NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1178 of 2024

(Arising out of the Order dated 09.05.2024 passed by the National Company Law Tribunal, Mumbai Bench-I in IA No. 1011/2024 in Company Petition (IB) No. 2205/MB/2019)

IN THE MATTER OF:

Aircastle (Ireland) Ltd.
(formerly known as Klaatu Aircraft Leasing
(Ireland) Ltd.)
Having its registered office at:
20, Kildare Street, Dublin, Dublin 2,
D02 T3 V7, Ireland
Through its Power of Attorney holder:
Mr. Dharmender Arya, W-41, Greater Kailash II, New Delhi - 110 048
Email: ajay.kumar@kla-legal.com **…Appellant**

Versus

1. **Mr. Ashish Chawchharia, The Resolution Professional Of Jet Airways (India) Limited And Ors.**
   Having its registered office at:
   Commercial Building, 2nd Floor, Plot No. C-68, G- Block, Bandra-Kurla Complex (East),
   Mumbai - 400 051
   Email ID: ashish.chhawchharia@in.gt.com. **…Respondent No. 1**

2. **Spicejet Limited**
   Registered Address: Indira Gandhi International Airport, Terminal 1 D, New Delhi- 110 037 Corporate Office: 319, Udyog Vihar, Phase-IV, Gurugram, Haryana- 122 016 Email ID: chandan.sand@spicejet.com **…Respondent No. 2**

3. **Union Of India**
   Through Directorate General of Civil Aviation, Aurobindo Marg, Opp. Safdarjung Airport,

New Delhi - 110 003
Email ID: dgoffice.dgca@nic.in;
vipinkr.dgca@nic.in **…Respondent No. 3**

4. **Commissioner Of Customs (Import)**
Through office of Commissioner of Customs,
New Custom House, Near IGI Airport,
New Delhi- 110 037 Email ID: ccu-cusdel@nic.in **…Respondent No. 4**

Present

For Appellant: Mr. Ankur Mahindro, Mr. Rohan Taneja, Mr. Ajay Kumar, Ms. Aanchal nanda, Mr. Hetaram Bishnoi & Mr. Aditya Kapur, Advocates.

For Respondent: Mr. Malhar Z., Mr. Raghav Chadha, Mr. Dhiraj Kumar Totala, Ms. Aditi Bhansali, Ms. Vasudha Jain, Mr. Ankit Pal, Mr. Ajay Raj & Mr. Nishant Upadhyay, for R-1.

J U D G E M E N T

(04.10.2024)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by Aircastle (Ireland) Ltd., under Section 61 of the Insolvency & Bankruptcy Code, 2016 ('**Code**') against the Impugned Order dated 09.05.2024 passed by National Company Law Tribunal, Mumbai Bench-I ('**Adjudicating Authority**') in application being IA No. 1011/2024 in Company Petition (IB) No. 2205/MB/2019.

Mr. Ashish Chawchharia is the Respondent No. 1 who is the Resolution Professional of Jet Airways (India) Limited ('**Corporate Debtor**') Spicejet

Limited is the Respondent No. 2, Union of India (through Directorate General of Civil Aviation) is the Respondent No. 3 and Commissioner of Customs (import) is the Respondent No. 4.

2. Heard the Counsel for the Parties and perused the records made available including the cited judgements.

3. The Appellant submitted that its earlier name Klaatu Aircraft Leasing (Ireland) Ltd. was changed to Aircastle (Ireland) Ltd. on 23.12.2021.

4. The Appellant submitted that he has entered into a Lease Agreement of aircraft on 25.06.2015 bearing Manufacturer's Serial Number ('**MSN**') 34799 (hereinafter called as **Aircraft No. 1**) fitted with Engine Serial Numbers ('**ESN**') 894166 and 894175 along with Auxiliary Power Unit ('**APU**') No. 7243.

The Appellant submitted that similarly on 22.12.2016. he entered into another Lease Agreement of aircraft bearing MSN 30410 (hereinafter called as **Aircraft No. 2**) fitted with ESN 890246 and 890248 and APU No. 6355.

5. It is the case of the Appellant that due to defaults in payments in accordance with the Lease Agreements for Aircraft No. 1 and Aircraft No. 2, the said Aircrafts were de-registered by the Directorate General of Civil Aviation and were re-possessed by the Appellant.

6. The Appellant submitted that when he re-possessed the Aircraft No. 1, he found that Aircraft No. 1 had different ESN 803473, (in short **the engine in dispute**) (Original ESN were 894166 and 894175). Similarly, the Aircraft No. 2 had different APU No. 5121, (in short **the APU in dispute**) (Original APU No. 6355).

7. The appellant submitted that the Corporate Debtor was initiated under Corporate Insolvency Resolution Process ('**CIRP**') vide order dated 20.06.2019 and the moratorium under Section 14 of the Code came into force.

8. The Appellant also filed CIRP proceeding against the Respondent No. 2 which is pending litigation.

9. The Appellant submitted that engine in dispute continues to be in the custody and control since it belong to the Appellant, the Respondent No. 1 wrote a letter on 21.08.2019 to the Appellant requesting to return the same and which was followed by another letter dated 28.01.2020.

10. The Appellant stated that the Corporate Debtor had sent original APU No. 7243 (Aircraft No. 1) for repair to a company named Honeywell prior to CIRP of the Corporate Debtor and the Corporate Debtor could not clear the repair dues of Honeywell and therefore Honeywell retained lien on same and did not hand over to the Corporate Debtor or even to the Appellant.

11. The Appellant submitted that at that stage, Honeywell decided to realise its repair charges incurred in repairing of APU 7243 by auction the said APU

and subsequent to this, the Appellant executed an agreement with Honeywell for acquiring APU 7243 after making payment of USD 350,000.

12. The Appellant submitted that the Respondent No. 1 vide its e-mail dated 07.02.2020 addressed to the Appellant stated that the APU in dispute belongs to the Corporate Debtor and should be returned to the Corporate Debtor followed by another letter dated 25.06.2020 for the same. The Respondent No. 1 demanded the return of APU alongwith exorbitant and un-substantiated usage charges from the Appellant notwithstanding that the engine in dispute was never utilised by the Appellant. The Appellant stated that since, he acquired APU in dispute through a separate independent transaction by paying to Honeywell, this APU belongs to him and therefore did not return the same to the Corporate Debtor.

13. The Appellant brought out that the Respondent No. 1 filed an IA No. 615/2021 before the Adjudicating Authority seeking reliefs of returning the engine and APU in disputes along with claiming rental charges for the use of the Engine in dispute and APU in dispute which were in possession of the Appellant.

14. It is the case of the Appellant that there was a clear understanding between the Appellant and the Corporate Debtor in terms of Lease Agreement that if APU or engine was removed from any of the aircrafts and replaced, the replaced APU and/or engine would become property/ assets of the Appellant.

The Appellant cited the terms of the Lease Agreement, specifically Clause 10.4 and Clause 1.3 of Schedule in support of his claims. The Appellant stated that since these are properties of the Appellant, there is no merit in the arguments of Respondent No. 1 claiming right on such engine/ APU.

15. The Appellant submitted that the Respondent No. 1 filed an IA No. 1011/ 2024 for recalling of the order dated 04.12.2023 on account of alleged factual inconsistencies. The Appellant brought out that no appeal had been filed by the Respondent No. 1 against the order dated 04.12.2023 and thus it attained finality. It is the case of the Appellant that in disguise of recall application, the Respondent No. 1 effectively made out fresh case for review of original order dated 04.12.2023 which is not permissible as per laid down law.

16. The Appellant submitted that the Adjudicating Authority passed the Impugned Order on 09.05.2024 in IA No. 1011/2024 in Company Petition (IB) No. 2205/MB/2019, which is incorrect order. It is the case of the Appellant, that the Adjudicating Authority can only recall the order in case of factual mistakes but cannot pass fresh order giving new or modified reliefs in favour of the Respondent No. 1.

17. The Appellant submitted that the APU in dispute was replaced in lieu of APU 7243 which was sent to Honeywell for repair and was retrieved by the Appellant through purchase by paying USD 3,50,000 and in view of this the Adjudicating Authority incorrectly ordered and fixed a sum of INR 12,26,000/-

towards fixed lease rental for the use of the APU in dispute as well as USD 220 per hours and USD 180 per cycle as variable rent. The Appellant alleged that this was without any scientific basis or based on proper documentation and without considering the Appellant entitlements for same.

18. The Appellant submitted that objections raised by the Appellant in IA No. 1011/2024 regarding maintainability and merits were not appreciated properly by the Adjudicating Authority.

19. The Appellant cited the judgement of this Appellate Tribunal in the matter of ***Union Bank of India v. Dinkar T. Venkatasubramanian & Ors.***; *Comp. App. (AT) (Ins.) No. 729/2020* wherein this Appellate Tribunal has held that there is a distinction between the powers of review and re-call. Power of re-call is neither to rehear the case nor to find out any apparent error in the judgment which is the scope of review.

20. The Appellant reiterated that the Impugned Order is bad in law. The impugned order fails to consider that the Respondent No. 1 was not entitled to continue IA No. 615/2021 and/or file IA No. 1011/2024 on account of the fact that the IA No. 615/2021 had been filed when the CIRP was in play, however, during the pendency of IA No. 615/2021, the Resolution Plan had been approved on 22.06.2021 and the CIRP stood concluded. Therefore, the Resolution Professional became functus officio. The Appellant elaborated and submitted that the CIRP commenced on 20.06.2019; Original Application was

filed on 24.02.2021; Resolution Plan was approved on 22.06.2021; First Judgment was delivered on 04.12.2023; Recall application was filed on 23.12.2023 and the Impugned Order was passed 09.05.2024. The Appellant stated in background of these date and events, as per Section 23 and 31 of the Code, the Respondent No. 1 could have continued only till approval of Resolution Plan, therefore, the Respondent No. 1 became functus officio.

21. The Appellant submitted that Engine in dispute and APU in dispute were acquired prior to CIRP. The Appellant stated that in ***Neesa Leisure Ltd. v. RSIIC*** this Appellate Tribunal held that property taken prior to commencement of CIRP cannot be covered by the Resolution Plan under the Code.

22. The Appellant argued that reliance placed in a judgment passed by Hon'ble Delhi High Court in the matter of ***Tata Steel BSL Limited vs. Venus Recruiter private Limited & Ors***. *[(2023) SCC OnLine Del 155]* decided on 13.01.2023 in LPA 37/2021 and C.M. Nos. 2664/2021, 2665/2021 & 2666/2021 and LPA 43/2021 and C.M. Nos. 3196/2021 & 3198/2021 by the Adjudicating Authority is misplaced on account of the fact that the said judgment itself records that the Resolution Professional is functus officio vis-a-vis CIRP.

23. The Appellant further challenged the Impugned Order since post resolution of CIRP, no relief can be granted by the Adjudicating Authority of this nature and for which the only remedy is civil appeal in appropriate legal forum.

24. The Appellant submitted that the Adjudicating Authority has failed to consider that the entire basis of the Respondent No. 1 seeking to recover APU in dispute is that it was installed in lieu of APU 7243 through purchase by paying USD 3,50,000 which was sent to Honeywell for repair and has now been recovered by the Appellant therefore, the Respondent No. 1 cannot claim right over the APU in dispute. The Appellant stated that the APU in dispute was not installed in lieu of APU 7243.

25. The Appellant emphasised that as per Schedule 2 of the Lease Agreement, parts are defined to include APU. Clause 1.3.1 and 1.3.2 of Schedule 3 states that the Lessee i.e. Corporate Debtor shall replace all parts in the Aircraft and upon replacement the Lessor i.e. the Appellant shall become owner thereof. The Appellant submitted that in terms of the Clause 10.4 which states that upon loss of engine, the Lessee i.e. the Corporate Debtor shall promptly convey title of the replacement engine to the Lessor i.e. the Appellant.

26. The Appellant submitted that the impugned order ignores the contention as correct appreciation of facts would have resulted in the Adjudicating Authority dismissing the applications of the Respondent No. 1 and declaring that the Appellant is the undisputed owner of the Engine and APU in dispute as per the terms of the Lease Agreements.

27. Concluding his arguments, the Appellant requested this Appellate Tribunal to set aside the Impugned Order.

28. Per contra, the Respondent denied all the averments made by the Appellant treating these as misleading and malicious.

29. The Respondent gave the background of the Lease Agreement dated 25.06.2015 and 22.12.2016 w.r.t to Aircraft No. 1 & 2.

30. The Respondent submitted that under the agreements, the Corporate Debtor was required to replace the parts, excluding engine that was worn out, beyond repair or permanently rendered unfit for use and title of such repaired part was to vest with Respondent No. 1 free and clear of all claims. In this connection, the Respondent No. 1 cited Clause 1.3 of Schedule 3 of the Agreements (Part A of Schedule 2) and Clause 1.3.2 of the Lease Agreements.

31. The Respondent No. 1 submitted that during the normal course of operations, the Corporate Debtor routinely interchanges engines and other parts between its various aircrafts taken on lease for the purposes of repairs and maintenance. The Respondent No. 1 submitted that the APU Nos. 7440 was fitted on Aircraft 2 in replacement of then existing APU, and later, an APU being APU P-5121 belonging to the Corporate Debtor was fitted on the Aircraft 2 in replacement thereof.

The Respondent No. 1 stated that Engine No. ESN 962829 was removed and Engine No. ESN 803473 belonging to the Corporate Debtor was installed in the Aircraft 1 instead. The Respondent No. 1 emphasized that the said engine installed by the Corporate Debtor on the aircraft does not fall within the

meaning of "parts" mentioned in Clause 1.3 of Schedule 3 of the Agreements (Part A of Schedule 2), and though installed on the Appellant's Aircraft, does not become the Appellant's property. Notably, as per Clause 1.3.2 of the Lease Agreements, as the Corporate Debtor's APU was fitted on Aircraft 2. title of the replaced APU, vested with the Corporate Debtor.

The Respondent No. 1 stated that under Section 18(1)(f) of the Code, requires the resolution professional to take custody of all assets belonging to the Corporate Debtor and this was exactly done by him.

32. The Respondent No. 1 submitted that in the year April 2019, on account of the financial crisis faced by the Corporate Debtor, various aircrafts operated by it were grounded and consequently, returned to be repossessed by the lessor. The Respondent No. 1 stated that when the Appellant repossessed its Aircrafts, the Corporate Debtor's Engine remained attached to Aircraft 1 and the Corporate Debtor's APU remained attached to Aircraft 2 and subsequently, the Appellant leased further to the Respondent No. 2 the Aircrafts wherein the Corporate Debtor's Engine and APU were installed.

33. The Respondent No. 1 brought out that commencement of CIRP against the Corporate Debtor was initiated on 20.06.2019 and during the CIRP, the Appellant did not file any claims with the resolution professional and the Appellant also suppressed the fact that the Corporate Debtor's assets were unlawfully in the possession of the Appellant.

34. The Respondent No. 1 submitted that in January 2020, he came to know that the Appellant had repossessed Corporate Debtor's Original APU from Honeywell. The Respondent No. 1 emphasised that the Corporate Debtor had sent it for repairs and the title of the same vests with the Corporate Debtor in view of Clause 1.3.2 of the Lease Agreement. The only engine belonging to the Appellant which eventually remained with the Corporate Debtor is Engine No. ESN 896341, which was lower in quality compared to the Corporate Debtor 's Engine, and its condition was unserviceable.

35. The Respondent No. 1 further submitted that despite much correspondence during 2019-2020 with the Appellant for return of the Corporate Debtor's APU and Engine by the Appellant and the Respondent No. 1's offers to swap the Corporate Debtor Engine (that was in Appellant's possession) with Appellant's Engine (that was in the Corporate Debtor's possession), the Appellant failed to return the Corporate Debtor Engine and either of the APUs to the Corporate Debtor. The Respondent No. 1 alleged that the Appellant and has continued to monetise not only the Corporate Debtor Engine, but also both the Corporate Debtor's APU as well as Appellant Original APU, thereby unjustly enriching the Appellant to the detriment of the Corporate Debtor.

36. The Respondent No. 1 further submitted that on 04.12.2023, the Adjudicating Authority passed the Impugned Order containing certain inadvertent errors which caused grave prejudice to the Respondent No. 1 and

therefore the Respondent No. 1 sought the Adjudicating Authority's intervention for correcting the same vide his application for recall of the order dated 04.12.2023.

37. The Respondent No. 1 refuted the Appellant's allegations that the recall Application was not maintainable since the Respondent No. 1 (i.e, the Resolution Professional) was no longer in-charge of the affairs of the Corporate Debtor. The Respondent No. 1 also refuted allegations of the Appellant that the Respondent No. 1 was seeking a review of the Impugned Order in name of the recall of the order. The Respondent No. 1 submitted that his Interlocutory Application was perfectly maintainable since at that juncture the Respondent No. 1 was duly authorized to file the same and was filed by the Respondent No. 1 on 27.02.2021, during the CIRP of the Corporate Debtor, in his capacity as the Resolution Professional of the Corporate Debtor. The Respondent No. 1 brought out that subsequently, the resolution plan of the Corporate Debtor was approved on 22.06.2021 and Monitoring Committee ('**MC**') was appointed by the Adjudicating Authority to oversee the implementation of the said resolution plan. The MC appointed the Respondent No. 1 as its authorized representative and therefore the Respondent No. 1 has legal rights to file the said application. The Respondent No. 1 elaborated that the original order was passed on 04.12.2023 and the plan was still being implemented in respect of the Corporate Debtor, thus, his recall Application had to have been filed by the Respondent

No. 1 on behalf of the Corporate Debtor in his capacity of the authorized representative of the MC and thus the Appellant's contentions on maintainability of original recall application before the Adjudicating Authority and his status as functus officio are contrary and misconceived.

38. The Respondent No. 1 cited the judgment in ***Union Bank of India (Supra)***, wherein this Appellate Tribunal relying on the decision of the Hon'ble Supreme Court of India in ***Budhia Swain and Ors. v. Gopinath Deb and Ors.*** *(1999) 4 SCC 396)* and ***Indian Bank v. Satyam Fibres (India) P. Ltd.*** *((1996) 5 SCC 350)* held that the Tribunal is vested with the inherent power to recall and set aside its own orders in certain circumstances.

39. The Respondent No. 1 submitted that vide the original order dated 04.12.2023, the Adjudicating Authority partly allowed the Respondent No.1's prayer i.e., in respect of the return of the Corporate debtor Engine, however, the Adjudicating Authority inadvertently omitted legitimate reliefs sought by the Respondent No. 1 in relation to the Corporate Debtor APU and consequently usage charges qua the Corporate Debtor Engine and the Corporate Debtor APU on mistaken facts.

40. It is the case of the Respondent No. 1 that in the Original IA itself, it was stated that Original APU was sent to M/s. Honeywell for repairs by the Corporate Debtor on 04.08.2017 (prior to the commencement of the CIRP) and was retrieved by the Appellant. The Respondent No. 1 submitted that the

Adjudicating Authority conclusion in original order dated 04.12.2023 that " we do not find any submission from the Resolution Professional in relation to status of Original APU....” was a mistake by the Adjudicating Authority and because of this mistake, the Adjudicating Authority did not consider the Respondent No. 1 submissions in relation to Original APU, which prejudiced the Corporate Debtor. The Respondent No. 1 emphasised that the Appellant’s Original APU was no longer in the possession, custody or control of the Respondent No. 1 and in fact both Appellant’s and the CD's APU were in the custody and control of Appellant since January 2020, which was illegal action on part of the Appellant.

41. The Respondent No. 1 clarified that no reliefs were sought in relation to Appellant's Original APU and the Respondent was only seeking return of the CD's APU and usage charges for period January 2020 till date i.e. the period for which the Appellant has been using both Appellant’s and CD's APU for Appellant’s own commercial gain.

42. The Respondent submitted that the Adjudicating Authority made the following observations about CD's APU in the Order:

> *"As regards return of APU E-5121 ("APU"), we do not find any submissions from the Resolution Professional in relation to the status of Original APU except that the said APU is to be returned by* ***JetLite,*** *their sister concern. However, we find that Lease Agreement in relation to Aircrafts was entered into between the Corporate Debtor*

and Respondent No. 1. hence, the Resolution Professional cannot shift the onus to recover the said APU from JetLite as there exists no privity of contract between JetLite and the Respondent No. 1.... Further, the repossession took place prior to CIRP, the right of set-off is available to the Respondent No. 1 in relation to exchange of APU However, the parties shall be entitled to make claim for the differential in price, if it is ascertainable."

(Emphasis Supplied)

43. It is submitted by the Respondent No. 1 that JetLite is in no manner involved in the present dispute between the Applicant and Respondents. The Adjudicating Authority has inadvertently referred to Respondent No. 2, Spicejet Limited (who is not related to the Corporate Debtor) as JetLite. The Respondent No. 1 clarified that Spicejet was only concerned with the matter at hand, in its capacity of the Appellant's lessee who is utilizing the CD's APU. The Respondent No. 1 stated that the CD's APU is admittedly in the possession of the Appellant which was the Respondent No. 1 position all along. In fact, at paragraph 10 of the Original IA, the Respondent No. 1 has stated "...Similarly, in February 2019, the Engine owned by the Corporate Debtor was installed on Aircraft 1. The Aircrafts were operating using the Engine and the APU owned by the Corporate Debtor's on its Aircrafts". The Respondent No. 1 submitted that the Adjudicating Authority erred in observing that the CD's APU should not

be returned solely on account of it being with Corporate Debtor's sister concern JetLite, which was clearly a wrong fact and which prejudiced Corporate Debtor.

44. The Respondent No. 1 elaborated that genuine mistakes by the Adjudicating Authority in relation to the position qua Appellant's Original APU and the CD's APU have led to the Adjudicating Authority's order which prejudiced the Respondent No. 1 rights as Appellant is in possession and control of Appellant's Original APU and the CD's APU and the Appellant has been monetising both APUs. The Respondent No. 1 sated that under no circumstances or the Agreements, the Appellant was entitled to be in possession of and commercially exploit both APUs and the mistake by the Adjudicating Authority in relation to the factual position qua the CD's APU and consequent decision based thereon, including qua usage charges, caused prejudice to the Corporate Debtor and all its stakeholders and therefore the Respondent No. 1 requested the Adjudicating Authority to recall the order dated 04.12.2023.

45. The Respondent No. 1 contended that since the APUs on the aircrafts were "parts" as defined in the Lease Agreements, title to the APUs passed the Respondent No. 1 when the APUs were installed on the aircrafts (which Appellant repossessed) as in terms of Clause 1.3.2, the replaced APU's title passes to the Corporate Debtor.

46. The Respondent No. 1 stated that on February 20, 2019, Engine No. ESN 962829 was removed and the CD's Engine came to be installed in the Aircraft I

being Aircraft No. MSN-34799 and, therefore, at the time of repossession of Aircraft No. MSN-34799 by the Appellant, Engine No. ESN 803473 (CD's Engine) continued to remain installed on it (Engine Nos. ESN 894166 and ESN 894175 which were originally installed on Aircraft No. MSN-34799 came to be installed on different Aircraft of the Appellant which have anyway already been repossessed by the Appellant. The Appellant stated that, at present, admittedly, the Engine remains in the Appellant's possession, and the only engine belonging to Appellant's that remains in the Corporate Debtor's possession is Engine No. ESN 896341.

47. The Respondent No. 1 assailed the conduct of the Appellant who despite discussing swap of the Engine No. ESN 803473 (CD's Engine) (which was in Appellant possession), with Engine No. ESN 896341 (Appellant 's Engine) (which was in the Corporate Debtor's possession), the Appellant failed to return the CD's Engine and either of the APUs to the Corporate Debtor and continued to monetise the CD's Engine to the detriment of the Corporate Debtor.

48. The Respondent No. 1 submitted that the Appellant has not made any claim for expenses allegedly incurred in respect of the job work charges purportedly paid by Respondent No. I to M/s. Honeywell for Original APU. Further, the Appellant has never sought to submit any claims for any differentials in price and thus no relief or concession could have been granted to Appellant. The Respondent No. 1 stated that since Appellant has not filed any

proof of claim with the Respondent No. 1 towards expenses purportedly incurred for job work charges incurred by Appellant and since a resolution plan in respect of the Corporate Debtor has been approved on 22.06.2021, the Appellant's claims, if any, stand extinguished and cannot be brought back to life like a hydra head now.

49. Concluded his pleadings, the Respondent No. 1 submitted that the Appeal devoid of any merits, need to be dismissed the appeal with cost.

Findings

50. Since, we have already noted the facts of the case, during submission of the Appellant and Respondent, we will not reiterate the same once again.

51. Following issues emerges in the present appeal :-

(i) Whether the Respondent No. 1 was entitled to file an application for recall of the order dated 04.12.2023.

(ii) Whether the Adjudicating Authority erred in recalling its earlier order dated 04.12.2023.

(iii) Whether the Impugned Order dated 09.05.2024 is incorrect on as its tantamount to review rather than recall of the order and gave relief to the Respondent No. 1 wrongly which are not permissible as per laid down law and judicial precedents.

Since, all these issues are inter-related, inter-connected and inter-dependent, we shall deal with these issues in conjoint manner in subsequent discussions.

52. As regards, the issue of maintainability of the appeal filed by the Respondent No. 1 in the capacity of Resolution Professional who has become allegedly functus officio as claimed by the Appellant, we find that similar issue was decided in the judgment of ***Tata Steel BSL Ltd. (Supra),*** and the relevant portion of the same reads as under :-

> *70. A perusal of the said amendment demonstrates that the authorities were aware that many a times a company was driven to insolvency due to dubious transactions which are extremely complicated. The Resolution Professional has a very limited time to unearth these transactions by which time the period of resolution process gets over and the Committee of Creditors are forced to take a haircut. In order to get over this, it has now become mandatory that the Resolution Plan will necessarily have to take into account these fraudulent transactions which if are set aside would give Committee of Creditors that extra amount which they would otherwise have lost because of the fact that the Resolution Process has come to an end. The contention of Mr. Sibal that the fact that this Resolution has come into effect only from 14.06.2022 means that all the resolution processes which have come into effect prior to 14.06.2022 cannot be re-opened and that the NCLT and the Resolution Professional becomes functous officio once the Committee*

of Creditors has accepted the Resolution Plan and which has been approved by the NCLT, cannot be accepted. If such an interpretation is accepted it will go against the very purpose of the IBC. The scheme of IBC is just not a commercial call taken by the Committee of Creditors. It was enacted by the legislature to ensure maximum recovery due to the creditors who had lent money to a corporate entity. The endeavour must always be to ensure maximum recovery of that money to the Committee of Creditors because it is public money and public cannot be made to suffer on account of dubious/nefarious transactions entered into by the company which has gone into the process of insolvency. The fact that after 04.06.2022, the Resolution Plan must also take into account all the dubious transactions does not give any less credence to the fact that such plans which have been approved by the Creditors prior to 14.06.2022, the NCLT will have jurisdiction to the application by the Resolution Professional for setting aside certain transactions so that the money can be recovered through the account of the Committee of Creditors. The argument of the learned Counsel for the Tata Steel BSL Ltd. that the money must come to the coffers of the company cannot be accepted because the price that has been offered by the Resolution applicant is a commercial decision. He has accepted to take over the entity at a particular price. He cannot be a beneficiary of that amount because that amount was actually paid by the Committee of Creditors which is a

public money. Resolution Process is for the corporate debtor and also to ensure that the Committee of Creditors are not put to a loss because the amount lost by the Committee of Creditors is principally public money.

72. In our view, Respondent No. 1"s reliance upon this clause is misplaced. This clause has no bearing on the dispute in the present matter. Regulation 38 is titled ―Mandatory contents of the Resolution Plan‖. Regulation 38(2) requires that a resolution plan "shall" contain whatever is listed under sub-clauses (a) to (d). Therefore, the understanding is that Regulation 38(2)(d) necessitates a resolution plan to provide for the manner in which the resolution applicant seeks to deal with a pending avoidance application and the proviso sets a cut-off date for the applicability of the new regulation. Therefore, all resolution plans submitted before the NCLT for approval on or after 14.06.2022 must mandatorily provide for the manner in which they seek to deal with a sub-judice avoidance application and resolution plans submitted for approval before 14.06.2022 are not necessitated to provide for the manner in which the resolution applicant seeks to deal with such claims. Therefore, the provision only deals with what ought to be in resolution plans and cannot be interpreted to extinguish proceedings pertaining avoidable transactions in resolution plans submitted before 14.06.2022 altogether.

89. Conclusion

a) The phrase "arising out of" or "in relation to" as situated under Section 60(5)(c) of the IBC is of a wide import and it is only appropriate that such applications are heard and adjudicated by the Adjudicating Authority, i.e., the NCLT or the NCLAT, as the case maybe, notwithstanding that the CIRP has concluded and the resolution applicant has stepped into the shoes of the promoter of the erstwhile corporate debtor.

b) CIRP and avoidance applications, are, by their very nature, a separate set of proceedings wherein, the former, being objective in nature, is time bound whereas the latter requires a proper discovery of suspect transactions that are to be avoided by the Adjudicating Authority. The scheme of the IBC reinforces this difference. Accordingly, adjudication of an avoidance application is independent of the resolution of the corporate debtor and can survive CIRP.

c) The endeavour of the IBC and its rules and regulations is to ensure that all processes within the insolvency framework are time efficient. While the law mandates a resolution plan to necessarily provide for the treatment of avoidance applications if the same are pending at the time of submission of resolution plans, it cannot be accepted that avoidance applications will be rendered infructuous in situations wherein the resolution plan could not have accounted for avoidance applications due to exigencies that

delayed initiation of action in respect of avoidable transactions beyond the submission of a resolution plan before the adjudicating authority. This is because such an interpretation will render the provisions pertaining to suspect transactions otiose and let the beneficiaries of such transactions walk away, scot-free. Money borrowed from creditors is essentially public money and the same cannot be appropriated by private parties by way of suspect arrangements. Therefore, in cases such as the present one, wherein such transactions could not be accounted, the Adjudicating Authority will continue to hear the application. Such benefit cannot be given in cases where the RP had already applied for prosecution of avoidance applications and the applicant ought to have been cognizant of pending avoidance applications but did not account for the same in its resolution plan.

d) It follows that the RP will not be functus officio with respect to adjudication of avoidance applications in a situation, as described hereinabove. There being a clear demarcation between the scope and nature of the CIRP and avoidance application within the scheme of the IBC, the RP can continue to pursue such application. ...

(Emphasis Supplied)

53. We are conscious of the fact that the above judgement of ***Tata Steel BSL Ltd. (Supra),*** was in context of avoidance application filed by the Resolution Professional which were allowed to be continued and in this context, the

Hon'ble Delhi High Court held that the Resolution Professional cannot be treated as functus officio and was allowed to continue. The present case is on its own facts where the Resolution Professional was pursuing his prayers during CIRP was authorised to file Interlocutory Application on behalf of the Monitoring Committee for the benefit of the Corporate Debtor. The rationale for the ratio remains the same and applicable in this case i.e., the Resolution Professional should not be treated as functus officio and therefore the argument of the Appellant that the appeals are not maintainable does not hold any ground.

54. Incidentally, we held the similar position in order passed by this Appellate Tribunal dated 14.08.2024 in the matter of ***Amit Dineshchandra patel Vs. Chandra Prakash Jain Resolution Professional of Sintex Prefab & Infra Ltd*** in *Comp. App. (AT) (Ins) No. 785 of 2022*.

55. Thus, we hold that the Respondent No. 1 had locus and was entitled to file the application for recall of the order dated 04.12.2023 and on this account, the Adjudicating Authority did not commit any error.

56. At this stage, it is important to go into aspect of recall v/s review primary issue in the present appeal. We note that several judgments have been passed by the Hon'ble Supreme Court of India and this Appellate Tribunal explaining the distinction between review petition and recall petition. Based on such judgements, we find following ratios relevant which are summarised as under :-

- Power of review has to be expressly conferred by a Statute.

- Power to recall does not require an express provision in a Statute.
- To recall is an inherent power whereas to review its judgement is not.
- In a review petition, the Court considers the error apparent on the face of record on its merits.
- Power of recall is not power of the Tribunal to rehear the case to find out any apparent error in the judgment which is the scope of review.
- Power of recall of a judgment can be exercised by the Tribunal when any procedural error is committed in delivering the earlier judgment; for example, necessary party has not been served or necessary party was not before the Tribunal when judgment was delivered adverse to a party. One other well-known grounds for recall is the ground for fraud.
- Where an application is styled as recall but in essence is review application, the same cannot be entertained.
- Power to recall can be exercised under Rule 11 of NCLAT Rules, 2016

57. We will also refer to the judgment of the Hon'ble Supreme Court of India in the matter of ***Sri Budhia Swain v. Gopinath Deb & Ors.*** [*(1999) 4 SCC 396]* which stipulated an order or judgement can be recalled in the following instances i.e.,

i) The proceedings culminating into an order suffer from inherent lack of jurisdiction and such lack of jurisdiction is patent,

ii) There exists fraud or collusion in obtaining the judgment,

iii) There has been a mistake of the Court prejudicing a party, or

iv) A judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.

58. The power to recall a judgment will not be exercised when the ground for reopening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence.

59. Generally speaking, review can be permitted, if found in the statute by the competent judicial forum. Review can be filed, if there is discovery of New and Important matter or evidence, which, after the exercise of due diligence was not within the knowledge of the person seeking review or could not be produced by him at any time when the decree was passed or order made or some mistake or error apparent on the face of the record or any other sufficient reason.

60. We consciously note that the NCLT & NCLAT have inherent powers to recall order but have no power to review its order.

61. We further note that in the case of ***Action Barter Pvt. Ltd. Vs Srei Equipment Finance Ltd.,*** *in IA Nos. 811/2020, 917/2020, 962/2020 &*

1587/2020in Company Appeal (AT) (Ins.) No. 1434 of 2019, this Appellate Tribunal held that Rule 11 of the NCLAT Rules is merely declaratory in the sense that the NCLAT is armed with inherent powers to pass orders or give directions necessary for advancing the cause of justice or prevent abuse of the Appellate Tribunal's process. This Appellate Tribunal further held that even in absence of Rule 11, the Appellate Tribunal being essentially a judicial forum determining and deciding rights of parties concerned and granting appropriate relief has no limitations in exercise of its powers to meet ends of justice or prevent abuse of its process. Such powers being inherent in the constitution of the Appellate Tribunal, Rule 11 can merely be said to be declaring the same to avoid ambiguity and confusion.

62. However, the Rule cannot be invoked to revisit the findings and it is not open to re-examine the findings. The mistake/error must be apparent on the face of the record and must have occurred due to oversight, inadvertence or human error. It would be open to correct the conclusion if the same is not compatible with the finding recorded on the issues raised.

63. We will also take into account the relevant portion of this Appellant Tribunal's earlier order in the case of ***Union Bank of India (Supra),*** which reads as under:

"16. In another judgment of, Budhia Swain & Ors. Vs. Gopinath Deb & Ors.", "(1999) 4 SCC 396 the Hon'ble Supreme Court has dealt with power to recall...

> *6. ...What is a power to recall? Inherent power to recall its own order vesting in Tribunals or courts was noticed in Indian Bank v. Satyam Fibres (India) P. Ltd. ((1996) 5 SCC 550; (1998) 92 Comp Cas 149 (SC)] vide paragraph 23, this court has held that the courts have inherent power to recall and set aside an order,*
>
> *(i) obtained by fraud practiced upon the court,*
>
> *(ii) when the court is misled by a party, or*
>
> ***(iii) when the court itself commits a mistake which prejudices a party,"**...*
>
> *8. In our opinion a tribunal or a court may recall an order earlier made by it if*
>
> *(i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,*
>
> *(ii) there exists fraud or collusion in obtaining the judgment.*
>
> *(iii) there has been a mistake of the court prejudicing a party, or*

(iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented...

20. The above judgments of the Hon'ble Supreme Court clearly lays down that there is a distinction between review and recall. The power to review is not conferred upon this Tribunal but power to recall its judgment is inherent in this Tribunal since inherent power of the Tribunal are preserved, powers which are inherent in the Tribunal as has been declared by Rule 11 of the NCLAT Rules, 2016. Power of recall is not power of the Tribunal to rehear the case to find out any apparent error in the judgment which is the scope of a review of a judgment Power of recall is not power of the Tribunal to rehear the case to find out any apparent error in the judgment which is the Reference in I.A. No. 3961 of 2022 in Company Appeal (AT) (Ins.) No 729 of 2020 scope of a review of a judgment. Power of recall of a judgment can be exercised by this Tribunal when any procedural error is committed in delivering the earlier judgment, for example, necessary party has not been served or necessary party was not before the Tribunal when judgment was delivered adverse to a party. There may be other grounds for recall of a judgment. Well known ground on which a judgment can always be recalled by a Court is ground of fraud played on the Court in obtaining judgment from the Court. We, for the purpose of answering the

questions referred to us, need not further elaborate the circumstances where power of recall can be exercised."

(Emphasis Supplied)

64. Above makes clear the distinction between the recall and review. We reiterate that NCLT/NCLAT has inherent power to recall orders but no power for revision of the order.

65. Having noted correct legal position on recall v/s review, we will proceed to examine whether the present Impugned Order dated 09.05.2024 was proper and legal recall order or incorrect and perverse review in name of recall.

66. We note that IA No. 1011/2024 in Company Petition (IB) No. 2205/MB/2019 sought recall of original order dated 04.12.2023 on the ground that there have been certain errors inadvertently included on erroneous basis on the subject matter of disputes by the Adjudicating Authority based on wrong facts.

67. The recall IA was filed by the Respondent No. 1, inter-alia, under section 18 and 25 Code of the Code seeking direction against the Appellant Klaatu Aircraft Leasing (Ireland) Private Limited (now called as Aircastle (Ireland) Ltd. the Appellant herein) and Spice Jet Limited to return engine bearing ESN No. 803473 and APU P-5121 which allegedly belongs to the Corporate Debtor.

68. It has been brought out that the Corporate Debtor was required to replace the parts rendered unfit for use and other APU was also treated as parts and for ownership of "Parts", the Agreements provided that, if replaced as per the Agreement, title to such replaced part was to vest in the Appellant and title to the removed part would vest with the Corporate Debtor.

69. It has been brought out that as per definition of engine, the terms Engine includes "Replacement Engine" and engine does not fall within the definition of "Parts".

70. We also note that on 20.02.2019 an engine bearing number ESN 803473 ("CD's Engine") was installed on the Aircraft 1, in replacement of the Original Engine. Further, the Original APU was replaced from time to time, inter-alia, with an APU number 7440 and then on August 04, 2017, an APU 121 ("CD's APU"). On July 24, 2018, the Original APU was sent by the Corporate Debtor to M/s Honeywell for repairs.

71. We note that around April 2019, on account of the financial crisis faced by the Corporate Debtor, various aircrafts operated by the Corporate Debtor were grounded and consequently returned to the lessor and accordingly the Appellant repossessed both its leased Aircrafts. When the Appellant repossessed its Aircrafts, the CD's Engine and CD's APU remained attached to the Aircrafts. Subsequently, Appellant leased these Aircrafts to Respondent No. 2 who has been operating the same with the CD's Engine and CD's APU fitted thereon.

72. Thus, the Appellant is in possession of Original APU (7243), CD's APU (5121) and CD's Engine (803473). Further, both the aircrafts were re-leased to SpiceJet (R2) and they too were utilising the fitted engine (803473) and APU (5121) which belonged to CD.

73. There were some factual inaccuracies and error in the order dated 04.12.2023 in IA no. 615 of 2023, which has been corrected in the Impugned Order dated 09.05.2024 in IA 1011/2024. We note following differences in both the orders: -

Para	***Order dated 04.12.23***	***Changes made by substitution vide Order dated 09.05.24***
7.6	*It is undisputed fact that the Engine and APU, fitted in the repossessed Aircrafts were owned by the Corporate Debtor and the re-possession took place prior to commencement of CIRP. The Engine and APU came to be fitted into the repossessed Aircrafts in replacement of existing Engine and APU. It is the case of the Resolution Professional that original Engine is lesser in value than the Engine owned by the Corporate Debtor and fitted in the repossessed Aircraft prior to its repossession and the Original Engine has been retrieved by* ***Aircastle*** *from Honeywell, whom such*	*It is undisputed fact that the Engine and APU, fitted in the repossessed Aircrafts were owned by the Corporate Debtor, and the re-possession took place prior to commencement of CIRP. The Engine and APU came to be fitted into the repossessed Aircrafts in replacement of existing Engine and APU. It is the case of the Resolution Professional that original Engine is lesser in value than the Engine owned by the Corporate Debtor and fitted in the repossessed Aircraft prior to its repossession and the Original Engine has been retrieved by them from Honeywell, whom such*

	original engine was given for repair. ***Accordingly, the Original Engine belonging to the Respondent No. 1 has travelled back to the Respondent No. 1.***	*original engine was given for repair. Accordingly, they ought to be given back their engine by the Respondent No. 1, which is higher in value and in turn, they can return the Original Engine belonging to the Respondent No. 1.*
7.7	***Accordingly, the Respondent No. 1 is duty bound to return the Engine no. ESN 803473 ("Engine"), if the Original Engine has been retrieved by them from the M/s Honeywell, however, the Respondent No. 1 shall be entitled to make claim for the job work charges paid by them to M/s Honeywell while retrieving the Original Engine from them. To this extent, we find force in the contention of the Applicant and direct accordingly to the Respondent No. 1 to return the Engine No. 803473 forthwith to the Resolution Professional. Since, the said Engine was fitted in replacement of Original Engine and the Respondent No. 1 got it later on, we do not find any merit in the claim for usage charges for such engine.***	*Accordingly, the Respondent No. 1 is duty bound to return the Engine no. ESN 803473 ("Engine"), and the corporate debtor shall hand over the original engine to them. However, the respondent no 1 shall be entitled to make claim for the job work charges paid by them to M/s Honeywell while retrieving the Original Engine from them. Since, the said Engine was fitted in replacement of Original Engine and Respondent No.1 was deprived Original Engine which is still in possession of Corporate Debtor, we not find any merit in the claim for usage of charges for such engine. In the alternate, the parties may choose to make claim for the differential in price, if it is ascertainable, and agreeable to the Parties.*
7.8	***As regards return of APU E-5121 ("APU"), we do not find any submission from the Resolution Professional in relation to status***	*As regards return of APU E-5121 ("APU"), we find that this APU was installed on Aircraft-2*

	of Original APU, except that the said APU is to be returned by JetLite, their sister concern. However, we find that Lease Agreement in relation to Aircrafts was entered into between the Corporate Debtor and Respondent No. 1, hence, the Resolution Professional cannot shift the onus to recover the said APU from JetLite, as there exists no privity of contract between JetLite and the Respondent No. 1. Since, the said APU was in replacement of original APU, we do not find any force in the contention of the Resolution Professional for usage charges of said APU as well as return of said APU. Further, the repossession took place prior to CIRP, the right of set off is available to the Respondent No. 1 in relation to exchange of APU. However, the parties shall be entitled to make claim for the differential in price, if it is ascertainable.	*after removal of Lesser's APU P-7243 therefrom. APU P-7243 was sent for repairs to Honeywell on 04.08. 2017 was retrieved by Aircastle i.e. sister concern of Respondent No. 1 by 22nd January 2020. The APU E- 5121 fitted in Aircraft - 2 had also gone to the Lesser on repossession of the Aircraft in other words both APUs reached to the Lesser, thus, causing their unjust enrichment. Accordingly, we direct the Respondent No. 1 to return APU E-5121 to the Applicant within 15 days the date of this order. However, the Respondent No. 1 shall be entitled to make claim for job work charges paid by them M/s Honeywell while retrieving Original Engine from them. As regards usage charges of APU, we note that both the APUs came into possession of the Respondent No. 1 latest by 22.01.2020. Accordingly, we direct the Respondent No. 1 to a sum of Rs. 12,26,000/- towards fixed lease rental for use of APU and USD 220 per hours and USD 180 per cycle as variable rentals for the period from*

		23.01.2020 to 04.12.2023.

spelling is mentioned as "lesser" (SIC…)

(Emphasis supplied)

74. We note that the bone of contention between both the parties is amended version is contained in order dated 09.05.2024 in Para 7.6, 7.7 and 7.8 as noted above, in comparison to original order dated 04.12.2023 passed by the Adjudicating Authority.

75. We note that the Adjudicating Authority in its order dated 04.12.23 has erred in identifying the correct fact of the matter in Para 7.6 due to which there were factual inaccuracies. As per the original application submitted by the Respondent No. 1, it was clearly stated and supported with documents that Corporate Debtor's Engine bearing number 803473 and Corporate Debtor's APU bearing number 5121 were in possession of the Appellant and should be returned back to maximize the value of Corporate Debtor, as the Corporate Debtor's engine and APU is of greater value. In the same order, it was mentioned that 'the Original Engine belonging to the Respondent No. 1 has travelled back to the Respondent No. 1' which is not correct position because it was still with Respondent No. 1 as their engine was fitted in the aircraft. However, the Adjudicating Authority did not mention that Corporate Debtor's Engine and APU were in possession of the Appellant and should be returned to

Corporate Debtor as it is of greater value. This was corrected in the order of the Adjudicating Authority dated 09.05.2024 mentioning that the Appellant should return Corporate Debtor's engine which is of greater value and the original engine of the Appellant shall be returned them by Corporate Debtor. Thus, we find the correction in nature of recall.

76. We note that in Para 7.7 of the Impugned Order dated 09.05.2024 as well as in order dated 04.12.2023 the Adjudicating Authority had discussed regarding return of Engine No. ESN No. 803473 (disputed engine) and regarding entitlement of the Appellant to make claims for the job work charges paid to Honeywell. However, it is noted that in both the orders i.e., order dated 04.12.203 and the Impugned Order dated 09.05.2024 the Adjudicating Authority erred in mentioning that the original Engine was sent to M/s Honeywell for repair and later retrieved by the Appellant from Honeywell. Based on documents made available to us, this position is not true as engine was never sent to Honeywell for repair and only APU was sent to Honeywell for repair. As such the Appellant could not have claimed for the alleged work/ repair charges paid to Honeywell for repair of Engine to be recovered from the Respondent No. 1. However, the errors in both the orders does not impact the merits of the case, although, the error persist. The change made in the Impugned Order dated 09.05.2024 in Para 7.7 is that the Adjudicating Authority

has asked the Appellant and the Respondent No. 1 to make claims for the differential in prices, if it is ascertainable and agreeable to the parties.

This tantamount that the issue is the differential of pricing which has not been gone into or adjudicated by the Adjudicating Authority and has been left open to the Appellant and the Respondent No. 1 to decide mutually. In view of this, the amended para 7.7 cannot be treated as a review as alleged by the Appellant.

77. As regard, in Para 7.8, we note that in the original order dated 04.12.2023 as well as in the Impugned Order dated 09.05.2024, the Adjudicating Authority have discussed regarding return of APU 5121 (APU in dispute). Significantly, we note that the claims of Respondent No.1 regarding usage charges w.r.t. to APU 5121 (APU in dispute), the Adjudicating Authority has mentioned **JetLite** which is not the party at all in any other proceedings. The Adjudicating Authority also erred in mentioning that the JetLite is sister concern, which is not the case.

Based on this mistaken fact, perhaps the Adjudicating Authority came to wrong conclusion even after discussing the contention and the pleadings of the Respondent No. 1 regarding its entitlement for recoverable usage charges, and recorded incorrectly that no merit was found in the contention of Respondent No. 1 for usage charges APU as well as retain of the said APU.

We note in the amended para 7.8 of the Impugned Order dated 09.05.2024 the facts have been corrected by the Adjudicating Authority and after noting the same especially regarding two APUs in possession of the Appellant, the Adjudicating Authority has directed the Appellant to return APU 5121 to the Respondent No. 1 and also entitling the Appellant herein to make claim for job work charges paid by the Appellant to M/s Honeywell.

78. After correcting the facts and stating the details in the amended para 7.8 in the Impugned Order dated 09.05.2024 the Adjudicating Authority also corrected omission of the usage charges payable by the Appellant to Respondent No. 1.

79. We note that in the original appeal before the Adjudicating Authority 24.02.2021, following was specifically pleaded by the Appellant.

> *"28. The Applicant states that, as on the date of filing the present Application, the Respondents are liable to pay a sum of INR 12,79,29.115/- (Ruposs Twelve Crores Seventy Nine Lakhs Twenty Nine Thousand One Hundred and Fifteen Only) towards fixed lease rent of the Engine from June 20. 2019 to February 22, 2021 (@USD 3000 per day) along with variable lease rentals at the rate of USD 220 per hour and USD 180 per cycle against usage of the Engine during the aforesaid period. Further, the Respondents are liable to pay a sum of INR 8.52.86.077/- (Rupees Eight Crores Fifty Two Lakhs Eighty Six Thousand and Seventy*

Seven Only) towards fixed lease rent of the APU from June 20. 2019 to February 22. 2021 (@USD 2000 per day) alongwith variable lease rentals of at the rate of USD 220 per hour and USD 180 per cycle against usage of the APU during the aforesaid period."

80. Similarly, in relief under Para 34 (e) the same relief was specifically sought :-

"34. In view of the above. the Resolution Professional prays that this Hon'ble Tribunal be pleased to:-
(e) Direct Respondent Nos. 1 and 2 to pay to the Corporate Debtor, s sum of INR 12.26.000/- (Rupees Twelve Lakhs Twenty Six Thousand Only) towards fixed lease rental for use of the APU and USD 220 per hour and USD 180 per cycle as variable rentals. pending hearing and final disposal of this Application."

81. Thus, these were specifically pleaded facts before the Adjudicating Authority, however, the Adjudicating Authority due to mistaken facts regarding **JetLite**, ignored this point. Since the issue itself was ignored by the Adjudicating Authority and once the issue has been corrected by the Adjudicating Authority through suitable corrections, the Adjudicating Authority has recorded consequential correction in the Impugned Order dated 09.05.2024. In view of this, we hold that this is not in nature of review of its order but rather recall.

82. We reiterate that in the order dated 04.12.23, the Adjudicating Authority wrongly confused JetLite with Spicejet, whereas we note that as per the Lease Agreements between the Appellant and the Corporate Debtor, JetLite has no contractual obligation in this matter. The Adjudicating Authority has confused Spice Jet (R2) with JetLite and has erred. The Adjudicating Authority, after identifing its own mistakes passed in order IA 615 corrected the same in the Impugned Order dated 09.05.2024. The Adjudicating Authority also made certain consequential changes arising out of these correction.

83. We have noted that in the case of ***Budhia Swain (Supra),*** the Hon'ble Supreme Court of India has stipulated parameters under which recall of an order may be made. As per these parameters, the present Impugned Order dated 09.05.2024 passed by the Adjudicating Authority falls under – 'there has been a mistake of the court prejudicing a party'.

84. In view of the above facts and analysis, we do not consider the Impugned Order dated 09.05.2024 as review done by the Adjudicating Authority of its earlier order dated 04.12.2023. We observe that the Adjudicating Authority has committed genuine mistakes in order dated 04.12.2023 based on mistaken facts and thus passed the Impugned Order dated 09.05.2024 correcting the same including consequential changes.

85. In view of above detailed observations, we find that the Adjudicating Authority has correctly passed the Impugned Order.

86. In fine the appeal devoid of any merit, fails and stands rejected. No cost. IA, if any, are closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

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