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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 5th April, 2024
+ **CS(COMM) 285/2024 and I.A. 7590-7593/2024**
TWC AVIATION CAPITAL LIMITED Plaintiff

Through: Mr Ashish Dholakia, Sr. Adv. with
Mr. Ravi Nath, Mr. Ankur
Mahindro, Mr. Rohan Taneja, Mr.
Aditya Kapur, Mr. Siddhant, Mr.
Abhijit Mittal and Mr. Ankesh
Tripathi, Advocates (M: 99535
42080).

versus

SPICEJET LIMITED Defendant

Through: Mr. Sandeep Sethi, Sr. Adv. with
Mr. K R Sasiprabhu, Mr. Kartikeya
Asthana, Mr. Sumer Dev Seth and
Ms. Riya Kumar, Advs. (M:
8851382791).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

I.A. 7592/2024 (for exemption)

2. This is an application filed by the Plaintiff seeking exemption from filing originals/certified/cleared/typed or translated copies of documents, proper margins, electronic documents, etc. Original documents shall be produced/filed at the time of Admission/Denial, if sought, strictly as per the provisions of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter, '*Commercial Courts Act*') and the DHC (Original Side) Rules, 2018.



3. Exemption is allowed, subject to all just exceptions. Accordingly, the application is disposed of.

I.A. 7593/2024 (for additional documents)

4. This is an application seeking leave to file additional documents under the Commercial Courts Act. The Plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act and the DHC (Original Side) Rules, 2018.

5. Application is disposed of.

I.A. 7591/2024 (u/S 12A of the Commercial Courts Act)

6. This is an application filed by the Plaintiff seeking exemption instituting pre-litigation mediation under Section 12A of the Commercial Courts Act. Considering the facts and circumstances of the case, the Court is satisfied that in terms of the judgment of the Hon'ble Supreme Court in *Yamini Manohar v. T.K.D Keerthi*, (2023 LiveLaw (SC) 906), that the present suit contemplates urgent interim relief. Thus, the exemption is granted to the Plaintiffs.

7. Accordingly, the application is disposed of.

CS(COMM) 285/2024

8. Let the plaint be registered as a suit.

9. Issue summons to the Defendant through all modes upon the filing of Process Fee.

10. The summons to the Defendant shall indicate that the written statement to the plaint shall be positively filed within 30 days from the date of receipt of the summons. Along with the written statement, the Defendant shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.



11. Liberty is given to the Plaintiff to file the replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendant, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

12. List before the Joint Registrar for marking of exhibits on 5th July, 2024. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

13. List before Court on 8th May, 2024.

I.A.7590/2024 (u/O XXXIX Rules 1 & 2 CPC)

14. Issue notice in the application. Notice is accepted by Mr. K R Sasiprabhu, Advocate.

15. 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.

16. 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.



17. 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.”*
18. 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."*

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

20. 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.

21. Mr. Dholakia, Id. Sr. Counsel submits that the order dated 22nd March, 2024 has been passed by the jurisdictional Court under the



agreement. After hearing the Defendant the said order has been rendered. The stand of the Plaintiff is that the orders of the UK Court are orders/judgements in terms of Section 13 read with Section 44A of the CPC and are enforceable in India. Section 13 and Section 44A of CPC are hereinunder:

“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.

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44A. Execution of decrees passed by Courts in reciprocating territory— (1) Where a certified copy of decree of any of the superior Courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.



(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

Explanation 1— "Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and "superior Courts", with reference to any such territory, means such Courts as may be specified in the said notification.

Explanation 2.— "Decree" with reference to a superior Court means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect to a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment."

22. On the other hand, according to Id. Sr. Counsel for the Defendant, an execution would lie for such an order and a suit.

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);*
- *A. S. Sandhu v. Mithals International (P) Limited (2001SCC OnLine Del 556);*



- ***Roshanlal Kuthalia & Ors. v. R. B. Mohan Singh Oberoi***
((1975) 4 SCC 628).

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.



30. Mr. Sethi Id. Sr. Counsel submits that the engines are being used in other aircrafts. However, the two aircraft frames are lying unused.

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, Id. 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.



38. Let reply be filed within two weeks. Rejoinder, if any, be filed within two weeks thereafter.
39. List before the Court on 8th May, 2024.
40. Order *dasti*.

PRATHIBA M. SINGH
JUDGE

APRIL 5, 2024

mr/bh

(corrected & released 9th April, 2024)