 Section 60(5) of the IBC sets out that there shall be only one fora for adjudication of all the claims that arise out of or in relation to IBC, shall be dealt by that fora only, i.e. NCLT. The attention of the Court was then drawn to the report of the Bankruptcy Law Reforms Committee<sup>13</sup> to submit that it was after detailed deliberation and keeping in mind that the process of insolvency was fragmented under different statute that IBC was enacted. The Petitioners/Lessors have submitted to the jurisdiction of the NCLT by filing their applications. Reliance was placed upon Section 60(5) of the IBC to submit that it is the NCLT or the NCLAT that shall have the exclusive jurisdiction for each and every matter in relation to a corporate debtor.

13.10 In support of the proposition of law that the NCLT shall be the exclusive forum exercising jurisdiction in relation to the deregistration as the same is arising out of insolvency and that the Courts shall not exercise jurisdiction, reliance was made to the following judgments:

- a) Committee of Creditors of Essar Steel India Ltd through authorized signatory v. Satish Kumar Gupta and Ors 14,
- b) Gujarat Urja Vikas Nigam Ltd v. Amit Gupta and Ors<sup>15</sup>,
- c) Tata Steel BSL Ltd v. Venus Recruiters Pvt Ltd and Ors 16.

13.11 The Aircraft are the only assets of the corporate debtor, i.e., Respondent/RP of Go Air and the deregistration shall not be done as the same will result in taking away of the Aircraft, that is the only

existing asset of the corporate debtor will result in the death of corporate debtor

- Respondent/Go Air. Reliance in this regard is placed on Gujarat Urja case.

13.12 Relying on the definition of an asset under the Income Tax Act, Committee appointed by Ministry of Finance for the draft Insolvency and Bankruptcy Code on 22.08.2014.

(2020) 8 SCC 531 (2021) 7 SCC 209 2023 SCC Online Del 155 1961, it is contended that asset includes "property of any kind", thus Aircraft would also fall in this definition. Reference was made to the judgment of the Supreme Court in the case of Victory Iron Works Ltd. v. Jitendra Lohia & Anr.<sup>17</sup> in this regard.

13.13 Even assuming that the terminations are valid, the Aircraft were in possession and occupation of Respondent/Go Air as on the insolvency commencement date. Hence, under Section 14(1)(d) of IBC, the possession of Aircraft is with Respondent/Ro of Go Air and this possession cannot be disturbed during the CIRP. Reliance in this regard was placed on the judgement of the Supreme Court in Rajendra K. Bhutta v. Maharashtra Housing and Area Development Authority and Anr.<sup>18</sup> to submit that the expression "occupied" would be synonymous with actual physical possession in contradistinction to the term possession which would mean either constructive or actual possession. Relying on the Arcelor Mittal India private Limited v. Satish Kumar Gupta and Ors.<sup>19</sup>, an alternate argument has been raised to submit that antecedent facts which are in reasonable proximity to the insolvency commencement date, at the time of a resolution plan, can always be seen by the Courts to prevent persons attempting to wriggle out of such plans.

E. IBC is a Special Statute and a complete code - Its provisions will prevail over other statutes 13.14 The IBC is a complete code in itself, and the principles 2023 SCC Online SC 260 (2020) 13 SCC 208 (2019) 2 SCC 1 enunciated therein shall be taken be sacrosanct, reliance in this regard was placed on the judgment of the Supreme Court in the case of Ghanashyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd through the director and Ors.<sup>20</sup>.

13.15 Section 18(f) and Section 14 of IBC have to be read harmoniously with each other, so that the true intention of the legislature can be construed, which is that the IBC is a special legislation, and its object is revival/resurrection of a corporate debtor and the preservation and the maximisation of its assets. The moratorium under Section 14 of the IBC is the "calm period" available for resurrection of a distressed entity. Sale of assets of a corporate debtor should only be a last resort.

13.16 The provisions of IBC shall prevail over Aircraft Act and Aircraft Rules in view of Section 238 of the IBC. The IBC being the more recent statute, overrides previous special statutes.

F. Availability of Alternative Remedy 13.17 The present case is not a fit case to be decided by the Court under Article 226 of the Constitution and is a matter for NCLT only. Jurisdiction under Article 226 of the Constitution is not exercised where specialized authorities have been established under a statute. Reliance was placed on the following Judgments:

a) Assistant Collector of Central Excise Chandan Nagar, West Bengal v. Dunlop India Ltd and Ors 21;

(2021) 9 SCC 657 (1985) 1 SCC 260

b) South Indian Bank Ltd. and Ors v. Naveen Mathew Philip and Anr 22;

c) IFB Agro Industries Ltd. v. SICGIL India Limited and Ors 23;

d) Anand Rao Kaorada, Resolution Professional v. Varsha Fabrics Pvt Ltd. & Ors. 24  
G. Notification dated 03.10.2023 is not a clarificatory notification - cannot be retrospective 13.18 The MCA Notification has been issued under sub-Section (3) of Section 14 of the IBC. A careful review of the MCA Notification shows that the wordings intend to be prospective in nature. The interpretation given by the Petitioners/Lessors and the Respondent/DGCA exceeds the mandate of the statute. Hence, the MCA Notification cannot be considered to be retrospective.

13.19 As per Section 14(1) of IBC, moratorium is imposed as on the date of insolvency commencement. Hence, the law as on date of insolvency commencement i.e., 10.05.2023 alone ought to be considered. Previous interpretation of amendments made to IBC also suggest that the MCA Notification should be given a prospective reading as there is no language implicit in IBC which indicates that deregistration is outside the purview of moratorium, reliance in this regard was made to the judgment of the Supreme Court in the case of Ghanshyam Mishra case and State Bank of India v. Ramakrishnan and Anr. 25.

2023 SCC Online SC 435 (2023) 4 SCC 209 (2020) 14 SCC 198 (2018) 17 SCC 394 13.20 An action by virtue of a delegated legislation cannot be given retrospective applicability and the same is presumed to be prospective in nature, or the same is specifically mentioned in that legislation. Reliance in this regard was made on the judgments in the case of Zile Singh v. State of Haryana and Ors 26 and Monnet Ispat & Energy Ltd. v. Union of India and Ors. 27.

13.21 The MCA Notification is required to be construed to be prospective in nature as it is not clarificatory. In any event, an executive action cannot be given retrospective effect when the parent act does not endow the executive authority with the power to pass notification with retrospective effect. Reliance in this regard was made in the case of Director General of Foreign Trade and Anr v. Kanak Exports and Anr. 28 and Assistant Excise Commissioner, Kottayam and Ors. v. Esthappan Cherian and Anr 29.

13.22 NCLT and the NCLAT has previously decided on the prospective/retrospective application of notifications issued by Central Government under IBC, reliance was placed on the judgment of the NCLAT in this regard in the case of Madhusudan Tantia v. Amit Choraria and Anr. 30. Therefore, NCLT will be the most appropriate authority for the interpretation of the retrospective/prospective application of the MCA Notification and not this Court.

(2004) 8 SCC 1 (2012) 11 SCC 1 (2016) 2 SCC 226 (2021) 10 SCC 210 2020 SCC Online NCLAT 713 H. Inapplicability of judgments of the Petitioners/Lessors 13.23 The attention of the Court was then drawn to the Judgments as relied upon by the Petitioners/Lessors contending that the Awas case was prior in time on the implementation of the IBC and that the same shall have no bearing on the facts of the case on the basis of the provisions of Section 238 of the IBC. The termination in the Neesa Leisure case and the Abhilash Lal case was prior in time on the implementation of the IBC and therefore the same shall also have no bearing on the same.

I. Corporate death of the Airline 13.24 It is contended that the Respondent/RP of Go Air has already initiated steps to effectuate recovery. Deregistration would entail going back on these steps and result in the corporate death of Respondent/Go Air. The IBC has been enacted to ensure that as far as possible, the person/entity in insolvency, is revived/resurrected.

SUBMISSIONS OF THE RESPONDENT/DGCA  
RESPONDENT/UOI :

14. Learned Additional Solicitor General of India made submissions limited to the development in law with respect to the MCA Notification and the Affidavit dated 01.11.2023 filed by Respondent/UOI.

14.1 The Respondent/DGCA is a statutory body and is not supporting either the Petitioners/Lessors or the Respondent/RP of Go Air.

A. The Notification is Retrospective - a necessary adjunct 14.2 The MCA Notification is an extension of the obligation cast on by the signing of the Cape Town Convention which was acceded to by India on 31.03.2008. The MCA Notification under Section 14(3) of the IBC fulfils this obligation. Reliance was placed on Article 253 of the Constitution, which empowers the legislature to make laws for the implementation of treaty or conventions signed with any other country or international body.

14.3 Reliance was placed on the Ramakrishnan case to submit that Section 14(3) of the IBC was in itself retrospective, when it was introduced, and therefore, any notification under this Section shall be construed to be retrospective. Thus, as per the Respondent/UOI and the Respondent/DGCA, the MCA Notification can only be interpreted to be retrospective in nature.

14.4 Reliance was then made on the judgment of the Delhi High Court in the case of CIT v. Nasa Finelease P. Ltd.<sup>31</sup>, wherein, while interpreting the provisions of the Income Tax Act it was stated that the delay, if any, in the issuance of Rules and notification, cannot nullify the legislative mandate of the enactment. Delay, if any, was attributable to the Governmental authorities, who had failed to issue necessary notification within time. Therefore, it was stated that if the express intent of a notification is retrospective, then the same shall be construed to be retrospective. The Notification thus, can only mean to operate 2013 SCC OnLine Del 3478 from the date of the enactment of IBC as the provision, i.e., Section 14(3) was enacted on 28.05.2016 and the MCA Notification will be applicable from the date of the initiation of IBC.

B. Letters/notices issued by DGCA in pursuance of NCLT orders of moratorium 14.5 The Respondent/DGCA has not rejected any application of the Petitioners/Lessors and the Deregistration Application(s) have only been put in abeyance till the Court has decided on the issues raised pursuant to the Insolvency Commencement Order dated 10.05.2023. The Respondent/DGCA will abide by any direction as passed by this Court in regard to the deregistration of the Aircraft.

SUBMISSIONS OF THE  
AUTHORITY OF INDIA:

RESPONDENT /

15. Learned Counsel appearing on behalf of the Respondent/Airports Authority of India has submitted that the Aeronautical Information Circular [hereinafter referred to as "AIC"] dated 16.11.2018 which discusses the SOPs with regard to export of an Aircraft as covered under the Cape Town Convention and AIC dated 14.03.2019 to submit that prior to export of the Aircraft in accordance with the Aircraft Rules, any and all dues, i.e. AOG (Aircraft on ground) Charges and other charges, as accrued against the Aircraft grounded at Airports, need to be paid by the Petitioners/Lessors.

REJOINDER  
/LESSORS:

SUBMISSIONS

OF THE PETIT

16. The Petitioners/Lessors have made the following submissions in Rejoinder:

A. Only the High Court has power to deregister 16.1 The entire case of the Petitioners/Lessors is based on Rule 30(7) of the Aircraft Act which is an embodiment of and consistent with the Cape Town Convention and is seeking to avail the implementation of a statutory duty as prescribed under the Aircraft Act. This statutory duty can be only carried out under the Article 226 of the Constitution in a writ of mandamus and not by a Tribunal (NCLT) constituted under a specific statute having a specific purpose. The NCLT cannot usurp jurisdiction of other Courts under the IBC. The decision of the Respondent/DGCA is in the realm of Public Law and as such, the NCLT cannot have jurisdiction, as the decision taken by the government or by a statutory authority cannot be brought within the fold of "arising out of" or "in relation to" insolvency resolution appearing in Section 60(5) of the IBC.

16.2 A careful perusal of the NCLAT Order dated 24.05.2023, which has granted the parties liberty to file application regarding the applicability of the moratorium is categorically silent about IDERA, as the NCLT and the NCLAT being a creature of the IBC and working in the powers and provisions conferred therein cannot adjudicate upon the IDERA that is a creature of the Cape Town Convention and the Aircraft Act and Rules.

16.3 The interim moratorium application as filed by the Respondent/RP of Go Air was not allowed by the NCLT and was dismissed. Therefore, there was no

predicament on the Respondent/DGCA to deregister the Aircraft within 5 days of the filing of the IDERA under the statutory mandate.

B. Petitioners went before NCLT for prayers which NCLT could grant. Hence, not barred from approaching this Court 16.4 The Petitioners/Lessors have filed different applications for different cause of actions and remedies in different forums, and is therefore, not forum shopping. A comparison of the pleadings filed before the NCLT and this Court shows that the prayers in the application filed before the NCLT are distinct from those in the Petition filed before this Court. The Petitioners/Lessors have reserved their rights before the NCLT, to raise the plea of deregistration before an appropriate fora which in the present case can only meant to be this Writ Court, as earlier demonstrated.

16.5 The Petitioners/Lessors in WP(C) 7663/2023 has categorically submitted that the objection of the Respondent/RP of Go Air in relation to the similar prayers being prayed for before the NCLT is without any basis as the same was dropped by the Petitioners/Lessors in the Rejoinder that was filed before the NCLT. This submission was also recorded in the Order dated 12.10.2023. In this regard, the Petitioners/Lessors rely on the extract of the Rejoinder filed before the NCLT.

C. Termination not arising out of or in relation to Insolvency 16.6 Termination of the lease was on account of non-payment of lease rental by the Respondent/Go Air since 2020 onwards as also on the happening of Events of Default under the Lease Agreements, including voluntary suspension of operations by the Respondent/RP of Go Air. In any case, the subject matter before this Court is deregistration and not termination.

16.7 It is an admitted fact that the Respondent/DGCA makes it mandatory for the person demanding the deregistration to file the letter of termination of the Lease Agreements when the Deregistration Application is filed. The attention of the Court was taken to the checklist on the deregistration as mandated by the DGCA and the online filing of the same.

16.8 The Aircraft are clearly not critical/essential to the corporate debtor because the Aircraft are grounded and not serviceable. In view of the termination of the Lease Agreements, Respondent/Go Air cannot operate the Aircraft (indeed, it would be unlawful to do so). Learned Counsel for the Petitioner/Lessor in W.P.(C) 7214/2023 - has contended that so far concerns its 1 Aircraft (MSN 7858), the Respondent/Go Air itself was working towards return of the Aircraft in March 2023 and has already returned to the Petitioner/Lessor the Aircraft's APU, an unserviceable engine, 17 boxes containing the Aircraft documents to them prior to filing of these Petitions. Hence, there can be no impediment to the deregistration of MSN 7858.

D. Judgments relied on by Respondent/RP of Go Air cannot be applicable 16.9 The Petitioners/Lessors are seeking deregistration of the Aircraft rather than recovery of a property. Section 14 of the IBC does not cast any restraint upon this Court to deregister the Aircraft. The Gujarat Urja case is distinguishable as in the Gujarat Urja case, it is specifically stated that only the issues which 'solely' arise out of insolvency are questions which the NCLT has the jurisdiction to decide. It is contended that repeated stress has been given to the words 'solely arising out of

insolvency', however, the termination letter issued by the Petitioners/Lessors to the Respondent/RP of Go Air has stated that in addition to the non-payment of longstanding lease rentals and grounding of the Aircraft is a reason for termination of the Lease Agreements and thus, it cannot be said that termination was 'solely' on the ground of insolvency.

16.10 The facts in the Gujarat Urja case were that the Power Purchase Agreement was terminated after the initiation of insolvency proceedings - the insolvency was admitted on 20.11.2018 and the termination notice was issued on 01.05.2019. In addition, the Resolution Professional (therein) had challenged the termination before the NCLT. In the present case, the Respondent/RP of Go Air has not challenged the termination. Hence, the Gujarat Urja case cannot be relied upon.

16.11 The facts in the Rajendra K. Bhutta case and Gujarat Urja case are distinguishable from the facts of this case and in both these cases, the termination of the lease agreement and power purchase agreement respectively, took place after the moratorium was declared by the corporate debtor. However, it is not in dispute that the Petitioners/Lessors in the present case have terminated the Lease Agreements and they have filed their respective Deregistration Applications before the Insolvency Commencement Date - 10.05.2023. It has also been submitted that the principle laid down by the Court is on the basis of the facts of the case, therefore, facts of the case are also to be looked into before applying the principles enunciated in the case.

16.12 Emphasis has again been laid on Neesa Leisure case to state that Section 14 of the IBC will have no applicability if termination is prior to the initiation of CIRP. Applying these principles in the facts of the instant case, the Lease Agreements were terminated prior to the initiation of the CIRP by the NCLT by virtue of its Insolvency Commencement Order. Section 13 of the IBC, states that the moratorium is to be directed by an order passed pursuant to an application being filed under Section 10. Mere filing of an application under Section 10 of the IBC cannot be considered as the initiation of a moratorium.

16.13 The Respondent/RP of Go Air has failed to place reliance on a judgment which states that Section 14 of the IBC would apply even if termination was prior to the initiation of CIRP. In fact, if the interpretation advanced by the Respondent/RP of Go Air is accepted, the same would amount to giving a retrospective effect of the moratorium, as it would be made applicable to events taken place prior to the initiation of the said moratorium, which is not permissible in law.

16.14 The Arcelor Mittal case can be distinguished on facts, as the facts in that case were in the context of ineligibility of a prospective resolution applicant under Section 29A of the IBC which are inapplicable in the present case.

E. Notification dated 03.10.2023 - Prospective or Retrospective is immaterial 16.15 The Petitioners/Lessors are only seeking to avail the statutory duties of a Governmental Authority, under the writ of mandamus. Under Rule 30 (7) of the Aircraft Rules, the IDERA of the Petitioners/Lessors is requisite to trigger the deregistration. The Respondent/DGCA has stated on affidavit that the MCA Notification is retrospective in nature being clarificatory, as it clarifies the requirement of having to adhere to treaty obligations and the solemn sovereign promises and any

other interpretation would defeat the notification itself which makes a specific reference to the Cape Town Convention. It is also relevant to note that the constitutionality of the MCA Notification has not been challenged in any Court of law.

16.16 The MCA Notification is a subsequent event which must be considered by this Court. Relying on the Kedar Nath Agrawal (dead) and Anr v. Dhanraji Devi (dead) by LRs and Anr 32, it was contended (2004) 8 SCC 76 that, it is the power and duty of a Writ Court to consider the changed circumstances to do complete justice between the parties.

16.17 All the judgments that have been relied upon by the Respondent/RP of Go Air with regard to the MCA Notification state that for a legislation to be retrospective, the statute shall either implicitly or explicitly state the same. Therefore, the MCA Notification shall be read to be retrospective as the same is implicitly retrospective in regard to it being issued under Section 14(3) of the IBC. This approach has also been adopted by the Supreme Court in the case of Ramakrishnan case. Therefore, the Notification shall read to be clarificatory and shall be treated to be retrospective.

16.18 Reliance was placed on the judgment of the Supreme Court in the case of Nagindas Ramdas v. Dalpatram Ichharam alias Brijram and Ors.<sup>33</sup>, to submit that admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions made by the parties or their agents, stand at a higher footing than, evidentiary admissions under Section 58 of the Evidence Act, 1872. It was therefore submitted that the affidavit of the Respondent/DGCA admitting to the fact that the MCA Notification shall be retrospective, can only be meant to read as retrospective.

F. International Treaty Obligations - Cape Town Convention and Cape Town Protocol 16.19 The Cape Town Convention and the Cape Town Protocol have (1974) 1 SCC 242 been initiated for the purposes of making laws in relation to aircraft, uniform across the world and the local laws in India have also developed on the same lines.

16.20 India has acceded to the Cape Town Convention and Cape Town Protocol on 31.03.2008. This date of accession finds mention in the MCA Notification as well. As on date of the MCA Notification, the applicability of Section 14(1) of the IBC to aircraft, aircraft engines and airframes came to an immediate end. The expressions aircraft, aircraft engines, airframes and helicopters are defined in Article I of the Cape Town Protocol.

16.21 Article XI of the Cape Town Protocol sets out the "Insolvency" related provisions and contemplates two alternatives i.e., alternative 'A' and alternative 'B'. India, at the time of accession to the Cape Town Convention and Cape Town Protocol, made a declaration of accession called The Declaration Lodged by the Republic of India under the Cape Town Convention at the Time of the deposit of its Instrument of Accession [hereinafter referred to as "Declaration of Accession"] on 31.03.2008.

16.22 This Declaration of Accession, shows that India has opted for "Alternative A" to "Article XI" for all types of insolvency proceedings. Article XI(2) of the Cape Town Protocol which defines



"Insolvency related events", as well, as sets forth that possession of Aircraft shall be given no later than the end of the "waiting period". The waiting period under the Declaration of Accession has been declared as two calendar months. Thus, in the present case, the Petitioners/Lessors contend that, at the very latest, the two-month "waiting period" ended on 03.12.2023, i.e., two calendar months from the date of the MCA Notification and the Aircraft ought to have been deregistered and handed over to the Petitioners/Lessors no later than 03.12.2023.

16.23 It was further contended that accepting the arguments of the Respondent/RP of Go Air would lead to a situation where the obligations under the Cape Town Protocol and Cape Town Convention and the Declaration of Accession under Article XXX(3) of the Cape Town Protocol are to be ignored. Such an interpretation should not be countenanced by this Court.

#### ANALYSIS & FINDINGS:

CM APPL. 36850/2023 and connected Applications [Applications for impleadment of CoC]

17. At the outset, this Court deems it necessary to deal with the Application filed by the Committee of Creditors of the Respondent/Go Airline [hereinafter referred to as 'CoC'] for impleadment. It was contended on behalf of the learned Senior Counsel for the CoC that a CoC was constituted for revival of the Respondent/Go Air comprising of five banks as its members being:

- (i) Central Bank of India;
- (ii) Bank of Baroda;
- (iii) Deutsche Bank;
- (iv) DB International Asia Limited; and
- (v) IDBI Bank Limited.

17.1 The CoC has contended that it has a total claim of Rs. 5124 crores, out of which Rs. 5117 crores is an admitted debt. It is further contended that during the CIRP period, the CoC exercises statutory control to ensure revival of the corporate debtor - Respondent/Go Air and the rights of the CoC will be affected by any orders passed in the present Petition. It is thus prayed that the CoC be impleaded as a party to the present Petition.

17.2 The CoC has relied on the judgment of the Supreme Court in the case of Indus Biotech Pvt Ltd v. Kotak India Venture (Offshore) Fund (Earlier known as Kotak India Venture Limited) and Ors.<sup>34</sup> to state that post-admission of CIRP, insolvency proceedings operate in rem and hence, the interest of all stakeholders of Respondent/Go Air are impacted and prejudiced. The CoC has thus contended that it is both a necessary and a proper party to the present proceedings.

17.3 Reliance has also been placed by the CoC on the judgment of the Supreme Court in the Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors.<sup>35</sup> to submit that, in the context of IBC, the principle of "Judicial Hands Off" should be adopted, suggesting that as the NCLT has been entrusted by the IBC to adjudicate upon the cases arising out of and in relation to the IBC, and these should not be heard by any other Court. This contention has already been raised and presented in great detail by (2021) 6 SCC 436 (2019) 4 SCC 17 the Respondent/RP of Go Air during its arguments and is being dealt with hereafter.

17.4 This Application was opposed by the Petitioners/Lessors. It was averred that the Petitions have been filed seeking deregistration of the Aircraft and the reliefs sought are against the Respondent/DGCA and do not concern or affect the CoC. The interest of the CoC is represented by the Respondent/RP of Go Air as the Respondent/RP of Go Air acts and is bound by the instructions of the CoC. Hence, the CoC is neither a necessary nor a proper party in the present Petitions.

17.5 It is trite that the addition of parties is generally a matter of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case. A necessary party is indispensable, without whom no effective order can be issued. A proper party, on the other hand, is one whose absence does not hinder the issuance of an effective order, but whose presence is vital for a comprehensive and conclusive decision regarding the matter at hand [See: Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay and Ors.<sup>36</sup>]. The Court is required to see if the presence of the CoC is such, that in their absence no effective order can be passed and that their presence is necessary to enable the Court to decide the matter effectively.

17.6 Section 17 read with sub-Sections 1 and 2 of the Section 23 of the IBC states that the management of the affairs of a corporate debtor (1992) 2 SCC 524 is vested with the Interim Resolution Professional [hereinafter referred to as "IRP"] or the Resolution Professional/RP and it is the IRP/RP who conducts and manages the operations of the corporate debtor during this period. The IRP/RP under Section 25(2)(b) represents and acts on behalf of the corporate debtor with third parties and exercises rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. The relevant extract is below:

"Section 23: Resolution professional to conduct corporate insolvency resolution process (1) Subject to section 27 the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period.

Provided that the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period, until an order approving the resolution plan under sub-section (1) of section 31 or appointing a liquidator under section 34 is passed by the Adjudicating Authority.

(2) The resolution professional shall exercise powers and perform duties as are vested or conferred on the interim resolution professional under this Chapter.

.....

Section 25: Duties of resolution professional (1) .....

...

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following action, namely:-

...

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;"

[Emphasis supplied] 17.7 The Respondent/RP of Go Air is thus, bound to represent the interest of the CoC. The IRP/RP is an officer of the Court as appointed by the NCLT, to manage the interests of the corporate debtor and to represent its interests before a judicial authority. The Respondent/RP of Go Air is already a party in the present proceedings and is representing the CoC's interests. The contentions raised by the CoC have also been raised by the Respondent/RP of Go Air and are being adjudicated upon by this Court.

17.8 Since, the interests of the corporate debtor, i.e. Respondent/Go Air are being represented by the Respondent/RP of Go Air, CoC is not a necessary party to the present Petitions. The Applications filed by the CoC for impleadment accordingly are dismissed. It is clarified that this does not preclude the CoC in any manner, representing its interests before the NCLT or other judicial fora in accordance with law.

Registration of Aircraft and its Deregistration

18. As stated in Paragraph 2 above, the grievance of the Petitioners/Lessors essentially stems from the fact that although, the pre-requisites for deregistration under sub-Rule (7) Rule 30 of the Aircraft Rules have been complied with, the Respondent/DGCA has failed to deregister the 54 Aircraft which form the subject matter of these Petitions.

19. 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.

19.1 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. Rule 5 of the Aircraft Rules is extracted below:

"5. Registration and nationality and registration marks - Subject to the provisions of rule 33, no person shall fly, or assist in flying, any aircraft unless -

(a) it has been registered, and

(b) it bears its nationality and registrations marks and the name and residence of the owner affixed or painted thereon in accordance with rule 37 or, in the case of aircraft registered elsewhere than in India, in accordance with the regulations of the State in which it is registered:

Provided that the prohibition imposed by this rule shall not apply to aircraft flown in accordance with the special permission in writing of the Central Government and subject to any conditions and limitations which may be specified in such permission."

19.2 The registration and marking of an Aircraft is provided for in sub-

Rules (1) and (2) of Rule 30 of the Aircraft Rules. The Petitioners/Lessors contended that 54 Aircraft which form the subject matter of the present Petition, are all owned by companies or corporations registered outside India and are leased to Respondent/Go Air, and thus, fall in Category A in Rule 30(2)(iv) of the Aircraft Rules. The relevant extract is below:

"30. Certificate of Registration - (1). The authority empowered to register aircraft and to grant certificate of registration in India shall be the Central Government. The certificate of registration shall include the following particulars, namely:-

Type of aircraft, constructor's number, year of manufacture, nationality and registration marks referred to under these rules, full name, nationality and address of the owner, usual station of aircraft and the date of registration and the period of validity of such registration.

Provided that in the case of leased aircraft, the certificate of registration shall also include the validity of the lease and the names, nationalities and addresses of the lessor and the lessee:

.....

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

Category A--Where the aircraft is wholly owned either-- ...

...

(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]..."

[Emphasis supplied] 19.3 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). Such registration is not in conformity with the provisions of sub-rule (2); or

(ii). The registration has been obtained by furnishing false information; or

(iii). The aircraft could more suitably be registered in some other country; or

(iv). The lease in respect of the aircraft, registered in pursuance of sub-clause (iv) of clause (a) of sub-rule (2), is not in force; or

(v). The certificate of airworthiness in respect of the aircraft has expired for a period of five years or more; or

(vi). The aircraft has been destroyed or permanently withdrawn from use; or

(vii). It is inexpedient in the public interest that the aircraft should remain registered in India."

[Emphasis supplied] 19.4 A combined reading of Rule 5 and Rule 30(6) of the Aircraft Rules shows that unless an Aircraft has an existing registration, it cannot be flown and once the lease of an Aircraft has expired or been terminated, its registration "may" be cancelled at any time.

19.5 The Respondent/DGCA has placed reliance upon an extract of Civil Aviation Manual, which is effective from 10.09.1998. Paragraph 1.1 and 1.2 of the Civil Aviation Manual are also relevant and are extracted below:

"1. Introduction 1.1 Rule 5 of the Aircraft Rules, 1937 requires that no person shall fly or assist in flying any aircraft unless it has been registered and bears its nationality and registration marks and the name and residence of the owner affixed or painted thereon in accordance with Rule 37.

1.2 Rule 30 of the Aircraft Rules, 1937 empowers the Central Government to register an aircraft and to grant a Certificate of Registration in respect thereof. Rule 31 to 37 A

further describe the legislation with regard to registration of aircraft, its cancellation and change of ownership, the Nationality and Registration Marks and the manner in which they are to be affixed."

19.6 Paragraph 7.6 of the Civil Aviation Manual states that the registration of the Aircraft will be valid so long as its lease is in force. The relevant extract is as follows:

"7. Registration Certificate and Validity of Registration of Aircraft:

.....

7.6 In case of aircraft registered under paragraph 3.1 (iv), the registration will be valid so long as the lease is in force and therefore, the period of validity of Certificate in such cases shall be restricted to the date of lease agreement."

[Emphasis supplied] 19.7 Thus clearly, the period of validity of certificate of registration of an Aircraft is restricted to the subsistence of the valid Lease Agreement. In the present case, the Petitioners/Lessors have terminated the Lease Agreements hence, the 54 Aircraft do not have a valid certificate of registration.

20. As stated above, India acceded to the Cape Town Convention and Cape Town Protocol on 31.03.2008 and it is in pursuance thereof that sub-Rule (7) of Rule 30 was inserted into the Aircraft Rules, which states that upon receipt of an application for deregistration along with IDERA and a priority search report [as per Rule 30(7)(ii)], the registration shall be cancelled.

20.1 The IDERA is defined under the Aircraft Rules in Rule 3(28A) in the following terms:

"(28A) "IDERA" means the irrevocable deregistration and export request authorisation to be used for getting an aircraft deregistered and exported under the provisions of the Cape Town Protocol; "

20.2 IDERA is an acronym for an Irrevocable De-Registration and Export Request Authorisation. It operates under Article XIII of the Cape Town Protocol and provides that the Petitioner/Lessor is the sole person entitled to procure the deregistration of the Aircraft by the Respondent/DGCA and to procure and physically export the Aircraft from India. The table in Paragraph 3.2 above, contains the date on which each IDERA has been furnished by Respondent/Go Air to the Petitioners/Lessors.

20.3 Undisputedly, the Petitioners/Lessors in the present case are the IDERA Holders in respect of all 54 Aircraft which form the subject matter of the present Petitions. The IDERA, being almost identical in all the cases, as extracted from W.P. (C) 6626/2023 and reproduced below:

"IRREVOCABLE DE-REGISTRATION  
REQUEST AUTHORISATION

[DATED]

To Directorate General of Civil Aviation

Re: Irrevocable De-Registration and Export  
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]"

[Emphasis supplied]

21. It is the contention of the Petitioners/Lessors that owing to arrears of lease rentals, the Termination Notices were sent to Respondent/Go Air on 02.05.2023, 03.04.2023 and 04.05.2023 which also stated that the Petitioners/Lessors are assuming possession of the Aircraft and required Respondent/Go Air to provide necessary assistance for the deregistration and export of the Aircraft. The Petitioners/Lessors also sent their respective Deregistration Application between 02.05.2023 and 05.05.2023 [except Petitioner/Lessor in W.P.(C) 9901/2023, 10327/2023 and 10386/2023

whose Deregistration Applications were sent on 09.05.2023 and 10.05.2023]. Indisputably, all the de- registration Applications were sent to Respondent/DGCA prior to the Insolvency Commencement Order was pronounced/made available to the general public.

21.1 Although, the Deregistration Application were acknowledged by Respondent/DGCA, the process of deregistration did not take place as the Respondent/Go Air had initiated proceedings for voluntary insolvency which led to the Insolvency Commencement Order being passed by the NCLT on 10.05.2023.

21.2 The Petitioners/Lessors, thereafter, received a communication from the Respondent/DGCA on 12.05.2023 (and 19.05.2023) which stated that deregistration request cannot be processed. The communications received were similar to each other, for each of the 54 Aircraft. One such communication extracted from W.P.(C) 7663/2023 is below:

"Subject: Request for De-registration of A320 Aircraft; VT- WDA (MSN:110052) under IDERA.

Sir/Madam, Reference may please be made to your application regarding subject cited above.

I have been directed to convey that in view of the Order dated 10.05.2023 passed by NCLT, New Delhi in Company Petition No. (IB)-264 (PB)/2023, the De-registration request cannot be processed at this stage.

This issues with the approval of Competent Authority."

[Emphasis supplied]

22. The Petitioners/Lessors have contended that what has been filed before this Court is a Petition seeking mandamus directing Respondent/DGCA to comply with its obligations in terms of the Cape Town Convention and Cape Town Protocol as interpreted in the Aircraft Rules - more specifically Rule 30(7) of the Aircraft Rules to deregister the Aircraft. Once the conditions of the said Rule have been complied with, a statutory obligation is cast upon the Central Government acting through the Respondent/DGCA to cancel the registration of such Aircraft and this is a mandatory obligation. Rule 30(7) is extracted 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, without seeking consent or any document from the operator of the aircraft or any other person, if an application is received from IDERA Holder along with:--

(i) the original or notarised copy of the IDERA recorded with the Director-General;  
and



(ii) a priority search report from the International Registry regarding all registered interests in the aircraft ranking in priority along with a certificate from the IDERA Holder that all Registered Interests ranking in priority to that of the IDERA Holder in the priority search report have been discharged or that the holders of such interest have consented to the deregistration and export of the aircraft:

Provided that such cancellation of registration of the aircraft shall not effect the right of the Central Government or of any entity thereof, or any inter-governmental organisation in which India is a member, 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 such aircraft in respect of that object."

[Emphasis supplied] 22.1 Rule 30(7) of the Aircraft Rules provides that registration of those Aircraft [to which the Cape Town Convention and Cape Town Protocol apply] shall be cancelled within 5 working days without reference to the operator of the Aircraft or seeking any document from them upon receipt of: original or notarised copy of IDERA and the priority search report.

23. The purport of Rule 30 (7) of the Aircraft Rules has been dealt with by a Coordinate Bench of this Court in the Awas case. After analysis of the provisions of the Aircraft Rules, the Court in the Awas case, held that the Respondent/DGCA has to proceed in accordance with Rule 30 (7) of the Aircraft Rules which is a mandatory requirement 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. It was held that 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.

23.1 It is apposite to refer to the following extract of the Awas case in this regard 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 COR37 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. ...

22.4 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 COR - Certificate of Registration 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].

[Emphasis supplied] 23.2 An argument made in the *Awas* case that the entitlement of the Petitioners/Lessors to terminate the Lease Agreements would require determination by a competent Court of law, was also repelled by the Court as being misconceived in view of the provisions of the Cape Town Convention and Cape Town Protocol 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.

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] 23.3 While Rule 30(6) of the Aircraft Rules uses the term "may", Rule 30(7) of the Aircraft Rules uses the term "shall be cancelled". This signifies that the legislative intent that by use of the word "shall"<sup>38</sup>, the intention was to make Rule 30(7) of the Aircraft Rules, mandatory. This Court concurs with the judgment of a Coordinate Bench of this Court in the Awas case. The Respondent/DGCA is thus, mandatorily required See: Wellington Associates Ltd v. Kirit Mehta; (2000) 4 SCC 272 and Jamatraj Kewalji Govani v. State of Maharashtra; (1967) 3 SCR 415 to cancel the registration subject to the fulfilment of the documents and conditions as set forth in Rule 30(7) of the Aircraft Rules.

Jurisdiction of High Court under Article 226 of the Constitution vis-à-vis NCLT/NCLAT a creature of Statute - No power of Judicial Review

24. As discussed hereinabove, the provisions qua registration/deregistration of an Aircraft form the subject matter of the Aircraft Act and Aircraft Rules framed thereunder and the Petitioners/Lessors have approached this Court alleging a failure of the Respondent/DGCA to comply with the applicable provisions.

24.1 The Respondent/RP of Go Air has, on the other hand, averred that once the Insolvency Commencement Order came into effect on 10.05.2023, all disputes with respect to an entity where the insolvency process (CIRP) has commenced can only be adjudicated before the NCLT and this Court has no jurisdiction to entertain any Petition in relation to the assets of the entity where CIRP has commenced. It has been further contended that there is a clear nexus between deregistration and insolvency of Respondent/Go Air and in terms of Section 60(5) of the IBC, only the NCLT has exclusive jurisdiction to decide the "issues arising out of and in relation to the insolvency" of the Respondent/Go Air.

24.2 It has also been contended by Respondent/RP of Go Air that since termination of the Lease Agreements and Deregistration Applications are all motivated by the insolvency in terms of Section 14(1)(d) of the IBC, the Aircrafts are required to be retained by Respondent/Go Air to enable the Respondent/Go Air to function as a going concern.

25. Sub-Section (4) of Section 14 of the IBC, sets forth that an order for moratorium is effective 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] 25.1 There is no dispute that the order of moratorium in this case was passed by NCLT on 10.05.2023, in respect of Respondent/Go Air, hence the moratorium commenced on 10.05.2023. It has been submitted that once the moratorium commenced, all disputes arising out of and connected with the insolvency of Respondent/Go Air would have to be decided by the NCLT, in view of the provisions of Section 60(5) of the IBC. Reliance has also been placed on Section 238 of IBC to contend that the provisions of the IBC shall override all other statutes in force.

25.2 It is apposite to refer to sub-Section (5) of Section 60 of the IBC at this stage, which starts with a non obstante clause and states that the NCLT shall have the jurisdiction to entertain applications, claims and/or questions of law or facts which arise out of insolvency or liquidation proceedings of a corporate debtor. Section 60(5) of the IBC reads as follows:

"60. The Adjudicating Authority for corporate persons.

.....

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of--

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code."

[Emphasis supplied] 25.3 The purport of sub-Section (5) of Section 60 of the IBC has been discussed by the Supreme Court in the Embassy case. One of the issues that had arisen before the Supreme Court in the Embassy case, which is similar to the present case, was whether the High Court ought to interfere under Article 226 and 227 of the Constitution, with an order passed by the NCLT in

proceedings under the IBC, in view of the availability of an alternate statutory remedy under the IBC. The corporate debtor in that case held a mining lease granted by Government of Karnataka. Prior to the expiry of the lease, the NCLT declared a moratorium under Section 14 of the IBC. The Supreme Court held that the NCLT is not a Civil Court but a creature of a statute. It is apposite to refer to the following extract:-

"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] 25.4 In addition, the Embassy case also sets out the jurisdiction of the NCLT under the provisions of sub-Section (5) of Section 60 of the IBC and hold that although this provision is comprehensive in its sweep but, it cannot be deemed to include a decision taken by a government or statutory authority in the realm of public law. The power of judicial review of governmental authorities cannot be exercised by the NCLT. The relevant extract of the Embassy case is set forth below:

"37. From a combined reading of sub-section (4) and sub-section (2) of Section 60 with Section 179, it is clear that none of them hold the key to the question as to whether NCLT would have jurisdiction over a decision taken by the Government under the provisions of the MMDR Act, 1957 and the Rules issued thereunder. The only provision which can probably throw light on this question would be sub-section (5) of Section 60, as it speaks about the jurisdiction of the NCLT. Clause (c) of sub-section (5) of Section 60 is very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to insolvency resolution. But a decision taken by the Government or a statutory authority in relation to a matter which is in the realm of public law, cannot, by any stretch of imagination, be brought within the fold of the phrase "arising out of or in relation to the insolvency resolution" appearing in clause (c) of sub-section (5). Let us take for instance a case where a corporate debtor had suffered an order at the hands of the Income Tax Appellate Tribunal, at the time of initiation of CIRP. If Section 60(5)(c) of the IBC is interpreted to include all questions of law or facts under the sky, an Interim Resolution Professional/Resolution Professional will then claim a right to challenge the order of the Income Tax Appellate Tribunal before the NCLT, instead of moving a statutory appeal under Section 260-A of the Income Tax Act, 1961. Therefore the jurisdiction of the NCLT delineated in Section 60(5) cannot be stretched so far as to bring absurd results. [It will be a different matter, if proceedings under statutes like Income Tax Act had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression "operational debt" under Section 5(21), making the Government an "operational creditor" in terms of Section 5(20). The moment the dues to the Government are crystallised and what remains is only payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the resolution plan as approved by the adjudicating authority, namely, the NCLT.]

38. It was argued by all the learned Senior Counsel on the side of the appellants that an Interim Resolution Professional is duty-bound under Section 20(1) to preserve the value of the property of the corporate debtor and that the word "property" is interpreted in Section 3(27) to include even actionable claims as well as every description of interest, present or future or vested or contingent interest arising out of or incidental to property and that therefore the Interim Resolution Professional is entitled to move the NCLT for appropriate orders, on the basis that lease is a property right and NCLT has jurisdiction under Section 60(5) to entertain any claim by the corporate debtor.

39. But the said argument cannot be sustained for the simple reason that the duties of a resolution professional are entirely different from the jurisdiction and powers of NCLT. In fact Section 20(1) cannot be read in isolation, but has to be read in conjunction with Section 18(1)(f)(vi) of the IBC, 2016 together with the Explanation thereunder.

...

41. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right."

[Emphasis supplied]

26. 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. The NCLT is created under the IBC and its jurisdiction therefore is limited to the extent as provided under the IBC. The NCLT cannot assume control over other government authorities in the realm of public law. The scope of Section 63 and Section 231 of the IBC is restricted to matters which the NCLT or the NCLAT have jurisdiction.

26.1 In fact, recognising this limitation, the NCLAT has in a judgment, titled as Canara Bank v. Deccan Chronicle Holdings Limited<sup>39</sup>, while modifying an order passed by the NCLT, held that the power of the Supreme Court and the High Court under Article 32 and 226 of the Constitution, respectively, cannot be curtailed by any provision of an Act or Court and further held that the moratorium would not affect the High Court under Article 226 of the Constitution. The relevant extract is below:

"7. There is no provision to file any money suit or suit for recovery before the Hon'ble Supreme Court except under Article 131 of the Constitution of India where dispute between Government of India and one or more States or between the Government of India and any State or States on one side and one or two or more States is filed. Some High Courts have original jurisdiction to entertain the suits, which may include money suit or suit for recovery of money. The Hon'ble Supreme Court has power under Article 32 of the Constitution of India and Hon'ble High Court under Article 226 of Constitution of India which power cannot be curtailed by any provision of an Act or a Court. In view of the aforesaid provision of law, we make it clear that 'moratorium' will not affect any suit or case pending before the Hon'ble Supreme Court under Article 32 of the Constitution of India or where an order is passed under Article 2017 SCC OnLine NCLAT 255 136 of Constitution of India. 'Moratorium' will also not affect the power of the High Court under Article 226 of Constitution of India. However, so far as suit, if filed before any High Court under original jurisdiction which is a money suit or suit for recovery, against the 'corporate debtor' such suit cannot proceed after declaration of moratorium, under Section 14 of the I&B Code."

[Emphasis supplied] 26.2 The NCLT does not have the authority to assume the jurisdiction exclusively conferred on the High Courts and the Supreme Court and which cannot be curtailed by any statute.

## No Nexus between Deregistration and Insolvency

27. Respondent/RP of Go Air has averred that there is a clear nexus between deregistration and insolvency of Respondent/Go Air. Hence, the NCLT would have exclusive jurisdiction under Section 60(5) of the IBC to adjudicate all matters "arising out of" or "in relation to" the insolvency proceedings of the corporate debtor - Respondent/Go Air.

27.1 The Respondent/RP of Go Air has relied upon the judgments in the TATA Consultancy case and Gujarat Urja case to submit that sub- Section (5) of Section 60 of the IBC cannot be given a narrow interpretation. It provides that IBC has widest amplitude to deal with all such matters and forum for the same is NCLT/NCLAT. It has additionally been contended that the issues raised by the Petitioners/Lessors before this Court have also been raised by the Petitioners/Lessors before the NCLT and since the Petitioners/Lessors have already submitted to the jurisdiction of the NCLT/NCLAT, they are required to submit to the jurisdiction of the NCLT/NCLAT alone. The Gujarat Urja case has also been relied by Respondent/RP of Go Air to further the proposition that the NCLT has the power to exercise its jurisdiction under Section 60(5)(c) of the IBC, to ensure the revival of a corporate debtor.

27.2 In the Gujarat Urja case, an order passed by the NCLAT was assailed in the Supreme Court on the ground of jurisdiction of the NCLT/NCLAT to entertain contractual disputes between the parties. A moratorium was imposed by the NCLT and subsequently, a Power Purchase Agreement executed between the parties was terminated on account of default. Relying on the judgement in the Arcelor Mittal case, the Supreme Court held that the Power Purchase Agreement was terminated solely on the ground of insolvency and hence, the proceedings against the corporate debtor are to be governed by Section 60(5) of the IBC, and NCLT/NCLAT alone will have jurisdiction. The Supreme Court held that the purpose of non obstante clause in Section 60(5) of the IBC was to ensure that the NCLT alone has jurisdiction when it comes to applications which are covered by the IBC so that these are not entertained by any other fora. The Supreme Court, however, penned a word of caution in the Gujarat Urja case saying that where the dispute does not arise solely from or relate to insolvency, the legitimate jurisdictions of Courts and Tribunals must not be usurped by NCLT/NCLAT. It is apposite to refer to the following extract of the Gujarat Urja case:

"69. The institutional framework under IBC contemplated the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora. In the absence of a court exercising exclusive jurisdiction over matters relating to insolvency, the corporate debtor would have to file and/or defend multiple proceedings in different fora. These proceedings may cause undue delay in the insolvency resolution process due to multiple proceedings in trial courts and courts of appeal. A delay in completion of the insolvency proceedings would diminish the value of the debtor's assets and hamper the prospects of a successful reorganisation or liquidation. For the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in a timely, effective and efficient manner. Pursuing this theme in *Innoventive [Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407 : (2018) 1 SCC (Civ) 356]* this Court observed that : (SCC p. 422, para 13) "13. One of



the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process."

The principle was reiterated in *Arcelor Mittal [Arcelor Mittal (India) (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1]* where this Court held that : (SCC p. 88, para 84) "84. ... The non obstante clause in Section 60(5) is designed for a different purpose: to ensure that NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings."

Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor. However, in doing so, we issue a note of caution to NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the corporate debtor. The nexus with the insolvency of the corporate debtor must exist. ....

70....As such, it is important to remember that NCLT's jurisdiction shall always be circumscribed by the supervisory role envisaged for it under IBC, which sought to make the process driven by trained resolution professionals.

[Emphasis supplied] 27.3 Thus, it was held that disputes which arise solely from or relate to the insolvency of the corporate debtor are to be governed by the NCLT. Where applications are filed under the IBC, "by or against" a corporate debtor and where there is a nexus between the dispute and the insolvency of such corporate debtor, only the NCLT has the power to adjudicate. The NCLT must not however usurp the legitimate proceedings of other Courts.

27.4 On an analysis of the Gujarat Urja case, it is clear that the primary reason for termination of the agreement between the parties in that case was the initiation of insolvency proceedings. Paragraph 71 of the Gujarat Urja case, has held that in the absence of the insolvency of the corporate debtor, there was no ground to terminate the Power Purchase Agreement between the parties. Paragraph 71 is reproduced below:

"71. In the present case, PPA was terminated solely on the ground of insolvency, since the event of default contemplated under Article 9.2.1(e) was the commencement of insolvency proceedings against the corporate debtor. In the absence of the insolvency of the corporate debtor, there would be no ground to terminate PPA. The termination is not on a ground independent of the insolvency. The present dispute solely arises out of and relates to the insolvency of the corporate debtor."

[Emphasis supplied] 27.5 The Supreme Court in the Gujarat Urja case further clarified that where a decision of a private party has been taken solely on account of the initiation of the insolvency, such a decision, not being one taken, in the public law domain, such as in the Embassy case, is

distinguishable.

The applicability of the Gujarat Urja case is discussed hereafter. The relevant extract of the Gujarat Urja case is set out below:

"77. Reliance has also been placed on the judgment of this Court in Embassy Property [Embassy Property Developments (P) Ltd. v. State of Karnataka, (2020) 13 SCC 308], where this Court held that NCLT and NCLAT did not have jurisdiction over a dispute arising under the Mines and Minerals (Development and Regulation) Act, 1957, in relation to the refusal of the State of Karnataka to extend a mining lease. The primary consideration which weighed with this Court while coming to its decision was that NCLT cannot have jurisdiction on matters of public law. This Court held : (SCC p. 331, para

37)...

"37. ... Clause (c) of sub-section (5) of Section 60 is very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to insolvency resolution. But a decision taken by the Government or a statutory authority in relation to a matter which is in the realm of public law, cannot, by any stretch of imagination, be brought within the fold of the phrase "arising out of or in relation to the insolvency resolution" appearing in clause (c) of sub-section (5)."

(emphasis in original) In the present case the decision to terminate PPA has not been taken by any governmental or statutory authority acting within the domain of its public law functions. The decision has been simply taken by a contracting party solely on account of the initiation of insolvency proceedings against the corporate debtor in terms of an agreement between the parties."

[Emphasis supplied] 27.6 The Respondent/RP of Go Air has relied upon the judgment in the Arcelor Mittal case to submit that even antecedent facts proximate to the issue ought to be considered for applicability of the provisions of Section 60(5) of the IBC. However, judgment in the Arcelor Mittal case was in the context of ineligibility of resolution applicants to submit resolution plans after the introduction of Section 29A of the IBC in the year 2017. The Supreme Court while interpreting the Section 29A(c) of the IBC held that a person who wishes to submit a resolution plan must do so acting jointly or in concert with other persons who happen to manage or control the corporate debtor and that care must be taken to ensure that persons who are in-charge of corporate debtor for whom such resolution plan is made do not obtain control of a company without first paying all its debts. It was in this context that the Court held that if at the time of submission of a resolution plan, if there are antecedent facts which are reasonably proximate in time they can always be seen. However, the submission of resolution plan or persons eligible to be a resolution applicant does not form part of the mandate of this Court. This judgment thus, does not come to the aid of the Respondent/RP of Go Air.

28. The proceedings before this Court, indisputably are the Applications for deregistration and export (in some cases) of the Aircraft. Various prayers have also been made for the protection of the Aircraft. These do not solely arise from the insolvency of the Respondent/Go Air, as has been discussed hereafter.

#### Breach of Binding Lease Agreements - Non-payment of Lease Rentals

29. In the present case, the relationship between the parties arises out of Lease Agreements entered into between the Petitioners/Lessors and Respondent/Go Air whereby, Respondent/Go Air had leased 54 Aircraft from the Petitioners/Lessors. The details of these Aircraft are set out in Paragraph 3.2 above. In terms of the Lease Agreements, upon commencement of the lease, the Aircraft would be delivered and accepted by Respondent/Go Air on an "as is" condition. The Lease Agreements further provide for payment of monthly lease rental by Respondent/Go Air to the Petitioners/Lessors.

29.1 The lease commences with the delivery of the Aircraft to Respondent/Go Air and sets forth that in the event of a default, such as non-payment of lease rentals or other payments, under the Lease Agreements or breach of any of the terms of the Lease Agreements, the Lease Agreements shall stand terminated in accordance with the terms and conditions thereof.

29.2 The Lease Agreements further provides that once an event of default occurs, the Lessee - Respondent/Go Air shall take all steps necessary for the deregistration of the Aircraft. Although, the terms of each Lease Agreement is at variance with each other, the salient terms mentioned herein form part of most of the Lease Agreements. An extract of the Lease Agreement, as taken from the Lease Agreement filed in W.P. (C) 7214/2023 extracting some relevant clauses is reproduced below:

"...4.1 Subject to Clause 3 (Conditions Precedent), at Delivery the Aircraft shall be delivered to and accepted by Lessee in "as is" condition and shall become subject to and governed by this Agreement, the Term shall commence and Lessee shall thereupon sign and deliver to Lessor the Certificate of Acceptance.

.....

5.1 (a) Lessee shall provide to Lessor:

(i) no later than the date falling on the earlier of:

(1) ten (10) days after the date of this Agreement; and (2) the Delivery Date, a swift copy of an irrevocable letter of credit (the "Initial Security Deposit Letter of Credit") in an amount equal to XXXXXX (the "Initial Security Deposit LC Amount"); and

(ii) no later than three (3) Business Days prior to the Delivery Date, a swift copy of an irrevocable letter of credit (the "Second Security Deposit Letter of Credit", and together with the Initial Security Deposit Letter of Credit, the "Security Deposit

Letters of Credit", and each a "Security Deposit Letter of Credit") in an amount equal to XXXXXX (the "Second Security Deposit LC Amount" and together with the Initial Security Deposit LC Amount, the "Combined Security Deposit LC Amount" and each a "Security Deposit LC Amount")..."

".....

5.3 (a) Lessee will pay to Lessor or its order the amount calculated pursuant to paragraph (b) below in advance on each Rent Date. Payment must be initiated adequately in advance of each Rent Date to ensure that Lessor receives credit for the payment on the relevant Rent Date.

(b) For the purposes of this Agreement, the Rent will be XXXXXX per Rental Period, comprised of:

(i) a tranche one lease rental of XXXXXX per Rental Period; and

(ii) a tranche two lease rental of XXXXXX per Rental Period.

....."

[Emphasis supplied] 29.3 The events of default and the rights of parties are set forth in Appendix-9 of this Lease Agreement. These include non-payment of lease rentals; cessation of or suspension of airline business; non-compliance of insurance requirements, breach of any provisions of the transaction documents or of representation and warranties; inability to make payment of debts, appointment of a liquidator/insolvency professional and so on. Appendix-9 is extracted below for ready reference:

"APPENDIX 9 Events of Default and Rights PART A Events of Default

(a) Lessee fails to make:

(i) any payment of Rent, the Agreed Value, Supplemental Rent (if required), Total Loss proceeds on its due date or within five (5) Business Days of its due date; or

(ii) any other payment under any Transaction Document on its due date or, if no due date is specified, within seven (7) Business Days of demand;

(b) Lessee fails to comply with any provision of Appendix 7 (Insurances) or any Insurance required to be maintained under Appendix 7 (Insurances) is cancelled, invalidated or terminated or notice of cancellation is given in respect of any such Insurance, save that no Event of Default shall occur under this paragraph (b) provided that:

(i) Lessee promptly grounds the Aircraft upon first becoming aware of any circumstance set out in this paragraph (b); and

(ii) such cancellation, termination or notice of cancellation: (1) is part of a wider programme of cancellation by the insurers as a result of an event or series of events affecting the insurance market generally; and (2) the Aircraft remains grounded, stored and maintained in accordance with the requirements of this Agreement and fully covered by a "ground risk only" insurance policy for so long as any circumstance set out in this paragraph (b) is continuing;

(c) Lessee fails to comply with any provision of any Transaction Document as a result of which Lessor is adversely affected and, save to the extent such failure to comply is the subject of a separate grace period in this Appendix 9 Part A, if such failure is in the reasonable opinion of Lessor capable of remedy, the failure continues for twenty-five (25) days of either Lessee or Lessor becoming aware of such failure to comply (or such longer period as is necessary to cure the non-compliance provided the non-compliance is curable and Lessor (acting reasonably) is satisfied that Lessee is using all reasonable endeavours to cure the non-compliance but in any event no longer than forty (40) days);

(d) any representation or warranty made (or deemed to be repeated) by Lessee in or pursuant to this Agreement or any other Transaction Document is or proves to have been incorrect in any material respect when made or deemed to be repeated and, if the event giving rise to such breach is in the reasonable opinion of Lessor capable of remedy, such breach continues for twenty-five (25) days of either Lessee or Lessor becoming aware of such breach (or such longer period as is necessary to cure the breach provided the breach is curable and Lessor (acting reasonably) is satisfied that Lessee is using all reasonable endeavours to cure the breach but in any event no longer than forty (40) days);

(e) (i) any authorisation required by Lessee to obtain and transfer freely Dollars (or any other relevant currency) out of any relevant country; or

(ii) required by Lessee to authorise, or in connection with, the execution, delivery, validity, enforceability or admissibility in evidence of any Transaction Document or the performance by Lessee of its obligations under any Transaction Document, is conditioned, revoked, suspended, cancelled, withdrawn, terminated or not renewed, or otherwise ceases to be in full force and effect, save in circumstances where: (1) the conditioning, revocation, suspension, cancellation, withdrawal, termination or non-renewal is caused directly by an act or omission of Lessor; or (2) the consent, authorisation, licence, certificate, approval or registration is required in connection with an unscheduled payment to be made by Lessee under this Agreement (which for the avoidance of doubt shall not include Rent or Supplemental Rent but may include an indemnity payment}, in which case, the provisions of Clause 15 (illegality) shall

apply;

(f) the registration of the Aircraft or any airline licence or air transport licence in relation to the operation of the Aircraft is withheld, or is revoked, suspended, cancelled, withdrawn, terminated or not renewed, or otherwise ceases to be in full force;

(g) Lessee:

(i) is, or is deemed for the purposes of any relevant law to be, unable to pay its debts in excess of US\$15,000,000 as they fall due;

(ii) is declared insolvent by the relevant adjudicating authority in India;

(iii) admits, in writing, inability to pay any of its debts as they fall due; or

(iv) suspends making payments on all or any class of its debts or announces, in writing, an intention to do so;

(h) (i) a meeting of the shareholders of Lessee is convened to consider a resolution to present an application for an administration order or any such resolution is passed;

(ii) the filing of a petition by Lessee, or the passing of any final non-appealable order by the relevant authority, In each case, with a view to composition, assignment or arrangement with any creditor of, or rehabilitation, administration, custodianship, liquidation, or dissolution of Lessee or any other insolvency proceedings involving Lessee;

(iii) any final non-appealable order is made for any composition, assignment, arrangement, rehabilitation, administration, custodianship, liquidation, dissolution or insolvency proceedings of Lessee, or Lessee becomes subject to or enters into any of the foregoing; or

(iv) any liquidator, insolvency professional, trustee in bankruptcy, judicial custodian, statutory manager, compulsory manager, receiver, administrator, examiner or the like is appointed in respect of Lessee, in each case, pursuant to a final non-appealable order of the adjudicating authority, but excluding, in each case, any proceedings for the purposes of any solvent rearrangement, amalgamation or reorganisation, unless during or because of such amalgamation or reorganisation Lessee becomes or is declared insolvent;

(i) (i) an administrative or other receiver or manager or administrator is appointed by the appropriate court or tribunal in respect of Lessee or any substantial part of its assets;

(iv) Lessee (or any person acting for or on behalf of Lessee) requests the relevant authority in writing to appoint a receiver or manager or administrator; or

(v) any attachment, sequestration, distress or execution affects all or a material part of the assets of Lessee and is not discharged within ninety (90) days, and provided that if any action referred to in (i) or (iii) above are taken by a person other than Lessee or any Affiliate of Lessee, it shall not be an Event of Default if Lessor is satisfied (acting reasonably) that:

(1) such action is vexatious and without merit; (2) Lessee is solvent;

(3) Lessee is diligently and in good faith seeking to revoke such appointment or, as applicable, prevent such enforcement;

(4) the appointment or action, as applicable, does not adversely affect the interests of Lessor or any Financing Party in or to the Aircraft or in or under any Transaction Document;

(5) the action or, as applicable, appointment, does not adversely affect the ability of Lessee to discharge its obligations under the Transaction Documents; and (6) the appointment or action, as applicable, is revoked or remedied within one hundred and eighty (180) days (in the case of paragraph (i) above) or ninety (90) days (in the case of paragraph (ii) above), in each case, of the appointment or step being taken;

(j) Lessee suspends or ceases or threatens, in writing, to suspend or cease to carry on all or a substantial part of its business as a scheduled airline;

(k) Lessee disposes, conveys or transfers or threatens, in writing, to dispose, convey or transfer all or a material part of its assets or consolidates or merges with any other person, whether by one or a series of transactions, related or not, save where such disposal or threatened disposal, consolidation or merger is for the purpose of a solvent rearrangement, reconstruction or amalgamation;

(l) the existence, validity, enforceability or priority of the rights of Lessor as owner and the rights of Lessor as lessor in respect of the Aircraft or the rights of the Security Trustee and Lenders as mortgagee and as assignee under the Mortgage and the Assignment are challenged by Lessee or any other person claiming by or through Lessee;

(m) any event or series of events occurs, which in the reasonable opinion of Lessor, is likely to have a Material Adverse Effect;

(n) any air traffic control authority (or any authority on their behalf) or any other authority notifies Lessor that there are navigation, landing, airport or similar charges

due from Lessee where a failure to pay any such amounts could reasonably be expected to give rise to any claim or lien over the Aircraft, and such charges remain outstanding for a period of thirty (30) days from the date of such notice; provided that:

(i) no Event of Default shall arise under this paragraph (n) for so long as such charges are being contested in good faith and by appropriate proceedings, an adequate provision has been made and such proceedings do not involve any risk of the detention, interference with use or operation or sale, forfeiture or loss of the Aircraft; and

(ii) such thirty (30) day period shall not apply if there is any risk of detention, interference with use or operation or sale, forfeiture or loss of the Aircraft;

(o) Lessee fails to redeliver the Aircraft to Lessor on the Expiry Date in the condition provided for in this Agreement for reasons attributable to Lessee;

(p) (i) the issuing bank or confirming bank of a Letter of Credit fails to make any payment under a Letter of Credit when due (provided that it shall not be an Event of Default pursuant to this sub-paragraph (i) where Lessee pays to Lessor an equivalent amount in cash or replaces the Letter of Credit with a Letter of Credit from another issuing bank and complying with Appendix 5 Part A (Additional Payment Provisions) in all respects, in each case, within five (5) Business Days);

(ii) any Letter of Credit is not in full force or, for any reason ceases to constitute the legal, valid and binding obligation of the issuer and/or confirming bank and a replacement Letter of Credit complying with Appendix 5 Part A (Additional Payment Provisions) shall not have been issued in accordance with Appendix 5 Part A or the relevant amount of the Combined Security Deposit LC Amount or the Supplemental Rent (as applicable) shall not have been paid in cash within five (5) Business Days; or

(iii) where applicable, a Letter of Credit is not renewed within the time required by paragraph 1(b) of Appendix 5 Part A (Additional Payment Provisions) or replaced by payment of the Combined Security Deposit LC Amount or Supplemental Rent (as applicable) in cash, provided that such failure to pay the Combined Security Deposit LC Amount or Supplemental Rent (as applicable) in cash shall not be an Event of Default to the extent that the Lessor has otherwise drawn the relevant amount of cash under a Letter of Credit prior to its expiry, and each reference in this paragraph (p) to the "Issuer" and the "Issuing Bank" shall include a reference to any confirming bank for a Letter of Credit;

(q) any Financial Indebtedness of Lessee in excess of US\$15,000,000 becomes due and is not paid within any applicable grace period or is declared due prior to the date when it would otherwise have become due; or any action is taken to attach, foreclose upon, dispose of or repossess the collateral held as security for any such Financial Indebtedness; or any "default" or "event of default" or



"termination event", howsoever described, occurs under any other agreement, lease, hire purchase, conditional sale or credit sale agreement of Lessee involving individually or in the aggregate obligations of Lessee in excess of US\$15,000,000 and the lessor, vendor, conditional seller or other counterparty thereunder takes action to exercise any right or remedy to enforce any such document; or

(r) an event of default (howsoever defined therein) has occurred and is continuing under any Other Agreement."

[Emphasis supplied] 29.4 The above clauses show that the Lease Agreements between the parties was a commercial transaction wherein the Petitioners/Lessors had for payment of lease rentals and other charges, leased out the Aircraft to the Respondent/Go Air and this Lease Agreement contained various different events of default with a declaration of insolvency under clause (g) of Appendix 9, being only one of them.

29.5 It is the contention of the Petitioners/Lessors that Respondent/Go Air started defaulting in their lease payment obligations as early as 2020, in some cases. It has been further contended that several default notices were sent to Respondent/Go Air by the Petitioners/Lessors and it is only when the events of default complained about were not cured, that the Termination Notices were sent to Respondent/Go Air.

29.6 A tabular representation of the multiple default notices and the Termination Notices sent out by Petitioners/Lessors to Respondent/Go Air, is set out below:

S. No. Petition name and number No. of Date of default Date of Aircraft Notices and emails Termination Notices 1 WP(C) 6569/2023- 14.11.22 02.05.2023 ACCIPITER 13.03.23 INVESTMENTS 20.04.23 AIRCRAFT 2 LTD V UOI 2 WP(C) 6626/2023- EOS 17.03.23 02.05.2023 LTD. Vs. UOI 3 WP(C) 7214/2023- 31.07.20 02.05.2023 PEMBROKE AIRCRAFT 23.02.21 LEASING 11 LTD VS 12.03.21 DGCA AND ORS 06.03.23 4 WP(C) 7369/2023- SMBC 04.02.22 02.05.2023 AVIATION CAPITAL 22.02.23 UNION OF INDIA AND ORS 5 WP(C) 7773/2023- SFV Not attached but the 03.05.2023 AIRCRAFT HOLDINGS termination notice IRE 9 DAC LIMITED Vs. mentions occurrence of UOI THROUGH THE several defaults of MINISTRY OF CIVIL events.

AVIATION & ORS.

6 WP(C) 8088/2023- GY 27/29.11.22 03.05.2023 AVIATION LEASE 1722 CO LIMITED & ORS. Vs. UOI 7 W.P.(C) 9900/2023 30.04.2020 04.05.2023 SKY HIGH XCV LEASING CO. LTD. & ANR v UOI through DGCA 8 W.P.(C) 9901/2023 20.03.2023 03.05.2023 STAR RISING AVIATION 13 LIMITED v UOI through DGCA 9 WP(C) 7663/2023- DAE SY Not attached but the 02.05.2023 & 22 13 IRELAND termination notice 04.05.2023 DESIGNATED ACTIVITY 2 mentions overdue COMPANY Vs. UOI AND lease rentals defaults.

ORS 10 WP(C) 7774/2023- ACG 17.11.2022 02.05.2023 AIRCRAFT LEASING IRELAND LIMITED Vs. UNION OF INDIA & ORS.

11	W.P. (C) 9432/2023 BOC AVIATION	27.08.2 31.08.2
	(IRELAND) LIMITED v DGCA	
12	W.P. (C) 9594/2023 JACKSON SQUARE	18.08.2
	AVIATION IRELAND LIMITED v DGCA	
13	W.P. (C) -10327-2023 BLUESKY 31 LEASING	13.12.2 27.02.2
	COMPANY LIMITED V DGCA	
14	W.P. (C) -10386-2023 BLUESKY 19 LEASING	13.12.2 27.02.2
	COMPANY LIMITED v DGCA	

29.7 One such default notice sent on 31.07.2020 to Respondent/Go Air by the Petitioners/Lessors in W.P.(C)7214/2023 is extracted below:

"NOTICE OF DEFAULT (MSN 7858) Go Airlines (India) Limited ("lessee") .....

By fax, electronic mail and post 31 July 2020 Dear Sirs GO AIRLINES (INDIA) LIMITED - LEASE AGREEMENT DATED 2 MAY 2018 IN RESPECT OF ONE (1) AIRBUS A320-NEO AIRCRAFT WITH MANUFACTURER'S SERIAL NUMBER 7858 (THE "AIRCRAFT")

1. We refer to:

(a) the lease agreement dated 2 May 2018 in relation to the Aircraft made between Pembroke Aircraft Leasing 11 Limited (the "Lessor") and the Lessee (the "lease Agreement");

(b) the Relevant Agreement; and

(c) the rent deferral letter dated 9 June 2020 made between the Lessor and the Lessee in relation to the Lease Agreement (the "Deferral letter").

2. Capitalised terms used in this Notice but not defined herein shall have the meanings given to them in the Lease Agreement.

3. In this Notice, the provisions of Appendix 1 Part B of the Lease Agreement will be deemed to be set out herein in their entirety but as if each reference therein to "this Agreement" were a reference instead to this Notice.

4. Notice of Default 4.1 We note that:

(a) the amount of XXXXXX being the instalment of Rent payable on 7 July 2020 pursuant to the Lease Agreement (as supplemented by the Deferral Letter) was not paid on such date and remains unpaid as at the date of this Notice and this constitutes an Event of Default under Appendix 9 Part A paragraph (a)(i) of the Lease Agreement; and

(b) there has been a payment event of default under the Relevant Agreement which remains unpaid as at the date of this Notice and this constitutes an Event of Default under Appendix 9 Part A paragraph (r) of the Relevant Agreement.

4.2 In accordance with Appendix 1 Part B paragraph 10 of the Lease Agreement, an Event of Default is "continuing" until it has been remedied or waived in writing by the Lessor (on such terms as it may in its sole and unfettered discretion determine). As at the date of this Notice, the Lessor has not waived the Events of Default and nor has the Lessee remedied the Events of Default described in paragraph 4.1 of this Notice. Accordingly, each Event of Default remains "continuing".

4.3 We also note that the Lessee shall pay default interest on the outstanding Rent in accordance with clause 5.5 of the Lease Agreement.

5. Reservation of Rights 5.1 The Lessor hereby notifies the Lessee that all rights of the Lessor in relation to the Events of Default described in paragraph 4.1 of this Notice are expressly reserved.

5.2 Nothing contained in this Notice shall prejudice any present or future rights and remedies of the Lessor against the Lessee or any other person under the Transaction Documents and/or at law, all of which rights and remedies are hereby expressly reserved and, in particular, the Lessor expressly reserves all of its rights in relation to the continuing Events of Default described in paragraph 4.1 of this Notice and any other Default, Relevant Default or any other Event of Default which has occurred or may, in the future, occur under the Lease Agreement.

5.3 No failure or delay, whether past, present or future, on the Lessor's part to exercise any of its aforesaid rights, remedies and powers under the Transaction Documents and/or at law, shall constitute any waiver of those rights.

5.4 This Notice constitutes a "Transaction Document" pursuant to the Lease Agreement.

5.5 All communications in this Notice are unilateral and effective without acknowledgment.

6. Governing Law 6.1 This Notice and any non-contractual obligations arising out of or in connection with it shall be governed by, construed and take effect in accordance with English law.

Yours faithfully

-sd-

For and on behalf of Pembroke Aircraft Leasing 11 Limited as Lessor"

[Emphasis supplied] 29.8 Similarly, the Petitioners/Lessors in W.P.(C) 6626/2023 sent a notice of default dated 17.03.2023 to Respondent/Go Air for payment of rental dues of XXXXXX as outstanding. The relevant extract of this default notice is reproduced below:

"We refer to the Aircraft Lease Agreement (A320NEO MSN 11111) between Eos Aviation 12 (Ireland) Limited ("Lessor") and Go Airlines (India) Limited ("Lessee") dated 8 September 2022 in respect of one Airbus A320-271N aircraft bearing manufacturer's serial number 11111 (as amended from time to time, the "Lease"). Capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed thereto in the Lease.

As Servicer for Lessor, we hereby notify you that: (1) an Event of Default has occurred and is continuing under Section 12.1 of the Lease because Lessee has failed to make payments under the Lease within the prescribed time period following their due date. As of the date hereof, a total amount of XXX comprising US\$304,346.46 of Supplemental Rent and XXXXXX of Rent (as detailed further in the table below and, in each case, excluding any amount payable by way of an Unscheduled Amount at the Past Due Rate) is outstanding:

Due Date	Amount	Payment	In
15 February 2023	XXXXXX	Supplemental Rent	23
17 February	XXXXXX	Rent	23

(2) a Default has occurred and is continuing under Section 12.1 of the Lease because Lessee has failed to make the below payments on the relevant due date:

Due Date	Amount	Payment	I
15 March 2023	XXXXXX	Supplemental	23

16 March 2023

XXXXXX

Rent  
Rent

23

We hereby demand immediate payment by Lessee of all sums due and payable under the Lease."

[Emphasis supplied] 29.9 It is the case of the Petitioners/Lessors, which has not been denied by the Respondent/Go Air, that there were continuous defaults in the lease rental payments by the Respondent/Go Air. It was in these circumstances that Termination Notices on the dates as set out in the Table in Paragraph 29.6 above was sent. One such Termination Notice dated 02.05.2023 sent by the Petitioners/Lessors in W.P.(C)6626/2023 to Respondent/Go Air which sets out that the Respondent/Go Air is in breach of the Lease Agreements and an event of default has occurred by the Lessee - Respondent/Go Air suspending all flights is extracted below:

"2 May 2023 Go Airlines (India) Limited Via email Dear Sirs AIRCRAFT LEASE AGREEMENT (A320NEO MSN 11111) DATED 8 SEPTEMBER 2022 ("LEASE AGREEMENT") BETWEEN EOS AVIATION 12 (IRELAND) LIMITED ("LESSOR") AND GO AIRLINES (INDIA) LIMITED ("LESSEE") RELATING TO ONE (1) AIRBUS A320-271N AIRCRAFT BEARING MANUFACTURER'S SERIAL NUMBER 11111 ("AIRCRAFT").

1. Capitalised terms used in this notice shall have the meaning given to them in the Lease Agreement, unless otherwise defined.

2. We hereby notify you that Events of Default have occurred and are continuing under the following sections of the Lease Agreement:

a. Section 12.2(4) (Covenants; Representations and Warranties) of the Lease Agreement as Lessee has suspended all of its flights on 3 and 4 May 2023 and such suspension is not a result of strike, labour action or lockdown; and b. Section 12.3 (Voluntary Bankruptcy, Etc.) of the Lease Agreement as Lessee has commenced bankruptcy proceedings in India.

3. As a result of the Events of Default which are continuing, pursuant to the provisions of Section 13.1 of the Lease Agreement, Lessor hereby notifies Lessee that with immediate effect from the date of this notice:

(a) the leasing of the Aircraft under the Lease Agreement is terminated;

(b) Lessee is directed to immediately redeliver the Aircraft to Lessor (together with, for the avoidance of doubt, the complete set of Aircraft Documentation) at Nagpur Airport, India (or such other location as Lessor may specify) and in the return condition required by the provisions of the Lease Agreement; and

(c) Lessee's operation and possession of the Aircraft after the date of this notice without Lessor's express prior written consent is prohibited, other than in connection with fulfilling the requirements set out in paragraph (b) above.

4. Lessor reserves all of its surviving rights and remedies under the Lease Agreement and applicable law in connection with the Lease Agreement (and all Defaults and Events of Default which occurred thereunder) as at the date of this notice or which may become available to Lessor after the date of this notice.

5. No failure or delay on the part of Lessor in exercising any right or remedy shall operate as a waiver or forfeiture thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof.

6. This notice and any non-contractual obligations arising out of or in connection with this notice shall be governed by, and construed in accordance with, English law.

Yours faithfully,

-sd-"

[Emphasis supplied] 29.10 A review of the Termination Notices sent by the Petitioners/Lessors which have been placed on record, do make a mention of the insolvency commencement of voluntary bankruptcy proceedings. However, as discussed above, the primary reason for the termination was non-payment of lease rentals and other amounts which were due much prior to the Insolvency Commencement Date.

29.11 The fact that there was default of payment by Respondent/Go Air has not been disputed by Respondent/RP of Go Air. In fact, Respondent/RP of Go Air has laid the blame for non-payment of lease rentals in time on an American Company called "Pratt and Whitney"

and on account of their supplying defective engines for the Aircraft. This averment was, however, not supported by any document. In any event, this cannot absolve the Respondent/Go Air of its obligations under the Lease Agreements entered into by them for each of the 54 Aircraft.

29.12 Thus, clearly Respondent/Go Air had failed to fulfil its obligations under the Lease Agreements which resulted in the issue of default notices to them and subsequently to the termination of the Lease Agreements.

30. Respondent/RP of Go Air has contended that the termination of the Lease Agreements was a consequence of the insolvency Petitions filed by Respondent/Go Air before the NCLT and thus, in terms of judgment in Gujarat Urja case, since the Lease Agreements were terminated solely on the ground of insolvency, only NCLT has the jurisdiction to adjudicate the matter and invalidate the

termination.

30.1 As discussed above, the termination has neither arisen out of nor relating to the insolvency but on account of breaches to the Lease Agreements which occurred much prior in time to the Insolvency Commencement Date.

30.2 It is the case of the Respondent/RP of Go Air that the insolvency had arisen out of the failure on account of a U.S. Company called Pratt and Whitney who supplied defective engines for the Aircraft, which resulted in initiation of legal proceedings by Respondent/Go Air against the said company. It is apposite to extract Paragraph 13.3 and 13.4 of the Counter-Affidavit filed by Respondent/RP of Go Air in W.P.(C)7369/2023 [which is similar to the Counter-Affidavit(s) filed in all other Petitions] in this regard.

"13.3. The grounding of the aircrafts on account of engine failures led to a steady decline in the number of operational aircraft of the Answering Respondent from 2020 onwards. This meant a reduction in the operational fleet size and consequently reduced cashflows. Coupled with the onset of the Covid-19 pandemic and worldwide restrictions on travel, there was a sharp decline in revenues of the Corporate Debtor. 13.4. Singularly owing to the failure of engines supplied by P&W40 and refusal to resolve the issue by adhering to its contractual obligations, the stress on the cashflow of the Answering Respondent continued to increase and cash flows of the Answering Respondent continued to remain stressed due to which the Answering Respondent was unable to make payment of dues to the Petitioner."

[Emphasis supplied] Pratt & Whitney 30.3 In fact, Respondent/Go Air had made a similar submission before the NCLT as well, which finds a mention in the Insolvency Commencement Order dated 10.05.2023 and is reproduced below:

"7. While explaining the reasons for such defaults, the Ld. Sr. Counsel Mr. Neeraj Kishan Kaul appearing for the Corporate Applicant stated that it has been facing financial distress due to inherently defective engines supplied by Pratt & Whitney (hereinafter, referred to as "P&W"), as a result of which the aircraft are grounded and could not be taken off....

9. It is stated that due to the aforesaid default, the Applicant was constrained to cancel 4,118 flights with 77,500 passengers in the last thirty days. Subsequent to the filing of the present application, the DGCA has issued a Show Cause Notice dated 02.05.2023 in relation to the cancellation of flights scheduled on 03.05.2023 and 04.05.2023."

[Emphasis supplied] 30.4 Thus, concededly, as per Respondent/RP of Go Air as well, the insolvency has arisen out of defaults in payment and the inability of Respondent/Go Air to continue its commercial operations in view of these defaults.

## Applicability of the TATA Consultancy case

31. The Supreme Court in the TATA Consultancy case was hearing an Appeal arising from an Interim Order passed by the NCLAT. The Appellant and the corporate debtor had entered into an Agreement for providing facilities for conducting examinations for educational institutions. This Agreement contained a termination clause which was exercised by the Appellant owing to breaches by the Respondents, i.e., the corporate debtor. The Supreme Court held that the residuary jurisdiction of the NCLT cannot be invoked if the termination of the Agreement is based on grounds unrelated to the insolvency of the corporate debtor. The Gujarat Urja case was distinguished holding that the primary reason for the termination of the agreement was insolvency, hence Section 60(5) of the IBC was squarely applicable.

31.1 While holding that it is settled law that the IBC is a complete code, it was held that the NCLT in its residuary jurisdiction has the power to stay the termination of the Agreement albeit, only if it satisfies the criteria laid down in the Gujarat Urja case. The relevant extract is set out below:

"28. In Gujarat Urja [Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, (2021) 7 SCC 209 : (2021) 4 SCC (Civ) 1], the contract in question was terminated by a third party based on an ipso facto clause i.e. the fact of insolvency itself constituted an event of default. It was in that context, this Court held that the contractual dispute between the parties arose in relation to the insolvency of corporate debtor and it was amenable to the jurisdiction of NCLT under Section 60(5)(c). This Court observed that : (SCC pp. 262-63, para 69) "69. ... NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of corporate debtor... The nexus with the insolvency of corporate debtor must exist."

(emphasis supplied) Thus, the residuary jurisdiction of NCLT cannot be invoked if the termination of a contract is based on grounds unrelated to the insolvency of corporate debtor.

29. It is evident that the appellant had time and again informed corporate debtor that its services were deficient, and it was falling foul of its contractual obligations. There is nothing to indicate that the termination of the facilities agreement was motivated by the insolvency of corporate debtor. The trajectory of events makes it clear that the alleged breaches noted in the termination notice dated 10-6-2019 were not a smokescreen to terminate the agreement because of the insolvency of corporate debtor. Thus, we are of the view that NCLT does not have any residuary jurisdiction to entertain the present contractual dispute which has arisen dehors the insolvency of corporate debtor. In the absence of jurisdiction over the dispute, NCLT could not have imposed an ad interim stay on the termination notice. NCLAT has incorrectly upheld [Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain, 2020 SCC OnLine NCLAT 484] the interim order [BMW Financial Services (P) Ltd. v. S.K. Wheels (P) Ltd., 2019 SCC OnLine NCLT 28273] of NCLT....."

[Emphasis supplied] 31.2 The Supreme Court in the TATA Consultancy case has also observed that while examining prayers for interim relief, the NCLT and NCLAT must keep in mind the exception crafted by the Court in the Gujarat Urja case. The order of NCLT does not indicate that the NCLT



had applied its mind to the centrality of the facilities agreement and the corporate debtor survival as a going concern. Paragraph 31 of the judgment is extracted below.

"31. The narrow exception crafted by this Court in Gujarat Urja [Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, (2021) 7 SCC 209 : (2021) 4 SCC (Civ) 1] must be borne in mind by NCLT and NCLAT even while examining prayers for interim relief. The order of NCLT dated 18-12-2019 [BMW Financial Services (P) Ltd. v. S.K. Wheels (P) Ltd., 2019 SCC OnLine NCLT 28273] does not indicate that NCLT has applied its mind to the centrality of the facilities agreement to the success of CIRP and corporate debtor's survival as a going concern. NCLT has merely relied upon the procedural infirmity on the part of the appellant in the issuance of the termination notice i.e. it did not give thirty days' notice period to corporate debtor to cure the deficiency in service. NCLAT, in its impugned judgment [Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain, 2020 SCC OnLine NCLAT 484], has averred that the decision of NCLT preserves the "going concern" status of corporate debtor but there is no factual analysis on how the termination of the facilities agreement would put the survival of corporate debtor in jeopardy."

[Emphasis supplied] 31.3 Concededly, the termination has not been challenged by Respondent/Go Air or by Respondent/RP of Go Air in any judicial forum. As discussed above, the termination of the Lease Agreements between the Petitioners/Lessors and Respondent/Go Air was on account of breaches of the Lease Agreements which included non-payment of the lease rentals over extended period of time. The primary and most proximate cause for the termination was the triggering of the event of default clause of the Lease Agreement was on account of continuous non-payment of lease rentals for the Aircraft. These cannot be equated with the conditions "arising out of" or "in relation" to the insolvency. The default notices/emails were being sent to Respondent/Go Air from the year 2020 onwards and, prior to the Termination Notice(s), Respondent/Go Air had received several such default notices. Although, the Termination Notices do refer to the insolvency - being one of the many events of default - the insolvency is not what has led to the termination. The ratio of the Tata Consultancy case thus, squarely applies in the facts of the present case. The termination thus, does not arise out of the insolvency and is certainly not a consequence of the insolvency. The provisions of Section 60(5) of the IBC cannot be deemed to be applicable in the present case.

#### Cape Town Convention vis-à-vis the IBC

32. It has been contended on behalf of Respondent/RP of Go Air that the provisions of the IBC shall prevail over the Aircraft Act and Aircraft Rules in view of the Section 238 of the IBC. On the other hand, it is contended that by the Petitioners/Lessors, the provisions of the IBC and the Aircraft Act are not inconsistent with each other, thus, Section 238 of the IBC is not applicable. It is explained that the only place of overlap in the present Petitions is in the provisions of moratorium under Section 14 of the IBC.

32.1 Section 238 of the IBC provides for an overriding effect of the provisions of the IBC in all matters over other laws or instruments is only in the case where there is an inconsistency between

the IBC and such other law and not otherwise. Section 238 of the IBC is extracted below:

"238. Provisions of this Code to override other laws.--The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

32.2 No doubt that by virtue of Section 238 of the IBC, IBC will have a superseding effect on another statute or law. However, the sine qua non for the applicability of Section 238 of the IBC is the existence of an inconsistency between such provision of law/statute and a provision of the IBC.

32.3 The interpretation of Section 238 of the IBC was the subject matter of a judgment of the Supreme Court in the Abhilash Lal case. The Supreme Court addressed the challenge brought forth by the Municipal Corporation of Greater Mumbai [hereinafter referred to as "MCGM"] against a resolution plan approved for the corporate debtor in that case. The Resolution Plan included proposals for establishing security over properties owned by MCGM, which had been leased to Sevenhills Healthcare. The Supreme Court ruled that without obtaining approval under the applicable provisions of the Municipal Corporation Act, MCGM's objections couldn't be disregarded to create a new interest concerning its properties and lands. It determined that Section 238 of the IBC cannot infringe upon MCGM's authority and obligation to oversee how its properties are managed. The Court emphasized that Section 238 is relevant primarily in cases involving corporate debtors' properties and assets, not when third parties like MCGM are involved. It held that Section 238 of the IBC would only supersede other laws if there's any inconsistency between such law and the IBC.

32.4 The Supreme Court in the Abhilash Lal case has held as follows:

47. In the opinion of this Court, Section 238 cannot be read as overriding MCGM's right--indeed its public duty--to control and regulate how its properties are to be dealt with. That exists in Sections 92 and 92-A of the MMC Act. This Court is of the opinion that Section 238 could be of importance when the properties and assets are of a debtor and not when a third party like MCGM is involved. Therefore, in the absence of approval in terms of Sections 92 and 92-A of the MMC Act, the adjudicating authority could not have overridden MCGM's objections and enabled the creation of a fresh interest in respect of its properties and lands. No doubt, the resolution plans talk of seeking MCGM's approval; they also acknowledge the liabilities of the corporate debtor; equally, however, there are proposals which envision the creation of charge or securities in respect of MCGM's properties. Nevertheless, the authorities under the Code could not have precluded the control that MCGM undoubtedly has, under law, to deal with its properties and the land in question, which undeniably are public properties. The resolution plan, therefore, would be a serious impediment to MCGM's independent plans to ensure that public health amenities are developed in the manner it chooses, and for which fresh approval under the MMC Act may be forthcoming for a separate scheme formulated

by that corporation (MCGM).

.....

49. In view of the foregoing reasons, this Court holds that the impugned order [Municipal Corpn. of Greater Mumbai v. Abhilash Lal, 2019 SCC OnLine NCLAT 857] and the order of NCLT cannot stand; they are hereby set aside..."

[Emphasis supplied] 32.5 The provisions applicable with respect to moratorium subsist under Section 14 of the IBC, more specifically sub-Section(1)(d) of Section 14 of the IBC which sets out recovery of a property in the possession of a corporate debtor. As discussed above, sub-Section (3) of Section 14 of the IBC sets forth that the provisions of sub-Section (1) of Section 14 of the IBC will not be applicable to certain contracts and arrangements. These include reference to transactions, agreements or arrangements as notified by the Central Government from time to time.

32.6 Article XI of the Cape Town Protocol [which was adopted by India by the Declaration of Assets on 31.03.2008], already provided for steps to be taken in the event an insolvency situation arises between two members of a contracting state in relation to aircraft objects. The Declaration of Accession clearly sets forth that in such a scenario -

"Alternative A" of the Article XI of the Cape Town Protocol shall be applicable and the aircraft/aircraft objects shall be dealt in accordance therewith.

32.7 The moratorium in the present case came into being on 10.05.2023. By that time, the Petitioners/Lessors had already taken into action under the Aircraft Rules and the process of deregistration had already commenced. This is factually at a variance from the Gujarat Urja case and the Rajendra K. Bhutta case where the process of termination and the consequences were initiated after the passing of the Insolvency Commencement Order and were as a consequence of the insolvency. In the present case, the defaults in the Lease Agreements are the cause of the termination and not the insolvency. There is no dispute that the defaults were much prior in time to the moratorium.

32.8 There is no inconsistency between the provisions of moratorium under Section 14 of the IBC and the Aircraft Rules. The Cape Town Convention and the Cape Town Protocol on Aircraft as applicable to India in terms of the Declaration of Accession adopts a procedure for insolvency and the steps to be taken with respect of any Aircraft, Airframes and related objects. In any event, my ambiguity on this issue has been done away with by the MCA Notification, which makes it abundantly clear that aircraft, aircraft engines and airframes are excluded from the purview of the provisions of the IBC. This is, therefore a moot issue now which does not require to detain this Court further.

MCA Notification dated 03.10.2023 - Prospective or Retrospective

33. The MCA Notification was issued by the Ministry of Corporate Affairs in pursuance of the Cape Town Convention, and came into effect on 03.10.2023. The MCA Notification was issued under Section 14(3) of the IBC and sets forth that aircraft equipment, aircraft engines and airframes and helicopters were exempted from an application of moratorium under Section 14(1) of the IBC.

33.1 The MCA Notification being brief is extracted below:

"MINISTRY OF CORPORATE AFFAIRS NOTIFICATION New Delhi, the 3rd October, 2023 S.O. 4321(E) - WHEREAS, the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment were adopted under the joint auspices of International Civil Aviation Organization and the International Institute for the Unification of Private Law concluded at Cape Town on 16th November, 2001; AND WHEREAS, India, being a signatory to and having acceded the Convention and the Protocol by depositing with the International Institute for the Unification of Private Law the instruments of accession on 31.03.2008;

Now, therefore, in exercise of the powers conferred by clause (a) of the sub-section (3) of section 14 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby notifies that the provisions of sub-section (1) of section 14 of the Insolvency and Bankruptcy Code 2016 (31 of 2016), shall not apply to transactions, arrangements or agreements, under the Convention and the Protocol, relating to aircraft, aircraft engines, airframes and helicopters."

33.2 As discussed above, after the MCA Notification was released, the Petitioners/Lessors in W.P.(C)7774/2023 filed an application seeking urgent directions in view of the MCA Notification praying that the Court take into account the change in law as effected by the MCA Notification. Learned Counsel appearing on behalf of the Petitioners/Lessors submitted that Respondent/DGCA had cited the moratorium imposed under the IBC in view of the Insolvency Commencement Order as the reason for not affecting deregistration of the Aircraft. The Petitioners/Lessors in the remaining Petitions also prayed for similar reliefs as prayed for in W.P.(C)7774/2023 with respect to the MCA Notification.

33.3 This application was strongly opposed by Respondent/RP of Go Air. Amongst other arguments taken by Respondent/RP of Go Air, it was contended that the MCA Notification will have no bearing on this case in view of the fact that it has come into force after the date the moratorium was imposed by the NCLT. It was contended by Respondent/RP of Go Air that notifications which are not clarificatory in nature such as the MCA Notification are always prospective. Thus, the effect of the MCA Notification would not be available to the Petitioners/Lessors in the present case. In addition thereto, Respondent/RP of Go Air submitted that the Petitioners/Lessors are filing successive applications seeking interim relief, to delay the adjudication of the present Petitions.

33.4 In view of the objections raised by the Respondent/RP Go Air and to obviate delay in the final hearing of the present case, it was directed by this Court by its order dated 10.11.2023, that the application shall be heard and finally decided along with the present Petitions.

34. As discussed above, learned counsel appearing on behalf of Respondent/RP of Go Air has submitted that in the first instance, the MCA Notification is not applicable to the present case in view of the fact that the moratorium already stood imposed by the NCLT. It is further contended that the MCA Notification could not be considered as being clarificatory in nature as it was in pursuance of an executive action and any executive action is a delegated legislation. Since, delegated legislations do not operate retrospectively, the MCA Notification cannot be retrospective. Reliance was placed on the following extract of judgment of the Supreme Court in the *Esthappan Cherian* case:

"17. Another equally important principle applies : in the absence of express statutory authorisation, delegated legislation in the form of rules or regulations, cannot operate retrospectively. In *CIT v. M.C. Ponnose* [*CIT v. M.C. Ponnose*, (1969) 2 SCC 351 : (1970) 1 SCR 678] this rule was spelt out in the following terms: (SCC p. 354, para 5) "5. ... The courts will not, therefore, ascribe retrospectivity to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. Parliament can delegate its legislative power within the recognised limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the courts that the persons or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect."

[Emphasis supplied] 34.1 In addition, it was contended by the Respondent/RP of Go Air that the powers under Section 14(1) and Section 18 of the IBC are wide enough to include all issues which come within its purview and issues related to insolvency. The issue whether the MCA Notification is retrospective or prospective can also be considered by the NCLT. In support thereof, reliance was placed on the *Madhusudhan* case, a judgment pronounced by the NCLAT, where by virtue of a notification dated 24.03.2020, the threshold amount for jurisdiction of the NCLT was increased and minimum threshold for a default was enhanced from Rs 1 lakh to Rs 1 crore, was considered and held not be retrospective in nature in view of the fact that the notification does not contain the words retrospective. It was also contended by the Respondent/RP of Go Air that only NCLT/NCLAT is the correct and the only forum to adjudicate whether the MCA Notification is prospective or retrospective.

34.2 Respondent/UOI and Respondent/DGCA jointly filed a short affidavit in respect to this application. In their short affidavit dated 01.11.2023, it was submitted that the MCA Notification

was a necessary adjunct to a provision in the statute and it is required to be effective from 28.05.2016, the date on which Section 14(1) of the IBC has come into force<sup>41</sup>. Additionally, it was averred that the MCA Notification being clarificatory in nature would have to be considered to be applicable retrospectively. It is apposite to extract the relevant portion of this affidavit:

"6. ....

It is submitted that the executive's notification being procedural and a necessary adjunct to a section in a legislation, i.e., section 14(1) of the Insolvency and Bankruptcy Code ("IBC"), 2016 in this case, it needs to be given effect from the date on which the section comes into force. As such, the above mentioned Notification was issued u/s 14(3) of the IBC 2016, and would have to be considered to have a retrospective effect being clarificatory in nature. However, since the matter is subjudice, the answering respondents shall await for the appropriate directions from this Hon'ble Court before proceeding in the matter further."

[Emphasis supplied] The IBC including Section 14 has come into effect on 28.05.2016.

34.3 Learned ASG appearing on behalf of Respondent/UOI and Respondent/DGCA submitted that the Cape Town Convention and Cape Town Protocol also existed in our jurisprudence through Rule 30 and Rule 32A of the Aircraft Rules and the MCA Notification was issued in pursuance to the Aircraft Rules. Reliance was placed on the judgment in the case of Ramakrishnan case to submit that the MCA Notification is clarificatory and a necessary adjunct to municipal law and is thus retrospective in nature.

34.4 In Rejoinder, the Petitioners/Lessors contended that the MCA Notification is in pursuance to treaty obligations of the country and has to be taken as retrospective in nature. Reliance was placed on the Cape Town Protocol, more specifically to Article XI(2), which provides that upon the occurrence of an "insolvency related event", the insolvency administrator [the RP] shall give possession of the aircraft objects to the Lessor no later than, the earlier of (a) the end of the "waiting period" or

(b) the date on which the Lessor would be entitled to possession to the aircraft object if Article XI did not apply. The "waiting period", as far as India is concerned, is two (2) calendar months<sup>42</sup>. In view of the applicability of an insolvency related event, in the present case, the two- month "waiting period" ended on 03.12.2023, i.e., two months from the date of passing of the MCA Notification. The Petitioners/Lessors' Aircraft thus, ought to have been deregistered and handed over no later than 03.12.2023.

In of the Declaration lodged by the Republic of India under the Cape Town Convention at the Time of the deposit of its Instrument of Accession (Declaration of Accession).

34.5 It was further contended by the Petitioners/Lessors that the IBC came into effect in 2016 - eight years after India acceded to the Convention. Assuming that there was a lack of clarity on

whether the moratorium provisions apply to Aircraft Lease Agreements under the Cape Town Convention and Cape Town Protocol, the MCA Notification has clarified the position. It was highlighted that grave prejudice has been caused as a consequence of the delay in deregistration of these 54 Aircraft. India's compliance rating of the Cape Town Convention and Cape Town Protocol has been devalued. Consequently, Lease Agreements have become unfavourable for airlines in India as premiums have significantly increased.

34.6 The Petitioners/Lessors, in the alternate contended that their plea for deregistration would exist even without the MCA Notification as the Aircraft Rules are unambiguous.

35. The Supreme Court in the Zile Singh case has discussed the principles of construction of statutes. It has been held that unless the words in the statute are sufficient to show the intention of the legislature to affect vested rights, the statute is deemed to be prospective. However, it has also been held that where a new law is made to cure an issue for the benefit of the community, the presumption against retrospectivity is rebutted. The following extract is relevant:

"13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only -- "*nova constitutio futuris formam imponere debet non praeteritis*" -- a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid., p. 440)."

[Emphasis supplied] 35.1 It was further explained in this case that the Rule against retrospective operation would also be overcome not only by expressed words but also by circumstances in play which are strong enough to displace it. The Supreme Court observed:

15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant:

(i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right.

(p. 392) .....

17. Maxwell states in his work on Interpretation of Statutes (12th Edn.) that the rule against retrospective operation is a presumption only, and as such it "may be overcome, not only by express words in the Act but also by circumstances sufficiently strong to displace it" (p. 225). If the dominant intention of the legislature can be clearly and doubtlessly spelt out, the inhibition contained in the rule against perpetuity becomes of doubtful applicability as the "inhibition of the rule" is a matter of degree which would "vary secundum materiam" (p. 226). Sometimes, where the sense of the statute demands it or where there has been an obvious mistake in drafting, a court will be prepared to substitute another word or phrase for that which actually appears in the text of the Act (p.

231).

[Emphasis supplied] 35.2 The Zile Singh case has thus suggested four relevant facts to construe whether the legislature had sufficiently expressed its intention qua retrospectivity. These are:

- (i) General scope and purview of the statute;
- (ii) The remedy to be applied;
- (iii) The earlier state of the law; and
- (iv) What was in the contemplation of the legislature at the time of its promulgation.

36. The issue before this Court rests on the applicability of the moratorium imposed under Section 14 of the IBC, on the mandatory deregistration process as set forth under Rule 30(7) of the Aircraft Rules. Exceptions to the moratorium process under Section 14(1) of the IBC are already set out as sub-Section (3) in Section 14 thereof. Sub- Section (a) of Section 14(3) of the IBC includes transactions, agreements or arrangements notified by the Central Government in consultation with a financial, sectoral regulator or any authority.

37. Article 253 of the Constitution provides that the Parliament may make laws including to implement international treaties such as Cape Town Convention and Cape Town Protocol. Article 253 of the Constitution is extracted below:

"253. Legislation for giving effect to international agreements Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any



treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

37.1 The MCA Notification expressly refers to the adoption of the Cape Town Convention and states that it has been enacted in exercise of the powers conferred under clause (a) of Section 14(3) of the IBC. The MCA Notification further states that the provisions of Section 14(1) of the IBC "shall not apply" to agreements under the Cape Town Convention relating to aircraft, aircraft engines, airframes and helicopters.

37.2 India acceded to the Cape Town Convention and Cape Town Protocol on 31.03.2008 and this date of accession finds mention in the MCA Notification. It further states that the applicability of Section 14(1) of the IBC to aircraft, aircraft engines and airframes shall come to an immediate end. The expressions aircraft, aircraft engines, airframes and helicopters are defined in Article I of the Cape Town Protocol as 'aircraft objects'. Clearly, these expressions in the MCA Notification have been taken from the Cape Town Protocol.

38. The Cape Town Protocol itself provides for remedies on insolvency in Article XI of the Cape Town Protocol. Article XXX of the Cape Town Protocol read with Article XI of the Cape Town Protocol provides for the steps to be taken upon the occurrence of an insolvency related event. As discussed above, Article XI "Alternative A" and Article XXX of the Cape Town Protocol are extracted below:

"Article XI -- Remedies on insolvency

1. This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXX(3).

Alternative A

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of the aircraft object to the creditor no later than the earlier of:

(a) the end of the waiting period; and

(b) the date on which the creditor would be entitled to possession of the aircraft object if this Article did not apply.

3. For the purposes of this Article, the "waiting period" shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

4. References in this Article to the "insolvency administrator"

shall be to that person in its official, not in its personal, capacity.

5. Unless and until the creditor is given the opportunity to take possession under paragraph 2:

(a) the insolvency administrator or the debtor, as applicable, shall preserve the aircraft object and maintain it and its value in accordance with the agreement; and

(b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.

6. Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the aircraft object under arrangements designed to preserve the aircraft object and maintain it and its value.

7. The insolvency administrator or the debtor, as applicable, may retain possession of the aircraft object where, by the time specified in paragraph 2, it has cured all defaults other than a default constituted by the opening of insolvency proceedings and has agreed to perform all future obligations under the agreement. A second waiting period shall not apply in respect of a default in the performance of such future obligations.

8. With regard to the remedies in Article IX(1):

(a) they shall be made available by the registry authority and the administrative authorities in a Contracting State, as applicable, no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and

(b) the applicable authorities shall expeditiously co-

operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

9. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2.

10. No obligations of the debtor under the agreement may be modified without the consent of the creditor.

11. Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.

12. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1), shall have priority in insolvency proceedings over registered interests.

13. The Convention as modified by Article IX of this Protocol shall apply to the exercise of any remedies under this Article." .....

"Article XXX -- Declarations relating to certain provisions

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply any one or more of Articles VIII, XII and XIII of this Protocol.

2. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article X of this Protocol, wholly or in part. If it so declares with respect to Article X(2), it shall specify the time-period required thereby.

3. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply the entirety of Alternative A, or the entirety of Alternative B of Article XI and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A and the types of insolvency proceeding, if any, to which it will apply Alternative B. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article XI.

4. The courts of Contracting States shall apply Article XI in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.

5. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will not apply the provisions of Article XXI, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief will be applied."

[Emphasis supplied] 38.1 The Cape Town Protocol in Article I(2) defines the terms "aircraft", "aircraft engines", "aircraft objects" and "airframes" in the following terms:

"Article I -- Defined terms

2. In this Protocol the following terms are employed with the meanings set out below:

(a) "aircraft" means aircraft as defined for the purposes of the Chicago Convention which are either airframes with aircraft engines installed thereon or helicopters;

(b) "aircraft engines" means aircraft engines (other than those used in military, customs or police services) powered by jet propulsion or turbine or piston technology and:

(i) in the case of jet propulsion aircraft engines, have at least 1750 lb of thrust or its equivalent;

(ii) in the case of turbine-powered or piston-powered aircraft engines, have at least 550 rated take-off shaft horsepower or its equivalent, together with all modules and other installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relation thereto;

(c) "aircraft objects" means airframes, aircraft engines and helicopters;...

.....

(e) "airframes" means airframes (other than those used in military, customs or police services) that, when appropriate aircraft engines are installed thereon, are type certified by the competent aviation authority to transport:

(i) at least eight (8) persons including crew; or

(ii) goods in excess of 2750 kilograms, together with all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines), and all data, manuals and records relating thereto;..."

38.2 Thus, aircraft as defined by the Cape Town Protocol are airframes with aircraft engines installed thereon or helicopters and aircraft engines include engines used other than those in military, customs or police services, in terms of the definition above.

38.3 Article XI (2) of the Cape Town Protocol provides that upon the occurrence of an insolvency related event, the insolvency administrator [the RP] shall give possession of the Aircraft in the present case to a creditor at the end of waiting period or the date on which the creditor would be entitled to possession of the Aircraft if this Article did not apply, whichever is earlier. Since, insolvency proceedings have already been initiated, this Article does apply. The waiting period as has been set out in the Declaration of Accession is two calendar months, thus, the possession of the Aircraft in terms of the Cape Town Protocol would be required to be given at the end of the period of two months. Paragraph 9 of Article XI also provides that the exercise of remedies under the Cape Town Protocol should not be prevented or delayed after the date specified. The "waiting period" in the present case thus, would be two calendar months from the date of MCA Notification came into force or 03.12.2023.

38.4 The clarificatory Affidavit dated 01.11.2023 jointly filed by the Respondent/UOI and Respondent/DGCA states that the MCA Notification is a necessary adjunct to Section 14(1) of the IBC and needs to be given effect from 28.05.2016, the date on which the Section came into force. A plain reading of the MCA Notification does show the deliberate and conscious mention of the Cape Town Convention and Cape Town Protocol and its accession on 31.03.2008.

38.5 A press release issued by the Ministry of Civil Aviation on 06.10.2023 also gives an insight into the reasons for the MCA Notification. It states that the MCA Notification is in consonance with the India's treaty obligations and the exclusion of aircraft, aircraft engines, airframes and helicopters from the provisions of a moratorium under the IBC is a positive step towards leasing and funding of aircraft equipment. The Press Release is set out below:

"Ministry of Civil Aviation AWG places India with positive compliance outlook in CTC compliance index This development came in wake of the Government of India issuing a notification under Section 14 (3) of IBC, 2016 exempting Aircraft equipment covered under CTC from application of moratorium Posted On: 06 OCT 2023 3:51PM by PIB Delhi In consonance with the treaty obligation of India, being a Contracting State to the Cape Town Convention and the Aircraft protocol, the Government of India issued a notification dated 03.10.2023 providing that the moratorium under the Insolvency and Bankruptcy Code, 2016 will not apply to aircraft, aircraft engines, airframes and helicopters governed by the Cape Town Convention.

As a consequence of this development, Aviation Working Group (AWG) issued a positive watchlist notice in their CTC compliance index with projected increase in India's score. It would be a positive step towards ease of leasing/financing aircraft equipment to Indian operators.

\*\*\* YB/PS (Release ID: 1965009) Visitor Counter : 1229"

38.6 It is trite that the international treaty obligations are required to be followed strictly and any deviation therefrom would have adverse effects including downgrading of the business interests of country in the international community.

38.7 Applying the principles set forth in the Zile Singh case makes it apparent that the MCA Notification has been issued to cure a lacuna in the existing law which will benefit the community. The legislative intent of the MCA Notification can also be seen from a reference to the Cape Town Convention and Cape Town Protocol and the date of accession by India - all of which form part of this notification. The timing of the notification also assumes significance here. It cannot be deemed to be a co-incidence that the MCA Notification is close upon the heels of the controversy at hand. This is, thus, clearly to cure a lacuna which has been highlighted by the disputes between the Petitioners/Lessors and Respondent/Go Air. The circumstances surrounding the MCA Notification thus, all point to its retrospectivity.

38.8 Keeping in mind the scope and purview of the Aircraft Act and Rule 30(7) of the Aircraft Rules and given the fact that India is a signatory to the Cape Town Convention and Cape Town Protocol since 31.03.2008 and at the time of its adoption of the Declaration of Accession has clearly agreed to the adoption of "Alternative A" of Article XI of the Cape Town Protocol for "remedies on insolvency", this Court is of the considered view, for the reasons stated herein, that the words "aircraft, aircraft

engines, airframes" ought to have been included in sub-Section (3) of Section 14 of the IBC from the date the sub-Section came into force, so as to ensure implementation of procedure set forth therein for remedies on insolvency in relation to Aircraft which form the subject matter of these Petitions.

#### Effect of Delay in the MCA Notification

39. A Division Bench of this Court in the Nasa Finelease case, while discussing whether the benefit of a Section of the Act would be applicable, held that the delay in the issue of Rules and Notifications cannot nullify the legislative mandate of the enactment. The delay herein was attributable to the Central Board of Direct Taxes who had failed to issue the necessary notification within time. The Division Bench of this Court held that there was a delay in issue of a notification and that the notification was procedural and a necessary adjunct to the provision which was enforced with effect from 01.04.2006. Hence, the notification should be given effect from 01.04.2006. The relevant extract is reproduced below:

"6. On further appeal before the Income-tax Appellate Tribunal ("the Tribunal", for short), the respondent has succeeded on the first issue and it has been observed that they were entitled to the benefit under section 43(5), proviso (d), even in respect of transactions carried out with effect from April 1, 2006. The Tribunal observed that Parliament had enacted the provision with effect from the said date, and delay, if any, in the issue of Rules and notification, cannot nullify the legislative mandate of the enactment. Delay was attributable to the Central Board of Direct Taxes, who had failed to issue necessary notification within time.

7. The factual position is not in dispute. Notification No. 2 of 2006, dated January 25, 2006, issued by the Central Board of Direct Taxes does not specify any particular date and simply notifies the National Stock Exchange India Ltd. and the Bombay Stock Exchange, Mumbai, under proviso (d) of sub-section (5) of section 43 of the Act. The said proviso had become applicable with effect from April 1, 2006. Issue of notification obviously had to take some time as it involved processing and examination of applications, etc. This was a matter relating to procedure and the delay in issue of notification or even framing of the Rules was due to administrative constraints. We agree with the Tribunal that the delay occasioned, as procedure and formalities have to be complied with, should not disentitle and deprive an assessee, specially, when the transactions were carried through a notified stock exchange. The aforesaid delay is not attributable to the assessee. The notification, therefore, merits acceptance and should be given retrospective effect. Notification was procedural and necessary adjunct to the section enforced with effect from April 1, 2006. The rule and notification issued in the present case effectuate the statutory and the legislative mandate. There is no good ground or reason why the notification in question should not be given effect from April 1, 2006. No reason or ground is alleged or argued to contend that National Stock Exchange India Ltd. could not and should not have been

notified from April 1, 2006."

[Emphasis supplied] 39.1 A challenge to the Nasa Finelease case was dismissed by the Supreme Court on 11.07.201443.

39.2 As discussed above, India acceded to the Cape Town Convention on 31.03.2008. Subsequently, by the Declaration of Accession dated 31.03.2008, various declarations were made including with respect to Article XXX(I), Article VIII, Article XXX(II) and Article X and the application of "Alternative A" in respect of Article XI in its entirety for all types of insolvency proceedings. Sub-Section (3) of Section 14 of the IBC which provides for exemptions from the application for moratorium as it stood at the time of the enactment of the IBC on 28.05.2016, read as follows:

"14. Moratorium- (1)....

(2)....

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator."

39.3 Thereafter, in 2019/2020, amendments to sub-Section (3) of Section 14 of the IBC were enacted where certain transactions were excluded from the applicability of the moratorium and these were inserted as Clauses (a) and (b) to sub-Section (3) of Section 14 of the IBC. The MCA Notification as on 03.10.2023 similarly added another SLP(C) No. 017817 / 2014; titled as CIT v M/s Nasa Finelease Pvt. Ltd.

exception/exclusion to this list in sub-Section (c) of Section 14(3) of the IBC.

39.4 By acceding to the Cape Town Convention and Cape Town Protocol, India chose to apply the provisions as set forth in the Cape Town Convention and Cape Town Protocol to all matters in respect of aircraft, aircraft objects, airframes and aircraft engines.

39.5 The Respondent/DGCA has relied on the Nasa Finelease case to contend that the MCA Notification was although delayed but was a necessary adjunct to the Declaration of Accession of the Cape Town Protocol and is thus retrospective in its operation.

39.6 This Court finds merit in this contention. As discussed above in Paragraph 38 above, a combined reading of Article XI "Alternative A"

of the Cape Town Protocol along with Rule 30(7) of the Aircraft Rules reflects that aircraft, aircraft objects, airframes and aircraft engines are to be kept out of the purview of other legislations, and the provisions in relation to insolvency as set forth in Article XI "Alternative A" be applied in its entirety. The MCA Notification, thus in that sense was delayed. In light of the judgment of the Nasa Finelease case, this delay cannot

come in the way of a beneficiary to such a notification. Thus, the MCA Notification merits acceptance and should be given retrospective effect.

39.7 In view of the foregoing and applying the ratio as set forth in the Zile Singh case, this Court holds that the MCA Notification is held to be retrospective in its effect.

NCLT has no power to deregister the Aircrafts, powers can only be exercised by a High Court

40. The prayer for deregistration cannot be granted by any other authority other than Respondent/DGCA, and it is for grant of this prayer that the Petitioners/Lessors have approached this Court.

40.1 It is the contention of the Petitioners/Lessors that the IDERA and requisite documents have been received by Respondent/DGCA, in terms of Rule 30(7) of the Aircraft Rules. The impugned order/communication of Respondent/DGCA dated 12.05.2023 reproduced in Paragraph 21.2 above states that the deregistration request cannot be processed on account of the Insolvency Commencement Order passed by the NCLT. In view of the judgment in Awas case, the Petitioners/Lessors contend that the function of Respondent/DGCA to deregister the Aircraft is merely a "ministerial act" and that the Respondent/DGCA cannot interdict the process of deregistration.

40.2 The Petitioners/Lessors before this Court seek a writ of mandamus against Respondent/DGCA for breach of its duty as prescribed in the Aircraft Act and Rules. It is trite law that the Courts can exercise jurisdiction and give necessary directions where a public authority has failed to exercise its powers. The Supreme Court in Comptroller and Auditor-General of India, Gian Prakash, New Delhi and Anr v. K.S. Jagannathan and Anr<sup>44</sup> held as follows:

(1986) 2 SCC 679 "19..... In Halsbury's Laws of England, 4th Edn., vol. I, para 89, it is stated that the purpose of an order of mandamus "is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."

20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has



been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

[Emphasis supplied] 40.3 In Vinod Kumar case, this Court has further held that where Rules are framed delineating powers as well as procedures to be followed by an Authority, such Authority must follow such procedure and powers and act within the limits prescribed by such Rules.

40.4 Rule 30 (7) of the Aircraft Rules is mandatory in nature. Sub- Rule 7 of Rule 30 is unambiguous and requires that upon fulfilment of the pre-conditions below and within 5 working days, Respondent/DGCA shall mandatorily deregister the Aircraft:

- (i) The aircraft is registered in India;
- (ii) The provisions of the Cape Town Convention and apply to such aircraft;

(iii) An Application for deregistration is presented enclosing:

(a) original/notarised copy of IDERA and

(b) priority search report;

(iv) No consent or recourse to any other person including the operator of the aircraft is to be made.

40.5 The Petitioners/Lessors are the IDERA holders in respect of all Aircraft. Indisputably, the Cape Town Convention and Cape Town Protocol apply to these Aircraft. The Respondent/DGCA has not placed on record any communication setting forth the deficiencies in the documents filed by the Petitioners/Lessors for deregistration. The Respondent/DGCA is bound to act within the mandate of the Aircraft Act and Aircraft Rules to deregister the Aircraft.

40.6 In view of the foregoing discussions and since, all the pre- conditions as set forth above stand satisfied, subject to removal by the any deficiencies in the Deregistration Application by Petitioners/Lessors, the deregistration of the 54 Aircraft is to be proceed with by the Respondent/DGCA.

Possession of Aircraft with Respondent/Go Air cannot be disturbed

41. Respondent/RP of Go Air has averred that the claim that Respondent/RP of Go Air is for possession and occupation of the Aircraft and under the provisions of Section 14(1)(d) of the IBC,

the possession cannot be disturbed during a moratorium.

41.1 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.

41.2 The 54 Aircraft are 'assets' owned by the Petitioners/Lessors which were previously under a contractual agreement i.e., the Lease Agreements, with the Corporate Debtor-Respondent/Go Air, which stand terminated. 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 -- 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] 41.3 In the present case, the property i.e., the Aircraft ceased to be the property in possession of the corporate debtor upon termination of the Lease Agreements on various dates between 02.05.2023 and 05.05.2023. The Termination Notices were received by Respondent/Go Air prior to the imposition of moratorium on 10.05.2023 by the Insolvency Commencement Order. Thus, the Aircraft ceased to be in the "possession" of Respondent/Go Air, prior to the imposition of the moratorium and hence, these cannot be covered under Section 14(1)(d) of the IBC.

41.4 Respondent/RP of Go Air has relied on the judgment in Rajendra K. Bhutta case to submit that the expression "possession" under Section 14(1)(d) of the IBC includes property which is also occupied and would denote possession, both actual or constructive.

41.5 The moratorium in the Rajendra K. Bhutta case was imposed on 24.07.2017 and the notice for termination of the Lease Agreement between the parties was given as a result of the moratorium on 12.01.2018. It is in these circumstances when the termination arose out of insolvency, the Court held that the assets of the corporate debtor need to be protected. However, placing reliance on the judgement of the Supreme Court in the TATA Consultancy case, this Court had already ruled that

Section 60(5) of the IBC is not applicable in the circumstances of the present case as the termination does not arise 'solely' on account of the insolvency. In addition, the Respondent/RP of Go Air's claim for possession or occupation of the Aircraft under Section 14(1)(d) of the IBC has been exercised after the Lease Agreements of the Aircraft had been terminated. The Insolvency Commencement Order was passed after the Lease Agreements were terminated. The termination has remained unchallenged by the Respondent/RP of Go Air. Thus, Respondent/Go Air acting through the Respondent/RP of Go Air, cannot be permitted to retain possession of the Aircraft.

*Dura lex sed lex* - the law must be upheld

42. Respondent/RP of Go Air has argued that deregistration of the Aircraft would lead to the only asset of Respondent/Go Air being taken away from it and thereby leading to corporate death of Respondent/Go Air. This argument, however, fails to recognize that the Aircraft are not assets which are owned or belong to Respondent/Go Air. These Aircraft are owned by the Petitioners/Lessors pursuant to the Lease Agreements entered between Respondent/Go Air and the Petitioner/Lessors. The Petitioners/Lessors before the Court seek a writ of mandamus against the Respondent/DGCA for breaching its duty as prescribed in the Aircraft Act and Rules and are well within their rights to do so.

42.1 Another plea that was raised on behalf of the Respondent/RP of Go Air that deregistration would adversely affect over 4000 employees of Respondent/Go Air. However, in an affidavit<sup>45</sup> affirmed by the Respondent/RP of Go Air, it is stated 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," as a result of non- payment of their dues/salaries. It has now been almost 1 year since Respondent/Go Air suspended its business operations and admittedly, Affidavit of the Respondent/ RP of Go Air dated 11.12.2023 filed in CONT.CAS (C) 1767/2023, titled as "DAE (SY 22) 13 Ireland Designated Activity Company v Go Airlines (India) Ltd."

for the last more than 6 months, Respondent/Go Air does not have any employees reporting to work.

43. No doubt, the return of the Aircraft would cause hardship to the corporate debtor, i.e. Respondent/Go Air. This, however, cannot be used as a defense to not deregister the Aircraft(s). The Supreme Court in *Popat Bahiru* case has held that although a statutory provision may impose hardship or inconvenience on a specific party, the Court is obligated to uphold and enforce the law without exception. The principle of "*dura lex sed lex*" applies here, emphasising that the law, no matter how harsh, must be upheld. The Courts have consistently maintained that inconvenience of a party alone cannot outweigh the legal obligation to interpret and apply statutes faithfully, even if it leads to perceived hardship. It has been held as such:

16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular

party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." (See *Martin Burn Ltd. v. Corpn. of Calcutta* [AIR 1966 SC 529], AIR p. 535, para 14 and *Rohitash Kumar v. Om Prakash Sharma* [(2012) 13 SCC 792 : AIR 2013 SC .] [Emphasis supplied] 43.1 It is also to be considered that in view of the delay in deregistration of the Aircraft, India's compliance rating of the Cape Town Convention and Cape Town Protocol has fallen from 3.5 to 2 out of 5, which is a significant drop. These compliance ratings have a long term impact on the Aircraft industry in India and also to Airlines operating in India, including a significant increase in lease rental payments charged by the Petitioners/Lessors. In fact, a chain reaction has been set off which will have a ramification on leasing, for all commercial Airlines in the country. The inconvenience of a specific party cannot outweigh the statutory provisions and the International Treaty obligations which are applicable to these Aircraft.

## DIRECTIONS

44. In view of the discussions above, the following directions are passed:

44.1 The impugned rejection letters / communications dated 11.05.2023, 12.05.2023 and 19.05.2023 issued by the Respondent/DGCA declining to process the Deregistration Applications of the Petitioners/Lessors are set aside.

44.2 The Respondent/DGCA shall forthwith and no later than the next five working days process the Deregistration Applications as filed for the following Aircraft in terms of Rule 30(7) of the Aircraft Rules:

S.No Petition No. Details of the W.P.(C) 2. Airbus A320- 271N Aircraft Leased 7663/2023 MSN 11052 IRM 1 W.P.(C) Airbus A320-214 VT -WDA 6569/2023 MSN 5811 IRM VT-GOO 6 W.P.(C) Airbus A320 -271N 2 W.P.(C) Airbus A320-271N 7773/2023 MSN 11130 6626/2023 MSN 11111 IRM VT-WDC IRM VT-WDB 7 W.P.(C) 1. Airbus A320-271N 3 W.P.(C) Airbus A320NEO 7774/2023 MSN 7594 7214/2023 MSN 7858 IRM VT-WGI IRM VT-WGN 2. Airbus A320-271N 4 W.P.(C) 1. Airbus A320-214 3. MSN 7737 7369/2023 MSN 5675 IRM VT-WGJ IRM VT-GON 4. Airbus A320-271N

2. Airbus A320-271N 5. MSN 7753 MSN 7047 IRM VT-WGK IRM VT-WGA Airbus A320-271N

3. Airbus A320-271N MSN 7859 MSN 7074 IRM VT-WGM IRM VT-WGB 8 W.P.(C) AirbusA320-271N
4. Airbus A320-271N 8088/2023 MSN 7813 MSN 8498 IRM VT-WGL IRM VT-WGY Airbus A320-271N
5. Airbus A320-214 MSN 8146 MSN 5990 IRM VT-WGP IRM VT-GOQ Airbus A320-271N
6. Airbus A320-271N MSN 8152 MSN 8656 IRM VT-WGQ IRM VT-GOP
7. Airbus A320-214 MSN 5809 Airbus A320-271N IRM VT-WGA MSN 8209
8. Airbus A320-271N IRM VT-WGR MSN 7330 Airbus A320-271N IRM VT-WGE MSN 8273
9. Airbus A320-214 - IRM VT-WGS MSN 6072 Airbus A320-271N IRM VT-GOR MSN 8382
10. Airbus A320-271N IRM VT-WGT MSN 7205 Airbus A320-271N IRM VT -WGD MSN 8458 5 W.P.(C) 1. Airbus A320- 271N IRM VT-WGV 7663/2023 MSN 11160 Airbus A320-271N IRM VT -WDD MSN 8464 W.P.(C) IRM VT-WGW W.P(C) 6. MSN 8736 8088/2023 Airbus A320-271N 9900/2023 19. VT-WJH MSN 8482 7. Airbus A320-271N IRM VT-WGX 8. MSN 8445
20. VT-WGU Airbus A320-271N 9. Airbus A320-271N MSN 8503 10. MSN 8757 IRM VT-WGZ 21. VT-WJI 9 W.P.(C) Airbus A320NEO 11. Airbus A320-271N 9432/2023 MSN 9332 12. MSN 8850 IRM T-WJO 22. VT-WJK 10 W.P.(C) 1. Airbus A320NEO 9594/2023 2. MSN 7172 12 W.P.(C) 1. Airbus A320-271N IRM VT-WGC 9901/2023 2. MSN 9264
3. Airbus A320NEO 13. VT-WJN
4. MSN 7507 3. Airbus A320-271N IRM VT-WGF 4. MSN 9358
5. Airbus A320NEO 14. VT-WJP
6. MSN 7563 5. Airbus A320-271N IRM VT-WGG 6. MSN 9375
7. Airbus A320NEO 15. VT-WJQ
8. MSN 7571 7. Airbus A320-271N IRM VT-WGH 8. MSN 8785
9. Airbus A320NEO 16. VT-WJR

10. MSN 8613 13 W.P.(C) 1. Airbus A320-271N IRM VT-WJB 10327/20232. MSN 8785

11. Airbus A320NEO 9. VT-WJJ

12. MSN 8621 3. Airbus A320-271N IRM VT-WJC 4. MSN 9200

13. Airbus A320NEO 10. VT-WJL

14. MSN 8643 14 W.P.(C) 1. Airbus A320-271N IRM VT-WJD 10386-20232. MSN 9218

15. Airbus A320NEO 5. VT-WJM

16. MSN 8650 3. Airbus A320-271N IRM VT-WJE 4. MSN 9412 11 W.P.(C) 1. Airbus A320 -271N 6. VT-WJS 9900/2023 2. MSN 8583 7. Airbus A320-271N

17. VT-WJA 8. MSN 9598

3. Airbus A320-271N 9. VT-WJT

4. MSN 8720

18. VT-WJG

5. Airbus A320-271N 44.3 All maintenance tasks with respect to the Aircraft as set forth in Paragraph 44.2 hereinabove, shall be undertaken by the Petitioners/Lessors and/or their authorised representatives upto and until the time the Aircraft are deregistered and exported in pursuance of Rule 32A of the Aircraft Rules.

44.4 The Respondent/DGCA and the Respondent/AAI shall aid and assist the Petitioners/Lessors and grant the Petitioners/Lessors their employees, agents, officers and/or authorised representatives access to the Airports, where the Aircraft as set forth in Paragraph 44.2 hereinabove, are parked.

44.5 The Respondent/RP of Go Air and the Respondent/Go Air and its directors, employees, agents, officers and/or representatives are restrained from entering, accessing or in any manner, operating or flying any of the Aircraft, details of which are set forth in Paragraph 44.2 hereinabove.

44.6 The Respondent/RP of Go Air and Respondent/Go Air and its directors, employees, agents, officers and/or representatives are restrained from removing, replacing taking out any accessories, spare-

parts, documents, records, materials, etc. of the Aircraft, details of which are set forth in Paragraph 44.2 hereinabove.

44.7 The Respondent/RP of Go Air shall within the next fourteen days provide to the Petitioners/Lessors, upto date information and documentation in relation to the aircraft, airframe, aircraft engines and other parts and components of all the 54 Aircraft including:

- (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.

45. The Petitioners/Lessors 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 and W.P.(C) 9432/2023 are permitted to export the Aircraft subject to compliance with the Aircraft Act, Aircraft Rules and applicable laws and regulations.

45.1 The Respondent/AAI shall within the next three working days communicate to Respondent/DGCA as to the pending dues of the Petitioners/Lessors.

45.2 The Respondent/DGCA shall facilitate the export by providing an Export Certificate of Airworthiness, a Ferry Flight Permit and all other documents and permissions as the Petitioners/Lessors may require in this behalf, subject to Petitioners/Lessors compliance with the Aircraft Act, Aircraft Rules and applicable laws.

46. The Petitioners/Lessors in W.P.(C) 6569/2023, W.P.(C) 6626/2023, W.P.(C) 7214/2023, W.P.(C) 7663/2023, W.P.(C) 7774/2023, W.P.(C) 9594/2023, W.P.(C) 10327/2023 and W.P.(C) 10386/2023 are not precluded from taking appropriate remedies in accordance with law with respect to the export of their Aircraft which form subject matter of the present Petitions.

47. CM Appls. 36850/2023, 36930/2023, 36915/2023, 36931/2023, 36929/2023, 36891/2023, 36909/2023 and 36928/2023 for Impleadment of the CoC are dismissed.

48. The present Petitions are accordingly disposed of in terms of the foregoing directions. All pending Applications are closed.

49. Parties shall act based on the digitally signed copy of the Judgment.

TARA VITASTA GANJU, J April 26, 2024/AT/r DECISIONS REFERRED/RELIED UPON IN THIS JUDGMENT S.NO. CASE NAME Citation Page No. 1 Awas 39423 Ireland Ltd. & Ors. v. Directorate General of Civil 2015 SCC OnLine Del 28 Aviation & Anr. 8177 2 Embassy Property Developments Private Limited. v. State of (2020) 13 SCC 308 29 Karnataka & Others 3 Neesa Leisure Ltd through its resolution professional Mr. Amit 2022 SCC OnLine 30 Jain v. Rajasthan State Industrial & Investment Corporation NCLAT 4697 4 Neesa Leisure Ltd through its resolution professional Mr. Amit Civil Appeal No. 30 Jain v. Rajasthan State Industrial & Investment Corporation 1256/2023- Order dated (Supreme Court) 04.12.2023 5 Municipal Corporation of Greater Mumbai (MCGM) v. Abhilash (2020) 13 SCC 234 31 Lal & Others 6 Vinod Kumar v. State of Haryana & Others (2013) 16 SCC 293 32 7 TATA Cellular v. Union of India (1994) 6 SCC 651 32 8 Popat Bahiru Govardhane & others v. Special Land Acquisition (2013) 10 SCC 765 32 Officer and another 9 TATA Consultancy Services Ltd. v. SK Wheels private limited (2022) 2 SCC 583 36 Resolution Professional, Vishal Ghisulal Jain 10 Life Insurance corporation of India v. Asha Ramchandra (1994) 2 SCC 718 37 Ambekar ( mrs) and Anr 11 State of West Bengal v. Subhash Kumar Chatterjee and Ors (2010) 11 SCC 694 37 12 M.I. Builders Pvt Ltd. v. Radhey Shyam Sahu and Ors (1999) 6 SCC 464 37 13 Committee of Creditors of Essar Steel India Ltd through authorized (2020) 8 SCC 531 39 signatory v. Satish Kumar Gupta and Ors 14 Gujarat Urja Vikas Nigam Ltd v. Amit Gupta and Ors (2021) 7 SCC 209 39 15 Tata Steel BSL Ltd v. Venus Recruiters Pvt Ltd and Ors 2023 SCC Online Del 155 39 16 Victory Iron Works Limited. v. Jitendra Lohia & Anr 2023 SCC online SC 260 40 17 Rajendra K. Bhutta v. Maharashtra Housing and area development (2020) 13 SCC 208 40 authority and Anr 18 Arcelor Mittal India private Limited v. Satish Kumar Gupta and (2019) 2 SCC 1 40 Ors 19 Ghanashyam Mishra & Sons Pvt Ltd v. Edelweiss Asset (2021) 9 SCC 657 41 Reconstruction Company Ltd through the director and Ors 20 Assistant Collector of Central Excise Chandan Nagar, West Bengal (1985) 1 SCC 260 41 v. Dunlop India Ltd and Ors 21 South Indian Bank Ltd. and Ors v. Naveen Mathew Philip and Anr 2023 SCC Online SC 435 42 22 IFB Agro Industries Ltd. v. SICGIL India Limited and Ors (2023) 4 SCC 209 42 23 Anand Rao Kaorada, Resolution Professional v. Varsha Fabrics Pvt (2020) 14 SCC 198 42 Ltd & Ors 24 State Bank of India v. Ramakrishnan and Anr (2018) 17 SCC 394 42 25 Zile Singh v. State of Haryana and Ors (2004) 8 SCC 1 43 26 Monnet Ispat & Energy Ltd. v. Union of India and Ors (2012) 11 SCC 1 43 27 Director General of Foreign Trade and Anr v. Kanak Exports and (2016) 2 SCC 226 43 Anr.

28 Assistant Excise Commissioner, Kottayam and Ors. v. Esthappan (2021) 10 SCC 210 43 Cherian and Anr 29 Madhusudan Tantia v. Amit Choraria and Anr 2020 SCC Online NCLAT 43 30 CIT v. Nasa Finelease P. Ltd. 2013 SCC OnLine Del 45 31 Kedar Nath Agrawal (dead) and Anr v. Dhanraji Devi (dead) by (2004) 8 SCC 76 52 LRs and Anr 32 Nagindas Ramdas v. Dalpatram Ichharam alias Brijram and Ors (1974) 1 SCC 242 53 33 Indus Biotech Pvt Ltd v. Kotak India Venture (Offshore) Fund (2021) 6 SCC 436 56 (Earlier Known as Kotak India venture Limited) and Ors 34 Swiss Ribbon Pvt. Ltd. & Anr v. Union of India & Ors (2019) 4 SCC 17 56 35 Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater (1992) 2 SCC 524 57 Bombay and Ors 36 Wellington Associates Ltd v. Kirit Mehta (2000) 4 SCC 272 70 37 Jamatraj Kewalji Govani v. State of Maharashtra (1967) 3 SCR 415 70 Canara Bank v. Deccan Chronicle Holdings Limited NCLAT 255 SLP(C) No. 017817/ 39 CIT v. M/s Nasa Finelease Pvt. Ltd.- Supreme Court 2014; Order dated 126



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TARA VITASTA GANJU, J  
April 26, 2024/AT/r