

Commissioner Of Income Tax - 5 vs M/S Jet Airways (India) Ltd. on 16 November, 2021

Bench: Sanjay Kishan Kaul, M.M. Sundresh

1

ITEM NO.4

COURT NO.6

SECTION III

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Civil Appeal

No(s). 3290/2017

COMMISSIONER OF INCOME TAX - 5

Appellant(s)

VERSUS

M/S JET AIRWAYS (INDIA) LTD.

Respondent(s)

([FOR DIRECTION])

WITH

C.A. No. 3287/2017 (III)

C.A. No. 3286/2017 (III)

C.A. No. 3291/2017 (III)

Date : 16-11-2021 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Appellant(s)

Mr. Balbir Singh, Ld. ASG
Mr. Rana Mukherjee, Sr. Adv.
Ms. Rekha Pandey, Adv.
Ms. Manish Pushkarna, Adv.
Mr. Udai Khanna, Adv.
Mr. Naman Tandon, Adv.
Mr. Raj Bahadur Yadav, AOR

For Respondent(s)

Mr. Himanshu Mehta, Adv.
Mr. Ujjwal A Rana, Adv.
for M/S. Gagrati And Co, AOR

UPON hearing the counsel the Court made the following
O R D E R

Learned Additional Solicitor General on the basis of the “Resolution Plan” handed over has placed before us some part of the relevant extract. The significant aspect as contained in para V of the “Resolution Plan” (General Clauses) is Clause 12 dealing with legal proceedings which reads as under :

“12. LEGAL PROCEEDINGS 12.1 If any legal, taxation or other proceedings of whatever nature, whether civil or criminal (including, before any statutory or quasi-judicial authority or tribunal (except all litigations relating to or arising out of non-implementation of Resolution Plan in any manner or priority of Financial Creditors/avoidance transaction application) (the “Proceedings”) by or against the Corporate Debtor is pending/arising at any time, if any, the same shall stand transferred to the Resultant company.

12.2 All legal proceedings of whatsoever nature by or against the Corporate Debtor pending and/or arising at the Appointed Date in relation to the Demerged Undertaking shall be continued and enforced by or against the Resulting Company, and the Resulting Company will bear the liabilities of such proceedings at its own cost. The Corporate Debtor shall extend all its assistance to defend such proceedings at the cost of the Resulting Company.

12.3 Subsequent to the Appointed Date, if any proceedings are initiated by any third party (including regulatory authorities) by or against the Demerged Company under any statute, such proceedings shall be continued and enforced only against the Resulting Company and the Resulting Company shall bear the liabilities of such proceedings at its own cost. The Corporate Debtor shall extend all its assistance to defend the liabilities of such proceeding at the cost of the Resulting Company.” As to what is the “Resulting Company” has been defined in Part II definition Clause 4.12 as under:

“4.12 - “Resulting Company” means Airjet Ground Services Limited, a company incorporated under the provisions of the Companies Act, 2013 with an authorised share capital of Rs. 1,00,00,000/- and paid up share capital of Rs. 50,00,000/-” In view of the aforesaid, the submission of the learned Additional Solicitor General is that the “Resolution plan” itself protects the rights of the appellant-department to recover as though there was no outstanding liability on that date, the assessee having succeeded, the claim of the revenue department had been entertained through the present appeals and thus if the appellant succeeds on merits in the appeals, it would be entitled to make appropriate recovery against the “Resulting company”.

He further submits that in any case, he has advised the department to approach the NCALT as the objections to the “Resolution Plan” by one of the creditors is still pending consideration.

In view of the aforesaid, we consider it appropriate to await the decision of the NCALT before we bestow our consideration in appeals itself.

List after the NCALT decides that matter and liberty to the parties to mention for listing of the matters after the said decision.

The “Resolution Plan” placed before us today in Court be kept in a sealed cover.
[CHARANJEET KAUR] [POONAM VAID] ASTT. REGISTRAR-cum-PS COURT
MASTER (NSH)