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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 15th May, 2024

+ CS(COMM) 285/2024 and I.A. 7590/2024, 10853/2024

TWC AVIATION CAPITAL LIMITED

..... Plaintiff

Through: Mr. Ashish Dholakia, Sr. Adv. with
Mr. Ravi Nath, Mr. Ankur Mahindro,
Mr. Rohan Taneja, Mr. Aditya Kapur,
Ms. Vishali, Mr. Ankesb Tripathi,
Ms. Yashika Arora, Mr. Abhijeet
Mittal, Mr. Siddbant Vyas, Mr.
Ankush Satija, Mr. Mohit Dagar, Mr.
Rohit Bishnoi and Ms. Shubhangi
Jain, Advs. (M: 99535 42080)

versus

SPICEJET LIMITED

..... Defendant

Through: Mr. Sandeep Sethi, Sr Advocate with
Mr. K. R Sasiprabhu, Mr. Kartikeya
Astbana & Ms. Shreya Sethi, Advs.
(M: 8851382791)

CORAM:**JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. This is a suit for declaration, mandatory and permanent injunction *etc.*
The case of the Plaintiff- TWC Aviation Capital is that, it is the owner of two Boeing 737-800 Aircrafts with manufacturer's serial numbers 34399 [VT-SXB] and 34400 [VT-SXC] (hereinafter, '*Aircrafts*') as also three Aircraft Engines bearing Engine Serial No. (ESN) 895134, 894147 and 894206 (hereinafter, '*Engines*') and another engine bearing ESN 894207.
3. According to the Plaintiff, vide Aircraft Lease Agreement dated 27th



May, 2019, the said aircrafts with the engines were leased out for a term of 12 months with a basic rent of USD 180,000 per month. The Plaintiff's case is that the Defendant did not make the payment of the lease rentals and various amendment agreements were entered into to accommodate payment difficulties due to the COVID-19 pandemic. However, these amendment agreements were also breached by the Defendant.

4. The Plaintiff, issued notice dated 5th March, 2024 calling upon the Defendant to give certain undertakings. Upon failure by the Defendant to comply with the same, the Plaintiff, in terms of the jurisdiction clause in the Agreement, approached the High Court of Justice in England Wales, Court (*Business And Property Courts Of England Wales King's Bench Division Commercial Court*) [hereinafter 'UK Court'] and instituted a suit- by way of Claim No. CL-2024-000145, against the Defendant. In the said suit, vide order dated 14th March, 2024, the following directions were issued:-

"IT IS ORDERED THAT:

1. Until after the return date of 22 March 2024 ("Return Date") or further Order, the Defendant whether by its officers, servants, agents or otherwise, shall not:

(a) use or operate or permit any person to use or operate, or lend, hire, lease, charter, mortgage, assign, charge, or otherwise deal with or dispose of in any way whatsoever any of:

(i) a Boeing 737-8K9 aircraft with manufacturer's serial number MSN 34399 and registration marks VT-SXB ("MSN 34399");

(ii) Boeing 737-8K9 aircraft with manufacturer's serial number MSN 34400 and registration marks VT-SXC ("MSN 34400");



(iii) three CFM56-7B24 engines with engine serial numbers ESN 895134, ESN 894147, and ESN 894206 (“Engines”); or

(b) remove or use any Parts (as defined in the Aircraft Lease Agreements dated 27 May 2019 in respect of MSN 34399 and MSN 34400 and as amended from time to time) or any equipment or components from any of MSN 34399, MSN 34400 or the Engines for any purpose whatsoever.

2. The Defendant shall forthwith take steps to assemble all the technical and operational records of MSN 34399, MSN 34400, the Engines, and a CFM56-7B24 engine with engine serial number ESN 894207 with a view to it being able to deliver them into the possession of the Claimant or its duly authorised agents if the Court so orders on the Return Date.

3. The Claimant has permission to serve this Order together with the application notice, witness statement of Tetsuya Nozaki and its accompanying exhibit on the Defendant by email or fax.

4. The Claimant has permission to provide a copy of this interim Order to the Directorate General of Civil Aviation of India and/or the Airports Authority of India.

5. The hearing of this application on the Return Date shall be listed before Mr Justice Foxton.

6. Liberty to apply.

7. Costs reserved.”

5. Thereafter vide order dated 22nd March, 2024 the UK Court further directed as under:-

“IT IS ORDERED THAT:

1. The Defendant shall forthwith deliver up into the possession of the Claimant or its duly authorised agent at Delhi’s Indira Gandhi International Airport, India, a Boeing 737-8K9 aircraft with manufacturer’s serial number MSN 34399 and registration marks VT-SXB



("MSN 34399").

2. *The Defendant shall forthwith deliver up into the possession of the Claimant or its duly authorised agent at Chennai International Airport, India, a Boeing 737-8K9 aircraft with manufacturer's serial number MSN 34400 and registration marks VT-SXC ("MSN 34400").*

3. *The Defendant shall forthwith deliver up into the possession of the Claimant or its duly authorised agent at GMR Aero Technic, Rajiv Gandhi International Airport, Hyderabad, India, or such other location in India as the parties may agree in writing, three CFM56- 7B24 engines with engine serial numbers ESN 895134, ESN 894147, and ESN 894206 ("Engines").*

4. **The Claimant shall retain the Engines in India and not remove them out of India on or before 17 May 2024.**

5. *Until trial or further order and pending delivery up under Paragraphs 1, 2 and 3 above, and save for the purposes of compliance with Paragraphs 1, 2 or 3 above, the Defendant whether by its officers, servants, agents or otherwise, shall not:*

(a) use or operate or permit any person to use or operate, or lend, hire, lease, charter, mortgage, assign, charge, or otherwise deal with or dispose of in any way whatsoever any of MSN 34399, MSN 34400 or the Engines; or

(b) remove or use any Parts (as defined in the Aircraft Lease Agreements dated 27 May 2019 in respect of MSN 34399 and MSN 34400 and as amended from time to time) or any equipment or components from any of MSN 34399, MSN 34400 or the Engines for any purpose whatsoever.

6. *The Defendant shall forthwith commence delivering up all the technical and operational records of MSN 34399, MSN 34400, the Engines, and a CFM56-7B24 engine with engine serial number ESN 894207 into the*



possession of the Claimant or its duly authorised agents at such other location as the Claimant shall specify by notice in writing to the Defendant. For the avoidance of doubt, the Defendant shall be entitled to retain copies of such technical and operational records until trial or further order.

7. Following delivery up pursuant to paragraphs 1, 2 and/or 3 above, and until further order, the Claimant and its duly authorised agents have permission:

(a) to park and store or make arrangements for the parking and storage of MSN 34399, MSN 34400, and the Engines at such location as the Claimant shall think fit and notify to the Defendant;

(b) to carry out all routine cleaning, inspections, tests, repairs and/or maintenance work on MSN 34399, MSN 34400, and the Engines; and

(c) to do all thing necessary for the care and maintenance of MSN 34399, MSN 34400, and the Engines during parking or storage.

8. If the Defendant ceases to have solicitors on the record, the Claimant has permission to serve this Order and all further documents in these proceedings on the Defendant by email or fax.

9. The Claimant has permission to provide a copy of this Order to the Directorate General of Civil Aviation of India and/or the Airports Authority of India.

10. Liberty to apply.

11. The Defendant shall pay the Claimant's costs of and occasioned by this application assessed in the sum of £100,000 by 4pm on 12 April 2024."

6. Despite the above Court orders, it is stated that the Defendant failed to comply with the directions and was found to have removed the Engines and used them in other Aircrafts, without permission, leading to further legal notices from the Plaintiff.



7. The said orders of the U.K. Court are sought to be enforced through the present suit by seeking a declaration that the orders are valid and binding.

8. On 5th April, 2024, in the above background, submission of Id. Senior Counsel for the Plaintiff was recorded to the effect that the orders of UK Court, in terms of Section 13 read with Section 44A of CPC, are enforceable in India. Reliance was placed on the following decisions:

“23. *The said position is controverted by Id. Counsel for the Plaintiff by relying upon the following three judgements:-*

- *Alcon Electronics Private Limited v. Celem S.A. of FOS 34320 Roujan, France and Anr. ((2017) 2 SCC 253);*
- *S. Sandhu v. Mithals International (P) Limited (2001SCC OnLine Del 556);*
- *Roshanlal Kuthalia & Ors. v. R. B. Mohan Singh Oberoi ((1975) 4 SCC 628).”*

9. After hearing Id. Senior Counsel for the Plaintiff, this Court observed as under:

“24. *In Alcon Electronics Private Limited (supra), the Supreme Court held as under:*

“21. As far as the explanation with regard to reciprocal territory is concerned, there is no dispute that England is a reciprocating territory for the purpose of above section. Section 44-A CPC indicates an independent right conferred on a foreign decree-holder for enforcement of a decree/order in India. Section 44-A was inserted by Section 2 of the Civil Procedure Code (Amendment) Act, 1937 (8 of 1937). This section is meant to give effect to the policy contained in the Foreign Judgments



(Reciprocal Enforcement) Act, 1933. It is a part of the arrangement under which on one part decrees of Indian Courts are made executable in United Kingdom and on the other part, decrees of Courts in the United Kingdom and other notified parts of Her Majesty's dominions are made executable in India. It is to be seen that as United Kingdom is a reciprocating territory and the High Court of Justice, Chancery Division, England being a recognised superior court in England. Therefore, the order passed by that Court is executable in India under Section 44-A CPC.

22. Now we come to the next limb of the argument put forth by the appellant that the order passed by the English Court does not amount to a decree and hence it is not executable. It is no doubt correct, Section 44-A CPC deals with “execution of decrees passed by courts in reciprocating territory”. Before we further decide this issue it is appropriate to have a look at how decree, order and foreign judgment are defined under the CPC.

23. As per Section 2(2) CPC, “decree” means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144 CPC but shall not include (a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default.

24. Then a “foreign judgment” is defined under Section 2(6) as judgment of a foreign court.



“Judgment” as per Section 2(9) CPC means the statement given by the Judge on the grounds of a decree or order. “Order” is defined under Section 2(14) CPC as a formal expression of any decision of the civil court which is not a “decree”. Then Explanation 2 to Section 44-A(3) says “decree” with reference to a superior court means any “decree” or “judgment”. As per the plain reading of the definition “judgment” means the statement given by the Judge on the grounds of decree or order and order is a formal expression of a court. Thus “decree” includes judgment and “judgment” includes “order”. On conjoint reading of “decree”, “judgment” and “order” from any angle, the order passed by the English Court falls within the definition of “order” and therefore, it is a judgment and thus becomes a “decree” as per Explanation to Section 44-A(3) CPC. In this case, the Court at England, after following the principles of natural justice, by recording reasons and very importantly basing on the application of the appellant itself, has conclusively decided the issue with regard to jurisdiction and passed the order coupled with costs. Hence in our considered opinion, the order passed by the foreign court is conclusive in that respect and on merits. Hence executable as a decree and accordingly the issue is answered.”

25. In view of the above, the suit arising from the UK court is maintainable and can be enforced in India. The two orders of the UK Court are clear. Initially vide order dated 14th March 2024, the Defendant was restrained from using, operating etc., both the aircrafts, from removing the parts etc., It was also directed to assemble all the records of the engines and



be ready to deliver the same to the Plaintiff, if ordered by the Court.

26. Subsequently, vide order dated 22nd March 2024, the UK Court directed delivery-up of both the aircrafts and the three Engines to the Plaintiff. It also directed that the same shall not be removed from India. Further interim order was also granted against use or operation of the engines in the meantime. The Plaintiff was permitted to, after taking possession, make arrangement for storage and parking of the Engines, undertake inspection and maintenance of the engines etc.,

27. The proceedings before the UK Court are in terms of the dispute resolution clause in the Agreement, as admitted by the Respondent itself.

28. The only objection raised is that an Execution petition would lie and not a suit as has been filed by the Plaintiff. Prima facie, the orders passed by the UK court are enforceable in these proceedings in terms of Section 13 read with Section 44A of the CPC. The Defendant has already had an opportunity to defend itself in the UK Courts.

29. In keeping with the principles of Comity of Courts as also the admitted position being that a substantial sum of money is due from the Defendant to the Plaintiff, this Court is of the opinion that the Aircrafts and the engines deserve to be secured.”

10. After the Court had recorded as above, on behalf of the Defendant it was submitted that the engines are being used in other aircrafts and the aircraft frames were lying unused. In view of this submission, the Court directed as under:

“31. It is not in dispute that the aircraft frame and the aircraft engines are currently located in India and thus within the jurisdiction of this Court. The aircraft frames are currently not being used by the Defendant



and the same are standing parked in the Indira Gandhi International Airport and a hangar in the Madras Airport.

32. *Insofar as the frames are concerned, the same may be inspected by a team of officials of the Plaintiff who may take charge of the said aircrafts/ frames, even if sans the engines. The same shall, however, not be moved till further orders of this Court. The officials of the Plaintiff shall act as receivers of the Court and maintain them.*

33. *The inspection by the Plaintiff's officials shall be conducted on or before 12th April, 2024. A maximum of three officials from both sides are permitted to conduct the inspection.*

34. *Insofar as the three engines are concerned, the same are stated to have been removed from the aircrafts and are currently being used in other aircrafts. In this regard, it is made clear that the status of the said engines shall not be changed till the next date before this Court.*

35. *Mr. Sethi, ld. Sr. Counsel would seek instructions as to how and in what manner the Defendant intends to compensate/ return the engines to the Plaintiff by next date of hearing.*

36. *A short reply shall be filed within four weeks.*

37. *The usage report of these aircrafts/engines, since the date of termination i.e. 9th February, 2024 shall be furnished to the Plaintiff within two weeks."*

11. As per the above order, inspection of the aircraft frames was permitted. Replies were to be filed by the Defendant and instructions were to be taken as to how the amounts would be paid. Thereafter, on 8th May, 2024, it was submitted on behalf of the Defendant that the Defendant is willing to pay a sum of USD 435000 per month towards current dues, which was not acceptable to the Plaintiff, who had submitted that the total



dues of the Plaintiff are around 10 million dollars. The Court had then directed the Defendant to take instructions as to whether the Defendant would be willing to deposit a sum of Rs.20 crores along with continuing monthly payments. The said direction reads as under:

“11. Insofar as the monetary payments are concerned, the Court has put to the ld. Senior counsel for the Defendant as to whether the Defendant would be willing to deposit a sum of Rs.20 crores along with continuing payments of current dues for utilization of engines/aircraft. Mr. Sethi seeks time to take instructions in the matter.”

12. Today, it is submitted that the Defendant would not be able to pay the sum of Rs.20 crores upfront, however, the Defendant is willing to pay 500000 USD per week, in instalments of four weeks.

13. An objection is also sought to be raised that the order of the UK court is not enforceable in a suit in view of Section 13 and only an execution petition would lie under Section 44A of the CPC. The said provision reads as under:

“13. When foreign judgment not conclusive— A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—

- (a) where it has not been pronounced by a Court of competent jurisdiction;*
- (b) where it has not been given on the merits of the case;*
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;*
- (d) where the proceedings in which the judgment was*



obtained are opposed to natural justice;
(e) where it has been obtained by fraud;
(f) where it sustains a claim founded on a breach of any law in force in India.

14. As can be seen from the above, it is only if any of the conditions under Section 13 are satisfied that a foreign order or judgement is not enforceable. Clearly none of the conditions under Section 13 are attracted as the UK Court is the competent court in terms of the agreement between the parties. The Defendant has fully participated in the said proceedings and there is no reason for this Court to hold that the said order cannot be enforced in India. Even otherwise, when there are admitted dues the Defendant cannot continue to enjoy the aircrafts and the engines without making payments.

15. In the present scenario, *prima facie* there is no material on record to doubt the validity of the order or judgement passed by U.K. Court, neither can it be said that the claims of the Plaintiff are frivolous or vexatious. Further, it is the admitted position that the aircrafts and engines are owned by the Plaintiff and the Defendant have failed to make payments as also breached the lease agreement. Also, the balance of convenience lies in the favour of the Plaintiff considering that the Plaintiff already has a strong case for enforcement of the judgement of the U.K Court. Further, the Defendant's continued use of airframes and engines without complying with the terms of lease agreement would cause greater harm to the Plaintiff than the inconvenience caused to Defendant. Moreover, if the engines are not returned and properly serviced, the Plaintiff would suffer irreparable harm, as this could cause irreversible damage to the engines. Consequently,



the Plaintiff would permanently lose its ability to monetize the engines.

16. In the opinion of this Court, the Defendant has had the sufficient opportunity to clear the dues of the Plaintiff. The Defendant has contested the matter before the Commercial Court in UK and the order has been passed by the Commercial Court in UK directing that the possession of the aircrafts ought to be delivered to the Plaintiff. This Court had only, bearing in mind the fact that the Defendant is running an airline which is operating several aircrafts on a daily basis, given opportunities to the Defendants to make substantial payments to prove its *bonafides*. However, this now appears to be not possible for the Defendant, considering its financial position and the total dues now claimed by the Plaintiff is over 14 million USD.

17. At this stage, Id. Counsel for the Defendant submits that since Rs.20 crores was to be paid only by end of May, the Defendant ought to be given an opportunity to file the written statement.

18. This Court is of the opinion that, as it is, sufficient damage has been caused by separating the engines from aircrafts. The engines are being separately used. The inspection of the aircraft frames had been given to the Plaintiff, which as per Id. Sr. counsel, shows that there is substantial deterioration in the aircraft frames and engines.

19. Be that as it may, the separation of engines from the aircrafts in this manner may not even be permissible in the opinion of this Court. The aircrafts frames and aircraft engines now being used separately would cause considerable reduction in the value of these aircrafts for the Plaintiff. The dues are not forthcoming from the Defendant.

20. Under such circumstances, this Court has no option but to direct that



the aircrafts along with the engines along, with all relevant records relating to technical condition and usage of aircrafts shall be handed over to the Plaintiff by 28th May, 2024. Ordered accordingly.

21. List on 31st May, 2024.

PRATHIBA M. SINGH
JUDGE

MAY 15, 2024/*dk/bh*