

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 201
CP (IB)-2205/MB/2019

IN THE MATTER OF:

Mr. Ashish Chhawchharia Housing Development
Finance Corporation Ltd. State Bank Ltd. Applicant/petitioner
v.
Jet Airways Respondent

Order under Section 60(5) of Insolvency & Bankruptcy Code

Order dictated on 09.06.2020
Order delivered on 11.06.2020

CORAM:

SH. B.S.V. PRAKASH KUMAR
HON'BLE ACTG. PRESIDENT

PRESENT:

For the RP
Rohan

Mr. Ashish Chhawchharia, RP with Mr.

Rajadhyaksha, Mr. Sinha, Mr. Neeraja
Balakrishnan, Mr. Dhiraj Kumar Totala &
Mr. Amit Jha, Advs.

For Respondent HDFC

Mr. Janak Dwarkadas, Mr. Chirag, Mr. Denzil
Arambhar, Ms. Aayushi Mehta, Mr. Nimesh
Bhatt & Mr. Naren Dalal, Advs.

ORDER

SH. B.S.V. PRAKASH KUMAR, ACTG. PRESIDENT

CA-998/2020

1. The Resolution Professional (**RP-Ashish Chhawchharia**) of Jet Airways (India) Limited ("**Corporate Debtor/Jet Airways**") has filed this IA 998/2020 for approval of this Tribunal for sale of one of the non-core assets of the Corporate Debtor to clear overseas debt of Jet Airways/Corporate Debtor to ensure six air crafts are freed from encumbrances so that it would hugely maximize the value of the Corporate Debtor during CIRP period.

2. The Respondent, HDFC Limited (**HDFC**), in September 2017, advanced INR. 400,00,00,000 (Rupees Four Hundred Crore only) to the Corporate Debtor. In lieu of this, security interest in a premises owned by the Corporate Debtor on 2nd (part), 3rd and 4th floors of the Jet Airways Godrej BKC building ("**Premises**"), as set out in the Security Documents have been created in favor of HDFC. The Premises is a non-core asset and has never been used by the Corporate Debtor as a part of its airline business.
3. Now the RP has sought permission of this Tribunal for sale of this Premises in the manner set out in the resolution passed at 10th Meeting of Committee of Creditors (**CoC**) held on 24th April 2020 with approval of 74.45% voting. The proceeds from the proposed sale of the Premises will be utilized for clearing the residual dues remained payable to one Export-Import Bank of The United States ("**US Exim**") over the finance lease created on six air crafts of the Corporate Debtor and to HDFC over the security interest created in favor of it.
4. US Exim holds charge over 6 aircrafts (of which the cumulative depreciated value is over USD 200 million) that have been leased to the Corporate Debtor on a financial lease. The Corporate Debtor had already made substantial payments amounting to USD 881 million in relation to the 6 aircrafts. At the end of the lease period, the Corporate Debtor is required to make a nominal payment to US Exim and thereafter to get title to the six aircrafts. However, some amounts under the finance lease remain unpaid to US Exim

Bank. If the amounts payable to US Exim are not paid, US Exim will become entitled to repossess the six aircrafts. US Exim Bank has agreed that upon payment of USD 13 million, it will transfer the title of the six aircrafts to the Corporate Debtor. Therefore, upon payment of USD 13 million (approximately ₹90 crore) to US Exim Bank, the Corporate Debtor would get title to the six aircrafts, which would add around USD 200 million (approximately ₹1,400 crore) to the estate of the Corporate Debtor.

5. To achieve the above objective, the Applicant has made multiple attempts to raise finance including the interim finance, but these attempts have not been successful. In such scenario, given the overwhelming benefit to the Corporate Debtor by paying the dues to US Exim and acquiring title to the 6 aircrafts, the applicant says, it is incumbent upon the Applicant and CoC to explore other means of raising monies to make payment to US Exim and have the title to the six aircrafts transferred to the Corporate Debtor.
6. The Premises aforementioned is non-core asset of the Corporate Debtor which has never been used by the Corporate Debtor as a part of its airline business. Sale of the Premises would raise vital funds required for payment of USD 13 million to US Exim, which, in turn, would unlock the full value of the six (6) aircraft in the estate of the Corporate Debtor. These aircraft are core asset related to the business of the Corporate Debtor and would become available to any prospective resolution applicant. Even if the

Corporate Debtor is ordered to be liquidated, these 6 aircraft would become available as an unencumbered asset (valued at around ₹1,400 crore) for distribution in accordance with the Code. However, a sale of the Premises (proposed to be sold at a minimum price of ₹490 Crores) to raise funds is not possible without the consent of HDFC, which, as per the Deed of Mortgage, holds security interest and first and exclusive charge over the Premises.

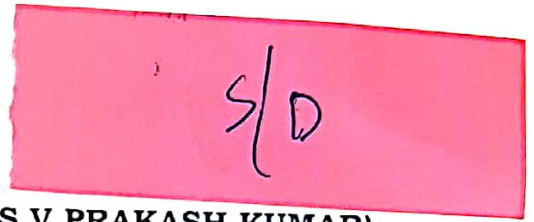
7. Accordingly, an arrangement was arrived at with HDFC that pursuant to payment of ₹360 crore to HDFC (as opposed to HDFC's claim of approximately ₹424 crores as on commencement of the CIRP) from the sale proceeds of 3rd and 4th floor of the Premises, HDFC would release its security interest over the Premises, which includes part of 2nd floor. The 2nd floor is valued at approximately ₹240 Crores.
8. Pursuant to the CoC meeting held on April 24, 2020, by a vote of 74.45%, the applicant says, the CoC has approved the arrangement for sale of the Premises, payment to HDFC of ₹360 crore and payment to US Exim to acquire title to the six aircrafts subject to the conditions as set out in the aforesaid resolution. However, this resolution states that it is passed subject to approval of this Tribunal. The arrangement arrived at between HDFC and the CoC is beneficial to the Corporate Debtor as well as to all stakeholders and causes no prejudice whatsoever to either the Corporate Debtor or any other stakeholder. It is in these circumstances that the present Application has been filed

by the Applicant in discharge of his duties under Section 25(1) of the IBC to preserve and protect the assets of the Corporate Debtor and the same ought to be allowed by this Hon'ble Tribunal.

9. The Respondent, HDFC has filed Affidavit dated 1st June 2020, inter alia, recording that it has no objection to the present Application being allowed and that it supports the present Application in terms of the resolution passed at the 10th Meeting of the CoC dated April 24, 2020.
10. On looking at the averments of the application and documents annexed thereto, for there being no objection either from any member of the CoC or from the charge holder of the premises i.e., HDFC, apart from this, for there being huge value addition to the Corporate Debtor, this Bench hereby allowed this application approving the resolution approved by the CoC on April 24, 2020.
11. In pursuance thereof, the applicant is hereby permitted to sell the Premises for utilising the proceeds of the sale of the 3rd and 4th floor to settle the claims of HDFC at INR 360 crores, upon HDFC giving up security interest, charge, or any other rights in respect of the Premises and withdrawing the pending Application simultaneously against receipt of the above sum of INR 360,00,00,000 with no further responsibility or liability on HDFC for or towards any further or other costs, charges, claims in connection with the insolvency process or otherwise howsoever, including in the event of any liquidation of the Corporate Debtor, and HDFC charge, security interests, and rights in

Debtor, and HDFC charge, security interests, and rights in the Premises shall remain unaffected until receipt of the full sum of INR 360,00,00,000 and the balance sums remaining from the sale proceeds of the 3rd and 4th floor of the Premises towards settlement with US Exim and CIRP costs.

12. Accordingly, IA 998/2020 is hereby allowed.

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(B.S.V PRAKASH KUMAR)
ACTG. PRESIDENT