

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI

C.P.(IB)-2205(MB)/2019  
MA 2360/2019

CORAM: SHRI V. P. SINGH  
MEMBER (J)  
SHRI RAVIKUMAR DURAISAMY  
MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL  
COMPANY LAW TRIBUNAL ON 5.7.2019

NAME OF THE PARTIES: State Bank of India

Vs

Jet Airways ( India) Ltd.

Section 9 of the Insolvency and Bankruptcy Code, 2016.

**ORDER**

76. **MA 2360/2019, MA 2387/2019, MA 2390/2019 in CP(IB)  
2205(MB)/2019**

MA 2387/2019 has been filed by the Resolution Professional seeking restraining order against the Respondent from de-registering the Aircraft till completion of the CIRP.

The applicant contends that by order of this Bench dated 20.6.2019, this Petition was admitted and the applicant was appointed as IRP. This application is filed about the Aircraft registered under the Registration Number VT-JEW (The Aircraft), of which the Corporate Debtor is the registered operator. The Aircraft is the asset of the Corporate Debtor, acquired by it by way of a lease agreement dated 29.8.2007 between the Corporate Debtor and one Fleet Ireland Aircraft Lease 2007-B2 Limited(Lessor).The Agreement is like the financial

lease. Accordingly, the Aircraft is reflected on the balance sheet of the Corporate Debtor as an asset.

The applicant further contends that the Respondent as on 28.6.2019 received an “Irrevocable De-registration and Export Requested Authorisation” (IDERA) from the holder of an “IDERA right” in respect of the Aircraft. The Respondent issued the public notice as such IDERA application from the IDERA Holder on 1.7.2019(DGCA Notification).

The applicant has further stated that the holder of the IDERA right over the Aircraft has requested for de-registration of the Aircraft from the aircraft registry of the Respondent.

It is further stated that the holder of the IDERA is seeking de-registration of the aircraft to recover possession of the Aircraft from the Corporate Debtor and eventually utilize the said Aircraft to recover its dues. Such action is not maintainable directly or indirectly during the moratorium as per Section 14 of the IBC, 2016.

The applicant has further stated that the action proposed by the Respondents would violate the moratorium set out in IBC against the institution or continuation of suits or proceedings against the Corporate Debtor before any court, Tribunal, arbitration panel, **or other authority.**

It is further stated in the application that additionally, the de-registering of the Aircraft at the behest of the IDERA right holder would assist the Lessor in the unlawful recovery of property that is an asset of the Corporate Debtor, in violation of the moratorium under Section 14 of the IBC.

The applicant further contended that it does not have access to the requisite information technology infrastructure of the Corporate Debtor to retrieve all the relevant documents. However, action by the

Respondent further to the DGCA Notification is imminent, and the applicant is, therefore, constrained to approach this Tribunal seeking urgent relief.

The applicant has further stated that by letter dated 4.7.2019, the applicant requested the Respondent to refrain from proceeding with the proposed de-registration of the Aircraft. Copy of the letter is annexed with the application as Annexure B.

The present application has been moved to preserve the value of the assets of the Corporate Debtor through the CIRP.

It is further stated that any delay in allowing the instant application will cause grave and serious loss of value to the Corporate Debtor, consequentially causing loss of value to the Stakeholders in the CIRP of the Corporate Debtor.

This application has been filed on 4.7.2019, but notice was served on the Respondents by way of email on 4.7.2019 and 5.7.2019. However, there is no representation from the Respondent side.

Counsel representing the RP has emphasized on Rule 30(7) of Aircraft Rules, 1937 which provides that *“the registration of an aircraft registered in India, to which the provisions of the Cape Town Convention and 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 the 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 interests have consented to the deregistration and export of the aircraft: Provided that such cancellation of registration of the aircraft shall not affect the right of the Central Government or of any entity thereof, or any inter-governmental organisation in which India is a member or another 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.”*

Ld. Counsel for the RP further stated that as per the Rule mentioned above, **five days is expiring today**. Since the IDERA holder has moved the application for de-registration of the Aircraft and if the order is passed under this Rule, then after de-registration of the Aircraft, the same will affect the value of the Corporate Debtor's property and will lose the right of using the Aircraft during CIRP.

It is further to point out that Section 14 of IBC prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority. Here the words “**other authority**” clearly covers any authority whose name is not mentioned in the Act itself.

DGCA is also covered under the term “Other Authority”. Admittedly, Corporate Debtor is undergoing CIRP, and the entire property is under the control of IRP.

It is pertinent to mention that Section 238 of IBC provides that “*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.*”

Thus, it is clear that as per provision of Section 238, provisions of IBC has overriding effect over all other laws which are in consistent with the provisions of this Code.

The application has been filed by IDERA holder, and as per Rules within five working days, DGCA has to cancel the registration of the Aircraft without seeking consent or any documents from the operator of the Aircraft. During CIRP, if such process is permitted, not only this Aircraft but other property of the Corporate Debtor in this case, most of the leased Aircrafts, a similar situation may occur, and the application may be filed by IDERA holder for de-registration of the Aircraft, and the peculiar situation will be created, and the most valuable assets of the Corporate Debtor will be taken away by IDERA holder.

Thus, before passing any final order, we would like to hear Respondent in this case.

Let Court Notice be issued against the Respondent. The applicant is directed to serve court notice on the Respondent. Reply, if any, may be filed by 12.7.2019.

**List this MA 2387/2019 on 19.7.2019. Till then Respondent is directed not to take any decision on the application filed by the IDERA holder regarding de-registration of the Aircraft and maintain the status quo.**

Ld. Counsel representing the RP sought leave of the court for filing progress report. A progress report is taken on record.

**List on 23.7.2019 for filing status report.**

**List MA 2390 and MA filed by Lucky star on 23.7.2019 for disposal.**

**Sd/-**

**RAVIKUMAR DURAISAMY**  
Member (Technical)

**Sd/-**

**V. P. SINGH**  
Member (Judicial)