

Through Videoconference

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. - I**

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IA No. 2081 of 2020
in
CP (IB) No. 2205/MB/2019

In the matter of an Application under Section 30(6) read with Section 31 of the
Insolvency and Bankruptcy Code, 2016

Ashish Chhawchharia
Resolution Professional for
Jet Airways (India) Ltd. ... *Applicant*

In the matter of:
CP (IB) No. 2205/MB/2019

State Bank of India ... Financial Creditor
V/s
Jet Airways (India) Ltd. ... Corporate Debtor

Date of Order: 22.06.2021

CORAM:

Janab Mohammed Ajmal, Hon'ble Member (Judicial)
Shri V. Nallasenapathy, Hon'ble Member (Technical)

Appearance:

For the RP: Mr. Gaurav Joshi, Senior Advocate with Mr. Rohan Rajadhyaksha, Mr. Dhirajkumar Totala, Ms. Neeraja Balakrishnan, Ms. Amrita Sinha, Mr. Nishant Upadhyay, Ms. Tanya Chib, Advocates i/b AZB & Partners.

For the SRA: Mr. Ravi Kadam, Senior Advocate with Ms. Pooja Mahajan, Mr. Ashish Vats, Ms. Mahima Singh, Mr. Mustafa Kachwala, Mr. Nishant Sogani, Ms. Ketki Pansare, Ms. Srishti Kapoor, Mr. Eshan Jaipuria, and Ms. Roshni Sewlani, Advocates i/b Chandhiok & Mahajan.

For DGCA/MoCA: Mr. Shyam Mehta, Senior Advocate with Mr. Ashish Mehta,
Advocate.

Per: Janab Mohammed Ajmal, Member (Judicial)

ORDER

This is an Application filed by the Resolution Professional under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (the Code), seeking approval of the Resolution Plan submitted by consortium of Mr Murari Lal Jalan and Mr Florian Fritsch (Jalan Fritsch Consortium / Resolution Applicant).

2. The facts leading to the Application may be stated as under.
 - a. Corporate Insolvency Resolution Process (CIRP) of Jet Airways (India) Limited (Corporate Debtor) was initiated by this Bench by order dated 20.06.2019 (Admission Order) and Mr. Ashish Chhawchharia, present Applicant, was appointed as Interim Resolution Professional (IRP). In the 1st meeting of the Committee of Creditors (CoC) held on 16.07.2019, the IRP was confirmed as the Resolution Professional (RP).
 - b. The Applicant made an advertisement on 20.07.2019 (First Round) for invitation of Expression of Interest (EoI). In response thereto the Applicant received two EoIs from Prospective Resolution Applicants (PRAs) on 03.08.2019. In view of the fact that some more credible applicants were interested in participating in the bidding process and based on the instructions received from the CoC, the time for submission of EoIs was extended till 31.08.2019 *vide* advertisements dated 04.08.2019 and 28.08.2019.
 - c. On 19.11.2019, the CoC authorised an extension of time for submission of the resolution plans till 16.12.2019. During this time, despite detailed negotiations, no resolution plan was received from any PRA.

- d. The Applicant, upon authorization, filed an Application under section 12(2) of the Code for extension of CIRP period by 90 days. The said Application was allowed by this Tribunal *vide* order dated 20.12.2019 and the CIRP period of the Corporate Debtor was extended till 15.03.2020.
- e. On 17.12.2019, the CoC cancelled and annulled the First Round of the process and approved & authorized the RP to issue a fresh invitation of EoI and Form G for submission of resolution plan for the Corporate Debtor. Subsequently, the Applicant published fresh advertisements on 22.12.2019 (Second Round) for invitation of EoIs. Synergy Aerospace Corporation (Synergy) & Prudent ARC Limited (Prudent) were the PRAs. However, no resolution plan was received from either of them.
- f. Further, to maximise the value of the Corporate Debtor, the CoC in its 8th meeting held on 18.02.2020 authorised the RP to initiate fresh round of EoI process. Accordingly Form G was published on 20.02.2020 (Third Round), wherein the last date for submission of EoI was 23.02.2020 and for submission of resolution plan was 09.03.2020. Pursuant to such invitation, the Applicant received three EoIs from the following PRAs:
 - i. JSC Far East Development Fund (FEDF);
 - ii. Synergy; and
 - iii. Prudent.

However, FEDF *vide* its email dated 26.02.2020 withdrew from the process. Subsequently, the final list had Synergy as the only PRA. However, it did not submit any resolution plan for the Corporate Debtor.

- g. In the 9th meeting held on 12.03.2020, the CoC noted that there could be a possibility of successful resolution if some more time was made available. This was *inter alia* due to (a) the Covid-19 pandemic hindering the travel plans of potential applicants; and (b) the divestment proposed by Government of India (GoI) from Air India leading to interest in the Corporate Debtor too. Accordingly, upon approval of the CoC, the Applicant again filed an Application before this Tribunal for extension of

CIRP period by further 90 days (beyond 270 days) from 15.03.2020. The Application was allowed by this Tribunal *vide* order dated 18.03.2020 and the CIRP period of the Corporate Debtor was further extended till 13.06.2020.

- h. Thereafter, in or around April 2020, the RP received informal EoIs from two individuals namely Mr. Claude Bothello and Mr. Siva Rasiah. This was brought to the CoC's notice. However, no EoI or eligibility documents were submitted by either of them. Their credibility and seriousness was neither established nor enquired into.
- i. Thereafter, at the 11th meeting held on 06.05.2020, the CoC cancelled and annulled the Third Round. It approved and revised the eligibility criteria in the EoI process document. Upon approval from the CoC, the Applicant published fresh advertisement on 13.05.2020 (Fourth Round) for invitation of EoI in Form G. Pursuant thereto the Applicant received EoIs from the following PRAs:
 - i. Jalan Fritsch Consortium;
 - ii. Consortium of Imperial Capital Investments LLC (ICIL), Flight Simulation Technique, Centre Private Limited (FSTCPL) and Big Charter Private Limited (Imperial Consortium);
 - iii. Mr. Sivakumar Rasiah;
 - iv. Alpha Airways;
 - v. Mr. Brijesh Singhla; and
 - vi. Synergy.

On the basis of the eligibility criteria, the final list of PRAs in terms of Regulation 36A(12) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (the Regulations) was prepared on 13.06.2020, to the following effect:

- a) Jalan Fritsch Consortium,
- b) Imperial Consortium,

- c) Sivakumar Rasiah; and
 - d) Alpha Airways.
- j. The last date for submission of resolution plan was 11.07.2020. In view of the request received from PRAs on 09.07.2020, the CoC approved & authorized the RP to extend the time for submission of resolution plan to 21.07.2020. On 21.07.2020, the Applicant received 2 (two) resolution plans from the following resolution applicants:
- (i) Jalan Fritsch Consortium; and
 - (ii) Imperial Consortium.
- k. Subsequently, at the 17th meeting of the CoC held on 03.10.2020, the Applicant placed before the CoC both the resolution plans which were voted upon by the CoC from 05.10.2020 to 17.10.2020 in accordance with Regulation 39 of the Regulations.
- l. The Resolution Plan dated 21 September, 2020 submitted by Jalan Fritsch Consortium as amended by the version dated 30 September, 2020 and as supplemented and amended by the addendum dated 2 October, 2020 along with the exemptions and waivers sought (Resolution Plan) was approved by the CoC with a majority of 99.22% votes in favour while 0.01% dissented and 0.77% abstained. Resolution Plan of Imperial Consortium received only 8.57% votes in favour.
- m. On 22.10.2020, the Applicant in accordance with the terms of Request for Resolution Plan (RFRP) document, issued the Letter of Intent (LoI) to the Jalan Fritsch Consortium (Successful Resolution Applicant / SRA). On 24.10.2020, the SRA accepted the LoI and on 31.10.2020 furnished a Performance Bank Guarantee (PBG) of ₹. 47,50,00,000/- in accordance with the terms of the Resolution Plan and as agreed to by the CoC.

3. CIRP – Lockdown Extension / Exclusion:

Considering the gravity of the situation facing the whole world on account of Covid-19 Pandemic, the Hon'ble Apex Court (*on 23.03.2020 in Suo Moto Writ*

Petition (C) No. 3/2020) and the Hon'ble National Company Law Appellate Tribunal (NCLAT) (*on 30.03.2020 in Suo Moto Company Appeal (AT) (Insolvency) No. 01 of 2020*) extended the timelines and suitable amendments were also brought in to the Regulations by insertion of Regulation 40C. The CIRP period for the Corporate Debtor was extended to 13.06.2020 by this Tribunal *vide* order dated 18.03.2020. On 13.06.2020 the whole country continued to be under lockdown, such lockdown was in force on 05.11.2020 when the present Application was filed. Though no objection was taken to the delayed, if any, filing of the Application, we feel and accept the Application to be in time under the circumstances.

4. The profile of the Successful Resolution Applicant:

- a. The Jalan Fritsch Consortium is a consortium of (a) Mr. Murari Lal Jalan, a Non-Resident Indian based in United Arab Emirates (UAE) and (b) Mr. Florian Fritsch, the former being the lead Partner. Mr. Jalan will hold shares in the Corporate Debtor in his personal capacity and Mr. Florian Fritsch will hold shares therein through his investment holding company – Kalrock Capital Partners Ltd, Cayman (KCPL). KCPL will incorporate a wholly owned subsidiary in the UAE (Kalrock Co), which will hold and manage Mr. Florian's share in the Corporate Debtor.
- b. Business interests of Mr. Jalan are spread over in the UAE, Federative Republic of Brazil, Republic of India, Republic of Uzbekistan and the Philippines. He had a net worth of over US\$ 138 million (approx. ₹. 979 crores) as on 31st December 2019.
- c. Mr. Fritsch, the principal shareholder of Kalrock Group, is an experienced professional in restructuring businesses. He had a net worth of over US\$ 250 million (approx. ₹. 1770 crores) as on 31st December 2019.
- d. The SRA confirms that it and its connected persons are not disqualified under Section 29A of the Code. Mr. Jalan and Mr. Fritsch have furnished to the Applicant Affidavits in terms of Section 29A of the Code along with a list of their connected persons as part of this Resolution Plan.

5. The salient features of the Resolution Plan are as under.

A. FINANCIAL PROPOSAL SUMMARY:

Heads	Particulars	Amount (in ₹.)	Payment terms	
			Within 180 days from effective date	After 180 days from effective date
CIRP Costs	CIRP COST	25 Cr	100%	-
Assenting FCs*	<ul style="list-style-type: none"> • ₹. 195 Cr + up to ₹. 185 Cr + Guaranteed NPV of ₹.391 Cr (using the discount rate specified in the Evaluation Matrix) • ₹. 40 Cr of Positive Cash Balance • 9.5% equity in Jet 2.0 (5th Yr Value ~₹. 3,485 Cr) • 7.5% equity in JPPL • Upside on Aircrafts + ATR Inventory + Spares + BKC Property (if given) • Savings on CIRP Costs • Savings on airport and parking charges • Savings on Contingency Fund • All payments are secured against tangible security • Dissenting FCs will be paid in priority as per IBC 	380 Cr	185 Cr <i>(Incl. 10 Cr for BKC)</i> 9.5% Equity in Jet 2.0 7.5% equity in JPPL Additional Upside on Aircrafts Sales + ATR Sales + Spares Savings on CIRP Costs Positive Cash Balance	195 Cr in Yr. 2 Guaranteed NPV of 391 Cr (using the discount rate specified in the Evaluation Matrix) in Yr. 3, 4, 5 Upside on BKC Savings on Airport
Workmen & Employees	<ul style="list-style-type: none"> • ₹. 52 Crores 	52 Cr	100%	-
OCs**	<ul style="list-style-type: none"> • ₹. 15,000 to each of the Operational Creditors, irrespective of their claim amount. 	10 Cr	100%	-

Heads	Particulars	Amount (in ₹.)	Payment terms	
			Within 180 days from effective date	After 180 days from effective date
OC (Dutch Admin)		10,000	100%	-
Other Creditors (other than FCs and OCs)		10,000	100%	-
Shareholders (promoters, Etihad and PNB)		10,000	100%	-
Contingency Fund		8 Cr	100% Established	
JPPL	Offer from RA to acquire 50.01% shareholding in JPPL from Etihad. The said sum of ₹. 25 Crores will be infused by the RA in addition to the above-mentioned amounts.	25 Cr	-	100%
TOTAL		475 Cr + 25 Cr		

*FCs = Financial Creditors.

**OCs = Operational Creditors.

B. SUMMARY OF INFUSION OF FUNDS AND UTILIZATION:

The infusion of funds for Resolution Plan would be met from the own sources of the SRA and from banks and financial institutions outside India.

The mode of finance and utilization is as under:

Infusion Timelines (in days)	Amount (in ₹.)		Purpose/Utilization
	As Equity	As ECB*	
Upfront (within 180 days)	350,00,00,000	-	CIRP Costs, Contingency Fund, Payment to Financial Creditors, Operational Creditors, Other Creditors, and other stakeholders, working capital for business, Misc. Admin Expenses
181-365 days	250,00,00,000	-	Working capital for business, Portion of funds can be used for acquiring Etihad's stake in JPPL; making payments to creditors if the Successful RA is inclined in advancing any payment timelines
Year 2	-	175,00,00,000	Remaining payment to Financial Creditors, Misc. expenses for general corporate and day-to-day operations, in compliance with the extent ECB Regulations.
After Year 2	-	600,00,00,000	Working capital for business
Sub-total	600,00,00,000	775,00,00,000	
TOTAL			1,375,00,00,000

*ECB = External Commercial Borrowing

- The SRA has proposed a total cash infusion of ₹. 1,375 Crores, breakup of which is as follows:
 - (i) ₹. 475 Crores shall be used for payment to stakeholders from SRA's cash infusion; and
 - (ii) ₹. 900 Crores shall be infused by SRA for Capital Expenditure (CAPEX) and Working Capital requirements for smooth functioning of the Corporate Debtor.

C. MAXIMUM LIABILITY CLAUSE:

It is submitted that the amount infused by the SRA in the Corporate Debtor for settlement of claims of all stakeholders would be limited to ₹. 475

Crores. This would include the CIRP cost. The breakup of this amount is specified in the table under Para 5.A above.

D. PROPOSAL FOR EACH OF THE STAKEHOLDERS IN THE RESOLUTION PLAN IS DERAILED AS UNDER:

I. Treatment of Outstanding CIRP cost (including Airport Parking Dues) (clause 6.4.1 of the resolution plan):

- a. The CIRP cost includes:
 - (i) Operating and Process Costs of ₹. 27.16 Crores, as of 31st August 2020, which includes fees, charges, salaries of Asset Preservation Team (APT) and other costs incurred by the RP in preserving the assets of the Corporate Debtor;
 - (ii) Interim Finance Cost of ₹. 54.4 Crores, as of 31st August 2020.
- b. It is submitted in the Resolution Plan that the RP has estimated an approximate sum of ₹. 240 Crores (as of 31.08.2020) towards parking charges for aircrafts and airport space lease charges, during the CIRP as good faith estimates, these are elaborately dealt with infra.
- c. It is submitted in the Resolution Plan that the RP has informed SRA that the Corporate Debtor currently has large number of employees on its payrolls, which are otherwise not required by the RP for the day-to-day affairs of the company. Since such employees were not required for the day-to-day business of the Corporate Debtor, the RP has not accounted the salaries and other benefits due to such employees (estimated at approx. ₹. 715 Crores as of September 2020) as CIRP cost.
- d. SRA submits that it has assumed that the amounts standing to the credit of the bank account of the Corporate Debtor (including amounts estimated to be received subsequently) are sufficient to cover the CIRP cost (excluding parking charges, rental charges,

employee dues, taxes etc). Accordingly, the SRA has set aside a sum of ₹. 25 Crores as CIRP cost towards payment of any such costs until the Approval Date. Any expenses incurred by the Corporate Debtor from the Approval Date until the Effective Date will be incurred out of the positive bank balance of the Corporate Debtor.

- e. It is submitted that if the airport and parking charges are over ₹.245 Crores, then amounts over and above ₹. 245 Crores will be first paid out of ₹. 25 Crores reserved as CIRP cost (if there are no outstanding CIRP cost) and then out of the positive cash flows of the Corporate Debtor. Any amounts over and above such amounts will be shared between the SRA and the Assenting Financial Creditors in equal proportion.
- f. The Resolution Plan states that if the CIRP cost is less than the estimated amounts and the airport dues are less than ₹. 245 Crores, then the differential amounts will be paid by the SRA to the Assenting FCs, which amounts are over and above the amounts reserved for them under this Resolution Plan.
- g. It is further submitted that if the CIRP cost exceeds the current estimates, the excess amount as per actuals would be borne by the SRA subject to a maximum of ₹. 475 Crores. Consequently, the payments towards Assenting FCs would get proportionately reduced.
- h. The Resolution Plan provides that the payment of CIRP cost in full shall have precedence over payment to any other Creditors, in terms of section 30(2)(a) of the Code.

II. Treatment of Assenting Financial Creditors:

- a. It is submitted that as per the list of Creditors, the total admitted claims of the Financial Creditors is ₹. 7807,74,68,687/-.

b. The various pay-outs offered to the Assenting Financial Creditors (AFCs) are as follows:

- i. Upfront ₹. 185 Crores - A total sum of ₹. 185 Crores on 180th day from the Effective Date including ₹. 10 Crores if the BKC Property is handed over to SRA will be paid to AFCs, secured by PBG of ₹. 47.5 Crores, Mortgage over BKC Property (if given to the SRA), Mortgage over Dubai Property No. 1 (Commercial Property located at Plot No. 1236, Jebel Ali Industrial First, Dubai, UAE) valued over ₹. 100 Crores.
- ii. Zero Coupon Bonds of ₹. 195 Crores - A total sum of ₹. 195 Crores would be paid to AFCs through issue of 19,50,000 'Series A Zero-Coupon Bonds' of the face value of ₹. 1,000/- each, on the effective date. The Bonds can only be redeemed after the closing date within 730th day of the Effective Date. The bonds will be secured by Mortgage over BKC Property (if given to the SRA), Mortgage over Dubai Property No. 1 and Mortgage over Dubai Property No. 2 (Commercial Property located at Plot No. 358-605, Al Quoz, Dubai, UAE) valued over ₹. 100 Crores.
- iii. NPV of ₹. 391 Crores through NCDs - Issue of 30,00,000 Non-Convertible Debentures (NCDs) of the face value of ₹.1,000/- each, aggregating to ₹. 300 Crores with guaranteed Net Present Value (NPV) of ₹. 391 Crores for AFCs (using the discount rate specified in the Evaluation Matrix). The NCDs will carry an interest rate of 0.001% from Allotment Date until Redemption Date. The NCDs shall only be redeemed after Closing Date and within five years from the Effective Date. The issuer of NCDs shall redeem the NCDs by repaying the outstanding Subscription Amount together with such Redemption Premium which ensures a Guaranteed

NPV of ₹. 391 Crores as of Effective Date for the AFCs. The NCDs will be secured by Mortgage over Dubai Property No. 1, Mortgage over Dubai Property No. 2, Mortgage over Dubai Property No. 3 (Commercial Property located at Plot No. 1290, Jebel Ali Industrial First, Dubai, UAE) valued over ₹. 50 Crores and Floating charge by way of hypothecation on India POS Credit Card receivables of the Corporate Debtor for ₹. 350 Crores or the total outstanding dues of the AFCs, whichever is lower.

- iv. Upside on Sale of Aircrafts - The SRA will pay to the AFCs an upside on sale of 11 aircrafts (Five 777s; Three 737s; and Three A330s) owned by the Corporate Debtor through issue of 6,00,000 'Series B ZCBs' of the face value of ₹. 1,000/- each, aggregating to ₹. 60 Crores which can be redeemed after the closing date and within 365 days from the effective date. The ZCBs will be secured by 11 Aircrafts of the Corporate Debtor (mentioned above) which are intended to be sold. The upside amount will be calculated in the following manner:
- a) Base Value of Aircrafts has been taken at ₹. 500 Crores i.e., no amounts are payable when Aircrafts are sold for amounts up to ₹. 500 Crores, other than face value of ₹.60 Crores.
 - b) 65% upside of any amounts realized from the sale of Aircrafts will be shared as redemption premium, if any, where Aircrafts are sold between ₹. 500 Crore and ₹. 750 Crore.
 - c) 75% upside of any amounts realized from the sale of Aircrafts will be shared as redemption premium, if any, where Aircrafts are sold between ₹. 750 Crore and ₹.1,000 Crore.

- d) 90% upside of any amounts realized from the sale of Aircrafts will be shared as redemption premium, if any, where Aircrafts are sold above ₹. 1000 Crore.
 - e) Costs and charges towards effecting such sale, including airport parking charges, brokerage, maintenance costs etc. accruing with effect from the Approval Date until the actual date of sale and not exceeding 12% of the sale consideration will be reduced from the sale price before payment.
- v. Upside on Aeronautical Radio of Thailand (ATR) Inventory - The SRA proposes to sell the ATR Inventory as ATRs will not be part of its fleet for operations and will share an upside on the sale of ATR Inventory with AFCs through issue of 1,50,000 'Series C ZCBs' of the face value of ₹. 1,000/- each, aggregating to ₹. 15 Crores. The ZCBs will be secured by entire existing ATR Inventory in possession of the Corporate Debtor. The upside amount will be calculated in the following manner:
- a) 25% upside of any amounts realized from the sale of ATR Inventory will be shared with the AFCs as redemption premium, if any.
 - b) Costs and charges towards effecting such sale, including airport parking charges, brokerage, warehousing charges (if any), maintenance costs etc. accruing with effect from the Approval Date until the actual date of sale and not exceeding 12% of the sale consideration will be reduced from the sale price before payment.
- vi. Upside on Aircraft Spares - The SRA proposes to sell the Aircraft Spares (Spares) and share an upside on such sale with the AFCs through issue of 5,00,000 'Series D ZCBs' of the

face value of ₹. 1,000/- each, aggregating to ₹. 50 Crores. The ZCBs will be secured by entire existing Spares in possession of the Corporate Debtor. The upside amount will be calculated in the following manner:

- a) Base Value of Spares has been taken at ₹. 50 Crores i.e. no amounts are payable when Spares are sold for amounts up to ₹. 50 Crores, other than face value of ₹. 50 Crores.
 - b) 80% upside of any amounts realized from the sale of Spares will be shared with the AFCs as redemption premium, if any.
 - c) Costs and charges towards effecting such sale, including airport parking charges, brokerage, warehousing charges (if any), maintenance costs etc. accruing with effect from the Approval Date until the actual date of sale and not exceeding 12% of the sale consideration will be reduced from the sale price before payment.
- vii. Upside on BKC Property - The SRA proposes to pay to the AFCs an upfront payment of ₹. 10 Crores for the BKC Property and pay all savings derived out of settlement towards airport and parking charges below ₹. 245 Crores. In addition, if BKC Property is sold for an amount over and above ₹. 245 Crores in next 2 years (or if the SRA decides to retain the BKC Property for the use of the Corporate Debtor), then 50% of the upside value will be shared with the AFCs.
- viii. 9.5% Equity Stake in Jet Airways - The SRA proposes to issue to the AFCs, an equity stake of 9.5% in the re-constituted share capital of the Corporate Debtor. As submitted by SRA in the resolution plan, the NPV of 9.5% Equity Stake based on the market capitalization at a conservative P/E Ratio of 10 for each year (from Year 3

onwards) at Year 5 is estimated at ~₹. 3,485 Crores. The shares issued shall have the same rights as attached to the shares held by the SRA. Further, the shares will be allotted to the AFCs in such manner that there shall be no dilution in percentage of shareholding reserved for the AFCs below 9.5% until ₹. 600 Crores is invested by the SRA in the Corporate Debtor. For future capitalization / Follow on Public Offer (FPO) etc., the number of shares issued to the AFCs will remain constant. In case of a FPO for increasing the public shareholding to comply with applicable listing regulations, it will be at market price and the issuance proceeds will flow in the Corporate Debtor, thus not reducing the value of shares held by the AFCs.

- ix. 7.5% Equity Stake in Jet Privilege Private Limited (JPPL) - The SRA proposes to offer 7.5% stake held by the Corporate Debtor in JPPL to the AFCs. It is further submitted that to secure the AFCs interest upfront, such 7.5% shares will be given from the 49.9% stake held by the Corporate Debtor in JPPL i.e. the Corporate Debtor will hold 42.4%, AFCs will hold 7.5% and Etihad will hold the remaining 50.1%. It is proposed that the AFCs will have the option to exercise 'Tag Along Right' to sell their 7.5% stake to Etihad or any other party to whom the SRA sells the Corporate Debtor's 42.5% stake, on the same terms and conditions as offered to the SRA.
- x. Positive Bank Balance – As of 01.09.2020, the Corporate Debtor had a positive cash balance of ₹. 40 Crores. The SRA proposes to pay all the positive balance standing to the credit of the Corporate Debtor to the AFCs on the Effective Date.

- xi. Savings on CIRP Savings – The SRA has earmarked a specific sum of ₹. 25 Crores as CIRP cost. The SRA proposes to transfer the un-utilized portion of such CIRP cost to the AFCs on the Effective Date.
- xii. Contingency Fund - The SRA has earmarked a specific sum of ₹. 8 Crores as Contingency Fund. The SRA proposes to transfer the un-utilized portion of the Contingency Fund to the AFCs on the Closing Date.
- xiii. Stake in Jet Lite (India) Limited (Jet Lite) - The SRA proposes to offer 100% stake held by the Corporate Debtor in Jet Lite to the AFCs on the Approval Date. If this proposal is not acceptable to AFCs, then the SRA shall liquidate Jet Lite immediately after the Approval Date.

III. Treatment of Dissenting Financial Creditors:

The SRA undertakes that any Dissenting Financial Creditor would be paid the liquidation value due to them in priority to other financial creditors in terms of Section 30(2) of the Code read with Regulation 38(1)(b) of the Regulations, out of the amounts reserved for the Financial Creditors in terms of this Resolution Plan.

IV. Treatment of Employees and Workmen:

- a. It is submitted that Corporate Debtor currently has large number of employees and workmen on its payrolls, who are otherwise not required for the day-to-day affairs of the Corporate Debtor and hence the RP did not account the salaries and other benefits due to such employees (estimated at approx. ₹. 715 Crores as of September 2020) as CIRP cost. However, the SRA makes the following gratuitous proposal for the employees and workmen of

the Corporate Debtor, which if acceptable, can be made available to the employees and workmen after the Approval Date:

- (i) Welfare Trust – SRA proposes that after the approval of the resolution plan all the people who are/were the employees and workmen of the Corporate Debtor on and from the ICD, form an employees' trust (Trust). The union leaders of the employees and workmen of the Corporate Debtor can be the trustees of such Trust and all such employees and workmen be the beneficiaries of such Trust. Such Trust can be formed by the employees and workmen any time after the approval of the Resolution Plan and the details of such Trust be shared with the SRA.
- (ii) Equity Stake in the Corporate Debtor - The SRA will transfer an equity stake of 0.50% to the Trust, if formed, in the re-constituted share capital of the Corporate Debtor, through conversion of their outstanding claims. The shares will have the same rights as attached to the shares held by the SRA in the Corporate Debtor and the beneficiaries of the Trust will be entitled to enjoy all the benefits of such shares. The SRA estimates that the NPV of 0.5% Equity Stake based on the market capitalization at a conservative P/E Ratio of 10 for each year (from Year 3 onwards) at the Year 5 is ₹. 183 Crores. The SRA proposes that if and when the Trust sells the shares held by it in the Corporate Debtor, the value derived from such sale be distributed in the following manner:
 - i. 60% to Workmen
 - ii. 15% to employees on salary of up to 12 lac p.a.
 - iii. 15% to employees on salary between 12-15 lac p.a.
 - iv. 10% to employees on salary above 15 lac p.a.

The above ratio is a proposal from the SRA and the beneficiaries of the Trust can vary it.

- (iii) Equity Stake in Airjet Ground Services Limited (AGSL) - As a part of this Resolution Plan, SRA has sought the demerger of third party ground handling business of the Corporate Debtor to its wholly owned subsidiary – AGSL. The SRA will transfer 76% equity stake in, and management control of AGSL to the Trust after the Approval Date. Therefore, the Trust will own majority stake and control in AGSL and its business.
- (iv) Cash Payment for Employees and Workmen - In addition to the amounts proposed to be paid to the Operational Creditors (Workmen and Employees, including Authorized Representatives of Workmen and Employees) for claims up to ICD, the SRA proposes to make the following payments to employees and workmen of the Corporate Debtor. Such payments will be made within 180 days from the Effective Date and the manner of payment and process will be detailed on the website of the Corporate Debtor.
- a. Cash payment for employees - The SRA proposes to pay a token sum of ₹. 11,000 in cash to each employee of the Corporate Debtor.
 - b. Cash payment for workmen - The SRA proposes to pay the following to each workman of the Corporate Debtor:
 - i. ₹. 11,000/- cash to each workmen of the Corporate Debtor.
 - ii. ₹. 5,100/- cash as medical expense reimbursement for the parents of the workmen of the Corporate Debtor.
 - iii. ₹. 5,100/- cash as school fee reimbursement for children of the workmen of the Corporate Debtor.
 - iv. Stationary (notebooks, school bags etc.) collectively

valued at ₹. 1,100/- for children of the workmen of the Corporate Debtor.

- v. One-time mobile phone recharge of ₹. 500/- for the workmen of the Corporate Debtor.
- c. The above-mentioned cash payment will be made out of the Contingency Fund (₹. 8 Crores) reserved by the SRA. Additional amounts, if required, will be utilized out of the proceeds of sale of assets received by the Corporate Debtor.
- (v) IT Assets - The SRA proposes to give to each workman, one IT equipment (phone or iPad or laptop) out of the existing IT assets of the Corporate Debtor. The IT assets will be given within 180 days from the Effective Date and the manner of process will be detailed on the website of the Corporate Debtor. Further, if any of the IT assets are left after completing the distribution to the workmen in the manner described above, then the SRA will give such remaining assets to each employee, one IT equipment (phone or iPad or laptop) out of the existing IT assets of the Corporate Debtor. Priority in such distribution shall be given to the employee with lowest last drawn salary up to the highest drawn salaried employee. The said IT assets will be given on lottery / chit / random identification basis to ensure the distribution process is fair, neutral and unbiased. It is also submitted that the SRA accepts no responsibility or liability for the condition or value of IT assets and any such allocated IT assets must be collected within 30 (thirty) days from completion of such draw of lots.
- (vi) Free Tickets - The SRA proposes to give credits for future tickets worth ₹. 10,000 to each employee and workmen of the Corporate Debtor. Such credits will be extended within 180

days from the Effective Date and the process will be detailed on the website of the Corporate Debtor. The credit for future tickets will be issued in the form of redeemable vouchers in the multiples of ₹. 1,000/- (equivalent to ₹. 1,000 worth of credit for future tickets). The vouchers will be transferable in nature (prior to issuance of any ticket). No tickets will be transferable in nature. Vouchers can be redeemed against more than 1 (one) ticket. Booking of tickets against redemption of such vouchers must be completed within 30 days of the Corporate Debtor recommencing its domestic operations. Tickets can be availed during April-June Quarters and August-October Quarters on sectors where the Corporate Debtor flies.

- (vii) Key Terms: It is stated in the Resolution Plan that this proposal to Employees and Workmen (i.e. equity stake in the Corporate Debtor; equity stake in AGSL, cash payment for employees and workmen, IT Assets and Free Tickets) is valid only if at least 95% of the employees and workmen of the Corporate Debtor (as on ICD) support this Resolution Plan by not contesting or challenging its approval by the Adjudicating Authority (the Authority) and/or its implementation in the manner approved by the Authority. If the above proposal is not accepted by the employees and workmen within 30 days from the Approval Date, then no other creditor will have the right to seek such benefits or any part thereof and such proposal shall stand withdrawn. After expiry of the said period of 30 days from the Approval Date, the equity stake of 0.50%, and cash payments of up to ₹. 8 Crores currently earmarked for employees and workmen will be given to the AFCs. The proposal with respect to ticket credits, equity stake in AGSL and handover of IT assets shall revert to the Corporate Debtor and no other creditor

will be entitled to it. After expiry of 30 days from the Approval Date or upon non-receipt of necessary approvals, the SRA shall have the discretion to deal with its equity stake in AGSL in the manner deemed appropriate by it without causing any prejudice to implementation of the Resolution Plan.

- b. The SRA proposes to pay a fixed sum of ₹. 52 Crores to the Workmen / Employees towards settlement of all the claims made by them, including to the Authorized Representatives of Employees and Workmen (Admitted Workmen and Employees dues). The said payment is also being made in priority to the payment to the financial creditors. It is submitted that in any case, if the liquidation value due to admitted Workmen and Employees dues is not 'NIL', then the SRA undertakes that the liquidation value due to such Admitted Workmen and Employees dues shall be paid and shall be paid in priority over payment to financial creditors within 175 days from the Effective Date. It is further submitted that SRA shall ensure payment to all Operational Creditors in accordance with Section 30(2) of the Code and confirms that in case the liquidation value due to the Admitted Workmen and Employees dues is over and above the amount proposed to be paid as per the Resolution Plan, then such additional amounts shall be first paid out of the positive bank balance of the Corporate Debtor as on the Effective Date and the remaining amounts shall be paid out of amounts reserved for AFCs on a pro rata basis, subject to a maximum of ₹.475 Crores.
- c. The SRA has further proposed a scheme for absorption of the Employees as follows:
 - i. To retain 50 employees and workmen forming part of the APT. Such employees will be given the option to resign and seek re-

- employment by the Corporate Debtor on fresh employment terms as agreed between the SRA and such employees, commencing from the Approval Date. An employee who refuses to exercise such option shall not be retained by the Corporate Debtor. (Retained Employees)
- ii. Excluding the Retained Employees, all employees and workmen on the payrolls of the Corporate Debtor (Demerged Employees) as on 15 September, 2020 (Record Date) will be demerged from the Corporate Debtor and absorbed into AGSL with effect from the Approval Date.
 - iii. It is further submitted that as part of such demerger, all the past dues towards salaries and other benefits (such as PF dues, leave encashment, retirement benefits, notice pay, termination dues etc.) of the Demerged Employees for the period after the ICD and until the Approval Date and/or retirement benefits accruing to Demerged Employees which have arisen after the ICD, shall also stand demerged from the Corporate Debtor to AGSL with effect from the Approval Date and the Corporate Debtor shall absorb no liability or responsibility for such payments as the RP has not accounted such salaries and other benefits as CIRP cost.
 - iv. The Corporate Debtor will offer 76% of its shareholding in AGSL to the Employees' Trust and retain the remaining 24% shareholding. If the Trust fails to exercise or refuses to accept such offer within 30 (thirty) days from the Approval Date or challenges the implementation of this Resolution Plan, then the Corporate Debtor will retain 100% shareholding in AGSL as indicated supra.

V. Treatment of Operational Creditors:

- a. Liquidation Value – It is stated by the SRA that the net worth of the Corporate Debtor would be insufficient to cover even the debts of the Financial Creditors in full. Therefore, the liquidation value due to the Operational Creditors including government dues, taxes or the other creditors or stakeholders (including dues to employee other than workmen), is presumed to be NIL. Further, in any case, if the liquidation value due to the Operational Creditors is not NIL, then the SRA undertakes that the liquidation value due to the Operational Creditors shall be paid and shall be given priority in payment over the Financial Creditors, within 175 days from the Effective Date. It is also stated that in case the liquidation value is not NIL, then such additional amounts shall be first paid out of the positive bank balance of the Corporate Debtor as on the Effective Date and the remaining amounts shall be paid out of the amounts reserved for AFCs of the Corporate Debtor on a pro rata basis.
- b. Cash Payment - Though, the liquidation value due to the Operational Creditors (excluding Workmen and Employees) of the Corporate Debtor is presumed to be NIL, the SRA proposes to pay a fixed sum of ₹. 15,000/- to each of the claimants classified as Operational Creditors irrespective of their claim amount i.e. an amount not exceeding a total sum of ₹. 10 Crores to the Operational Creditors towards settlement of their total outstanding dues as set out in the list of Creditors (Admitted OC Claims). It is also submitted that wherever, the Operational Creditor has an admitted claim of less than ₹. 15,000/-, then the actual amount claimed and admitted by the RP shall be paid by the SRA to such Operational Creditor.
- c. Operational Creditors classified as Ticket Refund - The SRA submits that the Operational Creditors classified as “Ticket

Refund” in the list of Creditors (total 5081 in number) shall have the option to either choose to get cash refund or seek credit for future tickets, but not both. No claims relating to lost Jet Privilege Miles will be entertained. It is clarified that the liquidation value payable to claimants of ticket refunds will be paid in cash.

- Cash refund -
 - i. For claims up to ₹. 15,000, refund will be processed as per actuals.
 - ii. For claims over ₹. 15,000, refund will be processed to a maximum of ₹. 15,000.

OR

- Credit for future tickets -
 - i. For claims up to ₹. 15,000, credit for future tickets will be provided as per actual admitted claim amounts.
 - ii. For claims above ₹. 15,000, credit for future tickets will be provided subject to a maximum of ₹. 15,000.
 - iii. Credit for future tickets will be issued in the form of redeemable vouchers in the multiples of ₹. 1,000/- (equivalent to ₹. 1,000 worth of credit for future tickets).
 - iv. Vouchers will be transferable in nature (prior to issuance of any ticket). No tickets will be transferable in nature.
 - v. Vouchers can be redeemed against more than 1 (one) ticket.
 - vi. Booking of tickets against redemption of such vouchers must be completed within 30 Days of the Corporate Debtor recommencing (Jet 2.0) its domestic operations.
 - vii. Tickets can be availed during April-June Quarter and August-October Quarter on any sector where Jet 2.0 flies.
- d. Settlement of Dutch Administrator’s claim – The SRA will settle the outstanding claims of the Dutch Administrator, if any, against payment of a maximum sum of ₹. 10,000/- subject to Dutch laws.

VI. Treatment of Other Creditors (other than financial and operational creditors):

It is submitted that if the Corporate Debtor was to be liquidated, the amount that would have been payable for all of these claims would have been NIL. In the estimate of the SRA, the liquidation value that is payable to the Government Agencies is also NIL. However, the SRA has earmarked ₹ 10,000/- for creditors (other than financial and operational creditors).

VII. Treatment of existing shareholders other than public shareholders:

The SRA proposes to pay a fixed sum of ₹. 10,000/- to the existing shareholders of the Corporate Debtor other than public shareholders (i.e., the existing promoters, Etihad and financial institutions holding shares in the Corporate Debtor).

VIII. Treatment of existing public shareholders:

The SRA clarified that, for every 100 existing shares held by the public shareholders, they will be entitled to 1 (one) share in Jet 2.0, post the re-constitution of share capital as per clause 7.4.3(a) of the resolution plan.

IX. Treatment of Airport and Parking Dues:

The Airport and Parking Dues are estimated at ₹. 240 Crores as on 31.08.2020. It is submitted by SRA in the resolution plan that one floor owned by the Corporate Debtor in BKC, Mumbai (BKC Property) has been kept outside the purview of this resolution process. The SRA has proposed two scenarios for resolution of outstanding Airport and Parking dues based on the ownership of the BKC property.

1. BKC Property as part of resolution – It is submitted that if the CoC agrees to include the BKC Property as part of this resolution process and agrees to offer a clear and marketable title of the BKC Property, free from all litigations, to the SRA, then the SRA agrees to:
 - i. Settle airport and parking charges within 180 days from the Effective Date.
 - ii. Pay an upfront underwritten value of ₹. 10 Crores to the AFCs within 180 days from the Effective Date.
 - iii. If airport and parking charges are settled below ₹. 245 Crores, then all savings derived out of such settlement will be paid to the AFCs.
 - iv. Any savings on airport and parking charges will be paid by the SRA to the AFCs either from sale proceeds of BKC Property (if sold) or from its own funds (if BKC Property is retained by the SRA).
 - v. If the airport and parking charges are over ₹. 245 Crores, then amounts over and above ₹. 245 Crores will be first paid out of ₹. 25 Crores reserved as CIRP cost (if there are no outstanding CIRP cost) and then out of the positive cash flows of the Corporate Debtor. Any amounts over and above such amounts will be shared between the SRA and the AFCs in equal proportion. The amounts payable by AFCs towards airport and parking dues will be deducted out of the amounts payable by the SRA to them and if there are any outstanding payable by the AFCs after such deduction, then such amounts shall be paid by them to the SRA.

- vi. Any amount received from sale of BKC Property (over and above ₹. 245 Crores) will be shared between the AFCs and the SRA in equal proportion.
 - vii. If the SRA decides to retain the ownership of the BKC Property, then at the end of Year 2, the SRA will pay to the AFCs, 50% of the market value of BKC Property (over and above ₹. 245 Crores). The market value will be derived by a Tier 1 Brokerage Firm appointed by the Asset Sales Committee (ASC) on a willing buyer and willing seller basis and the entire sale process will be run under the overall supervision of the ASC.
 - viii. This proposal regarding the BKC Property is subject to the SRA being given a clear and marketable title thereto, free and clear of all past litigations and encumbrances.
 - ix. All payments to the AFCs (over and above ₹. 245 Crores) will be made after deducting the following amounts:
 - all costs associated in facilitating such sale including valuation and brokerage,
 - stamp duty,
 - statutory charges, and
 - all applicable taxes.
2. BKC Property not part of resolution – It is stated that if the CoC decides to retain the BKC Property as a non-core asset and not offer it as part of this resolution process as proposed above, then the SRA will not pay the upfront sum of ₹. 10 Crores to the AFCs as envisaged in the above clause for BKC Property. Further, the airport dues and parking charges after the ICD (approx. ₹. 240 Crores as of 31.08.2020) will be paid by the SRA upfront in priority over any other payments to the

creditors of the Corporate Debtor, subject to a maximum of ₹.475 Crores.

3. It is further confirmed by the SRA that the proposal for resolution of outstanding airport and parking dues (approx. ₹. 240 Crores) which deals with the appropriation of the BKC Property is merely a proposal and not a condition to the implementation of this Resolution Plan.

E. RE-CONSTITUTION OF THE SHARE CAPITAL:

a. Cancellation of Shares:

It is stated that the equity shares held by the Promoters, Etihad and Financial Institution equivalent to 8,51,98,037 shares of ₹. 10 each collectively representing 75% shareholding in the Corporate Debtor, and all of the preference shares held by the Promoters and Etihad in the Corporate Debtor, shall stand fully extinguished as a part of this Resolution Plan within 170 days from the Effective Date (Cancellation of Shares). After the cancellation, the following would be the shareholding pattern of the Corporate Debtor before reconstitution:

Proposed	No. of Shares	Share Capital (In ₹.)	Shareholding %	Face Value (In ₹.)
Promoters	-	-	-	-
Etihad	-	-	-	-
Financial Institution	-	-	-	-
Public Shareholders	2,83,99,346	28,39,93,460	100%	10.00
Total	2,83,99,346	28,39,93,460	100%	

b. Reduction in Share Capital:

The share capital of the Corporate Debtor shall be reconstituted in such manner that the share capital of the existing Public Shareholders of the Corporate Debtor equivalent to ₹. 28,39,93,460/- divided into 2,83,99,346 equity shares shall stand reduced from face value of ₹. 10/-

each to face value of ₹. 1/- each (Reduction in Share Capital). After this reduction, the shareholding pattern of the Corporate Debtor will be:

Proposed	No. of Shares	Share Capital (In ₹.)	Shareholding %	Face Value (In ₹.)
Promoters	-	-	-	-
Etihad	-	-	-	-
Financial Institution	-	-	-	-
Public Shareholders	2,83,99,346	2,83,99,346	100%	1.00
Total	2,83,99,346	2,83,99,346	100%	

c. Consolidation of Share Capital:

Immediately upon the Reduction in Share Capital, the shares shall be consolidated into equity shares with face value of ₹. 10/- each (Consolidation of Share Capital). Any fractional entitlements of equity shares resulting from such consolidation shall be rounded off to the nearest whole integer. An indicative table, assuming no rounding up is required on account of fractional entitlement, is set out below:

Proposed	No. of Shares	Share Capital (In ₹.)	Shareholding %	Face Value (In ₹.)
Promoters	-	-	-	-
Etihad	-	-	-	-
Financial Institution	-	-	-	-
Public Shareholders	28,39,935	2,83,99,346	100%	10.00
Total	28,39,935	2,83,99,346	100%	

d. Investment in the Corporate Debtor:

It is proposed that the SRA will invest a maximum sum of ₹. 600 Crores in the equity of the Corporate Debtor. An indicative table below, sets up the proposed shareholding pattern for the SRA and the Financial Creditors, assuming no exit from the Public Shareholders:

Nature of Issuance	Shareholders	No. of Shares	Share Capital Incl. Premium	Face Value	Premium	Shareholding (%)
Fresh Issuance	RA	12,00,00,000	600,00,00,000	10	40	89.79
Conversion of Debt	Assenting FCs	1,26,96,644	63,48,32,188	10	40	9.50
Conversion of Dues	Workmen & Employees	6,68,244	3,34,12,220	10	40	0.50
Existing Shares	Public Shareholders	2,83,993	28,39,935	10		0.21
Total		13,36,48,882	667,10,84,343			100.00

- e. It was clarified by the SRA that the above steps are sequential in nature and shows the steps for capital restructuring that shall be undertaken. It was further clarified that, as evident from the tables provided in para 'E(c) & E(d)' above, the restructuring also contemplates a further consolidation of public shareholding from 28,39,935 shares to 2,83,993 shares and consequent restructuring of capital. This reflects the SRA's proposal for public shareholders that for every 100 shares held by the public shareholders, they will be entitled to 1 (one) share in Jet 2.0.
- f. Further submitted that, the equity shares issued by the Corporate Debtor shall be subject to lock-in of 1 (one) year (except public shareholders, shares allotted to workmen and employees and shares allotted to the AFCs) from the date of such issuance or for such additional period as may be required under applicable laws.
- g. Further stated that, the SRA shall ensure that the public shareholding in the Corporate Debtor is restored to at least of 10% within a maximum period of 18 months and subsequently to 25% within a maximum period of 3 years, in each case from the date of first tranche issuance of equity shares to the SRA. The SRA proposes to restore the public shareholding in the Corporate Debtor through issuance of fresh shares of the Corporate Debtor to the public, at market price, by way of a FPO, which process shall be carried out in compliance with applicable laws.

F. TIMELINES AND IMPLEMENTATION SCHEDULE OF THE RESOLUTION PLAN:

The SRA shall take the following steps in the order of sequence as an integral part of the Resolution Plan. The procedure, timelines and the sequence of steps listed below are only indicative and they may be re-arranged / changed as may be required or directed based on discussions with the necessary Governmental Authorities / stock exchange (on account of past non-compliances of the Corporate Debtor or otherwise) or for the purposes of advancing any payments to the stakeholders, and at all times in compliance with Applicable Laws:

Step	Activity	Days
1.	Receipt of approval from the Competition Commission of India under the provisions of the Competition Act, 2002 read with the provisions of the IBC.	Before approval of Resolution Plan by CoC
2.	Declaration of the Successful Resolution Applicant and Receipt of LoI from the CoC	X
3.	Unconditional acceptance of the LoI	X + 3
4.	Issuance of Performance Security Bank Guarantee	X + 7
5.	Finalization of the members of the Monitoring Committee	Between X and Approval Date
6.	Approval Date	Y
7.	Monitoring Committee to take control as per Clause 7.8.2	Y
8.	Fulfillment of Conditions Precedent as per Clause 7.6.1	After Y
9.	Filings of the certified copy of the Order of Approval received from Adjudicating Authority sanctioning the Resolution Plan with the relevant Government Authorities/ Stock Exchange/ Departments.	Y + 10
10.	Effective Date*	Z
11.	Infusion of ₹. 350 Crores in the Corporate Debtor	Z + 150
12.	Setting up the Contingency Fund	Z + 170
13.	Cancellation of Shares (excluding Public Shares)	Z + 170
14.	Reconstitution of Share Capital as per Clause 7.4.2	Z + 170
15.	Steps towards issuance of equity shares as per Clause 7.4.3	Z + 170
16.	Payment of CIRP Costs as per Clause 6.4.1.	Z + 170

Step	Activity	Days
17.	Payment to the Operational Creditors (Workmen and Employees, including Authorized Representatives of Workmen and Employees)	Z + 175
18.	Payment to all the Operational Creditor (other than Workmen and Employees)	Z + 175
19.	Payment to Other Creditors and Stakeholders	Z + 175
20.	Payment to Dissenting Financing Creditors	Z + 176
21.	1 st Tranche payment to Financial Creditors	Z + 180
22.	Monitoring Committee to be released and Reconstituted Board of Directors to take over the management of the Corporate Debtor.	Z + 180
23.	Closing Date	Z + 180
24.	Redemption of Series B, Series C; and Series D ZCBs	Z + 365
25.	Necessary Statutory approvals	Y + 365 (in accordance with Sec 31(4) of the Code)
26.	Redemption of Series A ZCB	Z + 730
27.	Release of charge (if any) over assets of the Corporate Debtor (which have not been previously released).	Z + 730
28.	Redemption of NCDs and release of any charge (if any)	Z + 5 Years

*Effective Date: The date of fulfilment of all the Conditions Precedent as stated in Clause 7.6.1 of the plan shall be the effective date for the purposes of this Resolution Plan.

G. MANAGEMENT AND SUPERVISION OF IMPLEMENTATION OF THE RESOLUTION PLAN:

a. Monitoring Committee:

- (i) The Monitoring Committee shall be appointed from the Approval Date until the Closing Date and the implementation of the Resolution Plan will be supervised by it during such period.
- (ii) The Monitoring Committee shall comprise of 7 (seven) members:
 - (a) 3 (three) appointed by the Resolution Applicant;
 - (b) 3 (three) appointed by the Financial Creditors having highest share in the CoC; and
 - (c) an independent insolvency professional appointed by the Financial Creditors (preferably retain the existing RP). The

SRA and the Financial Creditors reserve the right to change their appointees to the Monitoring Committee, if required, for better and effective management of the assets.

(iii) The duties of the Monitoring Committee shall be in accordance with clause 7.8.5 of the Resolution Plan.

b. Asset Sale Committee:

It is stated that, if the Series B, Series C and Series D ZCBs are not redeemed by the Closing Date, then the Monitoring Committee shall, on the Closing Date, form an ASC of 3 (three) members, comprising of any 2 (two) members appointed by the Financial Creditors on the Monitoring Committee and the insolvency professional appointed on the Monitoring Committee, to supervise the sale of assets of the Corporate Debtor as proposed in this Resolution Plan. The duties of the ASC shall be in accordance with clause 7.8.8 of the Resolution Plan.

H. PERFORMANCE BANK GUARANTEE:

It was clarified that as required under the RFRP, the SRA shall provide PBG for a total sum of ₹. 150 Crores. The PBG will be provided in two parts, with the first PBG of ₹. 47.5 Crores provided within 7 days from the date of receipt of LoI and the PBG for the remaining sum of ₹.102.5 Crores provided on the Effective Date. Consequently, the SRA has furnished PBG of ₹. 30 Crores from State Bank of India and ₹. 17.50 Crores from ICICI Bank (totalling to ₹. 47.5 Crores).

I. COMPLIANCE OF MANDATORY CONTENTS OF RESOLUTION PLAN UNDER THE CODE AND THE REGULATIONS:

The Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 and 39 of the Regulations and has submitted his Form H under Regulation

39(4). The Plan is in compliance with the provisions of the Code and the Regulations.

6. The Applicant submits that the Resolution Plan meets the requirement of Section 30(1) & (2) of the Code and it is in compliance of Regulation 38 of the Regulations in terms of Section 30(2)(f) of the Code as under:

- a) Provides a representation that the SRA is not disqualified from submitting a resolution plan under Section 29A and other provisions of the Code and any other Applicable Law (clause 2.6 read with 6.2 and 9.10) [Section 30(1)].
- b) Provides for the payment of insolvency resolution process cost in a manner specified by the Board, in priority to the payment of other debts of the corporate debtor (clause 6.4.1) [Section 30(2)(a)].
- c) Provides for the payment of debts of operational creditors in such manner as prescribed by the board (clause 6.4.2 read with clause 6.4.3) [Section 30(2)(b)].
- d) Provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan (clause 7.8 read with 7.9 and 8) [Section 30(2)(c)].
- e) Provides for implementation and supervision of the resolution plan (clause 7.7 read with 7.8, 7.9 and 8) [Section 30(2)(d)].
- f) Provides a declaration to the effect that the resolution plan does not contravene any of the provisions of the law for the time being in force (clause 9.7) [section 30(2)(e)].
- g) The Resolution Plan is in compliance with Section 30(2)(f) of the Code as it confirms to such requirements as specified by the Board.
- h) Provides that the amount due to the operational creditors under the resolution plan shall be given priority in payment over financial creditors (clause 6.4.2 read with 6.4.3, 6.4.10; and 7.7) [Regulation 38(1)(a)].

- i) Provides for the payment to the dissenting financial creditors, in priority over financial creditors who voted in favour of the plan (clause 6.4.4) [Regulation 38(1)(b)].
- j) Provides a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the company (clause 6.4.10) [Regulation 38(1A)].
- k) Provides a statement giving details that neither the Resolution Applicant nor any of its related parties have failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Authority at any time in the past (clause 7.2) [Regulation 38(1B)].
- l) Provides for the term of the resolution plan and its implementation schedule (clause 7.1 read with 7.7) [Regulation 38(2)(a)].
- m) Provides for the management and control of the business of the company during its term (clause 7.8 and 7.9) [Regulation 38(2)(b)].
- n) Provides for the adequate means for supervising its implementation (clause 7.8 and 7.9) [Regulation 38(2)(c)].
- o) The resolution plan addresses the cause of default (clause 5.1 read with 7, 8 and Appendix 12) [Regulation 38(3)(a)].
- p) It demonstrates that the plan is feasible and viable (clause 8, 8.2, 8.3.1 read with Appendix 12 and Appendix 13) [Regulation 38(3)(b)].
- q) The resolution plan contains all the provisions for its effective implementation (clause 7.7, 7.8 and 7.9) [Regulation 38(3)(c)].
- r) The resolution plan contains the provisions for approvals required and the timeline for the same (clause 7.5 to 7.9) [Regulation 38(3)(d)].
- s) The Plan demonstrates the Resolution Applicant's capability to implement the plan (clause 6.4.10 read with 6.5, Appendix 12 and Appendix 13) [Regulation 38(3)(e)].

7. Approvals, Waivers and Extinguishments:

The SRA has sought various approvals, waivers and extinguishments from this Tribunal as more particularly specified in clause 10 of the resolution plan, which are in the nature of automatic approvals and reliefs from various government authorities, statutory guidelines, licenses, contractual rights and benefits, tax and stamp duty exemptions, business and government contracts, cancellation of shares and reconstitution of share capital, demerger, etc.

8. Prayer for approval of reinstatement of slots (including bilateral rights and traffic rights):

- a. The SRA has sought appropriate directions to Director General of Civil Aviation (DGCA) and Ministry of Civil Aviation, Government of India (MoCA) for reinstatement of slots (including bilateral rights and traffic rights) to the Corporate Debtor and the International Traffic Rights Clearance since temporarily suspended, upon its revival, to enable the Corporate Debtor to effectively resume its business and operational activities in the manner prior to the initiation of the CIRP.

9. It is submitted that the slots allocated to the Corporate Debtor while in operation, have to be restored back upon resolution. Failing which the resolution of the Corporate Debtor would be frustrated. The slots are assets of the Corporate Debtor and need to be restored to it. In this connection reliance is placed on *Union of India v. Vijaykumar V. Iyer, Company Appeal (AT) (Insolvency) No. 733 of 2020 decided on 13.04.2021/Aircel Judgment*. The relevant portion of the Judgment may profitably be referred to.

10. The Hon'ble NCLAT observed at para 59 of the Judgment that 'asset' is defined as a present economic resource controlled by an entity as a result of past events. An economic resource is a right that has potential to produce economic benefits (*emphasis supplied*). Going by this definition, it is unambiguously clear that if as a

result of past events a present economic resource is controlled by the entity clothing it with a right that has potential of generating income, it falls within the purview of an 'asset'. The Hon'ble NCLAT discussing the National Telecom Policy and the procedure for grant of spectrum to a Telecom Company observed as follows:-

“60...

...So long as the licence is not suspended, revoked or terminated or until the expiration of period of licence, the Access Service Provider/ Licensee continues to have right to trade subject to observance of the Spectrum Trading Guidelines and terms and conditions of the regulatory framework. The trading activity envisaged under the Guidelines is subject to approval of DOT which has the right to recover the dues for the period prior to the effective date of trade. It is a trading of limited nature with the trading being permitted only between companies eligible to trade and the Buyer satisfying the eligibility criteria.

...

62. Next question for consideration would be whether spectrum can be subjected to proceedings under the I&B Code. In this regard the nature of the resource has to be kept in view while determining whether same can be subjected to insolvency/ liquidation proceedings. It having been found that the Telecom Licence and right to use spectrum are assets of the Licensee/ Corporate Debtor falling within the purview of Section 18 and 25 of the I&B Code for purposes of control and custody in the hands of Interim Resolution Professional/ Resolution Professional during CIRP Proceedings, be it seen that the Telecom Licences and right to use spectrum being assets of the Corporate Debtor are covered under moratorium slapped under Section 14 of the I&B Code as a sequel to the admission of an application seeking triggering of the CIRP. Explanation to Section 14(1) and sub-section (2A) introduced in Section 14 (inserted by Amending Act 1 of 2020 w.e.f 28.12.2019), in clear and unambiguous terms provide that the licences and concessions issued by the Government Authorities cannot be terminated or suspended during CIRP so long as the current dues were being paid, which has the object of ensuring maintenance of the substratum of the business during the CIRP period and keeping the Corporate Debtor as a going concern. The protection has been granted to telecom licences and right to use spectrum being assets of the Corporate Debtor and the

slapping of moratorium prohibits the Owner/Lessor during CIRP period from recovering property occupied or possessed by the Corporate Debtor. This protection is only limited to moratorium period and obtains only on the condition of there being no default in payment of current dues.”

11. The Hon’ble Appellate Authority gave the above findings basing on the explanation to Section 14(1) introduced with effect from 28.12.2019. It is submitted by the learned senior counsel for the Resolution Applicant that though the explanation was inserted only on 28.12.2019, it is essentially a clarification. Therefore, the purpose of protecting the licenses and concessions was inherent in Section 14(1)(d). It is therefore submitted that the allotment of slots remained protected in view of the moratorium coming into effect i.e. from 20.06.2019. The Hon’ble NCLAT in the Judgment have observed that the protection of the licenses and concessions from being terminated has the object of ensuring maintenance of the substratum of the licenses of the Corporate Debtor during the CIRP period and keeping the Corporate Debtor as a ‘going concern’.
12. Admittedly the Corporate Debtor ceased its operations from 17.04.2019. On the date of insolvency commencement i.e. on 20.06.2019, the Corporate Debtor was not in operation. It is not in dispute that the Corporate Debtor was not run as a going concern during the CIRP. Therefore, the protection of the licenses and concessions from termination or suspension would not be available to the Corporate Debtor. In the case of *Aircel (supra)* the spectrum continued to be with the Telecom Company during the CIRP. In the instant case the slots cannot be regarded as ‘present economic resource’ of the Corporate Debtor. That being an important factor, is squarely lacking in the case of the Corporate Debtor.
13. Coming to the point of whether the slots could be considered as an ‘asset’ of the Corporate Debtor, it would be pertinent to mention that slots can only be allotted to an airline ‘in operation’ with a valid Air Operating License (AOL) and operating

flights from a particular Airport. Slots are airport specific and are dependent upon the Airline's operating rights. The mechanism of allotment of slots, though integral to an operating airline, is a very complex and dynamic process upon which the entire flight schedule of an airport depends. The allotment of slots and their usage is like a constantly changing jigsaw puzzle. A single slot therefore could not be left or kept idle. The slots vacated by one Airline would have to go to another Airline for optimum utilisation of the slots and the capacity of the airport.

14. The allotment of slots is guided by the Guidelines for Slot Allocation (May 2013) (the guidelines) issued by the MoCA. The relevant extracts may be reproduced below.

I) Definitions

“SLOT” is a permission given by a coordinator for a planned operation to use the full range of airport infrastructure necessary to arrive or depart at a Level three airport on a specific date and time.

Classification of Airports: For the purpose of slot allocation, airports are generally categorized according to the following levels of congestion:

- a) Level 1: where the capacity of the airport infrastructure is generally adequate to meet the demands of airport users at all times.*
- b) Level 2: where there is potential for congestion during some periods of the day, week, or season which can be resolved by voluntary cooperation between airlines*
- c) Level 3: where capacity is constrained due to lack of sufficient infrastructure.*

II) Introduction

1. With the increase in air traffic at the major airports in the country, the capacity of these airports has become constrained. Therefore, to ensure the most efficient use of airport infrastructure and in order to maximize benefits to the greatest number of airport users, it is essential to have a policy for allocation of constrained or limited airport capacity to airlines and other aircraft operators through a transparent and equitable mechanism so as to ensure viable airport and air transport operations.

2. *An airport should be categorized into different levels by a responsible authority and by following a thorough demand and capacity analysis, and full consultation with all stakeholders. The airport should be designated as Level 3 only if this analysis and consultation concludes that the demand for airport infrastructure significantly exceeds available capacity and there is no practical way to alleviate the problem in the short term. The airport capacity should be made available in the public domain thorough websites.*

3. *For Level 3 airports, a Coordinator is required to be designated to allocate slots to airlines and other aircrafts operators using or planning to use the airport as a means of managing available capacity. An airport slot would therefore mean a permission given by a Coordinator for a planned operation to use the full range of airport infrastructure necessary to arrive or depart at a Level 3 airport on a specific date and time. The procedure should be devised in a manner that there is enough appellate mechanism inbuilt in the system.*

4. *It may be understood that coordination is not a solution to the fundamental problem of a lack of airport capacity. In all instances, coordination should be seen as an interim solution to manage congested infrastructure until the longer term solution of expanding capacity is implemented.*

5. *These guidelines forms the slot allocation and management standard for Indian coordination, and should therefore be duly noted and implemented in full by all affected Indian airports and air carriers using such airport infrastructure. The Guidelines have been formatted to reflect international based practice and in accordance with the recommendations of the IATA Worldwide Slot Guidelines (WSG), as amended twice yearly. The WSG is the globally adopted standard for efficient slot allocation to optimize the use of severely congested airport infrastructure worldwide.*

6. *These guidelines are expected to maximize efficiency in the process of slot allocation, promote sustainable competition and encourage growth of air connectivity to remote and inaccessible regions of the country, while ensuring viability of operations of the airlines.*

III) *Practice in India: A historical perspective*

1.

.....

2. *Recommendations of the Task Force:*

.....

The recommendations of the Task Force where accepted by the Government in the Year 2005 subject to the following:

- (i)
- (ii) *For grandfather rights a standard slot adherence 80% of allotted slots must be followed.*
- (iii)
- (iv) *After allocation is historic slots, 50% of the remaining slots will be allocated to the new airlines and the remaining to the existing airlines. In case the demand from the new airlines is not there to the extent of 50% then the balance slot can be allocated to the existing airlines.*

.....

VI) *Historicity*

1. *'Use it or Lose It' Rule:*

Historic precedence is only granted for a series of slots if the airline can demonstrate to the satisfaction of the coordinators that the series was operated at least 80% of the time during the period allocated in the previous equivalent season. Coordinators should provide timely feedback to the airlines about flights at risk of failing to meet the maximum 80% usage requirement during the season to allow to take appropriate action.

2. *Eligibility for Historic Precedence:*

- (i) *The following guidelines would be used to determine which slots are eligible for historic precedence and the number of operations required to achieve 80% usage:*
 - (a) *The series of slots held on the Historic Baseline Date of 31st January (summer) and 31st August (winter) is used as the basis for determining eligibility for historic precedence.*
 - (b) *For the series of slots newly allocated after the Historic Baseline Date, the number of slots in the series on the date of first allocation forms the basis of the 80% usage calculation.*

.....

- (ii) *Cancellations after the Historic Baselines Date: All cancellations made after the Historic Baseline Date are considered as non-utilization of the series of slots in the 80% usage calculation, unless the non-utilization is justified.*

.....

VII) Slot Allocation

Determination of Historic Slots:

- 1. The coordination process is initiated when the coordinator provides each airline with the details of their historic slots as a Slot Historical Allocation List (SHL) message. These messages must be distributed for each airport when the historic slots are determined by the coordinator, but not later than the SHL Deadline. The historic slots will be established for domestic and international operations by this deadline.*
- 2.*
- 3. No new differences related to the SHLs will be considered by the coordinator after the Agreed Historics Deadline.*

Initial Slot Submission by Airlines:

- 4. The airlines would be required to file their slot request for initial allocation twice each year for the summer and winter seasons with the concerned Coordinator of the Level 3 airport. The actual deadline for filing of this request would be as stated in the IATA WSG Coordination Calendar, around mid-October for the ensuing summer season (which starts on the last Sunday of March) and mid-May for the ensuing winter season (which starts on last Sunday of October).*
- 5. Initial Submissions must include requests for all domestic and international slots that an airline intends to operate during the season, including flights at the beginning of the season that originate in the preceding season.*
- 6. If a coordinator notices that an airline has failed to apply for a historic slot, then the coordinator should immediately ask the airline to clarify its submission. If the airline falls to respond within 24 hours, then the slot may be allocated to another airline.*

.....

Slot Allocation Priorities:

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16. *The criteria for allocation of slots available in the slot pool to various airlines should be as under:*
- i) New Entrants: an airline requesting a series of slots at an airport on any day where, if the airlines request were accepted, it would hold fewer than 5 slots at that airport on that day.*
 - a) Only airlines are eligible for new entrant status.*
 - b) 50% of the slots contained in the pool at initial slot allocation must be allocated to new entrants unless; requests by new entrants are less than 50%.*
-
- ii) Amendments: After the publication of the final slot allocation plan by the respective airport operators no amendments would be made, except ad hoc amendments due to weather / technical reasons (attributable to airport operator)/operating restrictions (like watch hours/sunset restrictions etc.) may be considered.*
-

VIII) Slot Return and Historic Baseline

- 1. Airlines should only hold slots that they intend to operate or use. To ensure that scarce capacity is not wasted airlines must immediately return any slots they know they will not use. Even at short notice, it may be possible to reallocate returned slots to other operators.*
 - 2. In particular, series of slots that no airline does not intend to operate must be returned no later than the Slot Return Deadline dates of 15th January (summer) and 15th August (winter).*
-

IX) Coordination after final Slot Allocation

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- 7. Slots of an airline which ceases to operate at an Airport:*
- i) An airline that ceases operations at an airport must immediately return all of the slots allocated to it for the remainder of the season and for the next season (if already allocated) and advise the coordinator whether or not it will use the slots in the future.*

ii) *If an airline fails to provide the necessary information by a reasonable deadline date set by the coordinator then the coordinator may withdraw and reallocate the slots. In the allocation of the withdrawn slots, preference will be given to another airline that is willing to operate on the virgin route.*

8. *Slots of an Airline that loses its operating license:*

- i) *Slots can only be held by an airline with a valid operating license. If an airline ceases to hold a valid operating license, its slots revert to the slot pool.*
- ii) *In the case of bankruptcy (or similar proceedings) the representatives of the airline should enter into dialogue with the coordinator to disuse their future intentions for the slots and provide the contact details of the administrator.*
- iii) *The slots may be reserved by the coordinator for one month pending reinstatement of the airlines operating license or a formal takeover of the airlines activities. The airline its legal representative or the responsible licensing authority should keep the coordinator informed of the airline status.*
- iv) *If dialogue has not been initiated within a reasonable deadline set by the coordinator and if there is not legal protection linked to bankruptcy then the coordinator should reallocate the slots.*

9. *Slots of an airline after merger and acquisition.*

- i) *When an airline is merged or acquired by another airline the series of slots held by this airline will be transferred to the acquiring airline.*
- ii) *The historic slots held by the merged or acquired airline will be transferred to the acquiring airline which will enjoy the historicity of these slots as if it itself had held these slots.”*

➤ The Affidavit submitted by MoCA also outlines the Aeronautical Circular 03 of 2017 pertaining to the matter are reproduced below for ready reference:-

“3.4 If an Airline starts using the rights allocated to it initially but subsequently discontinues or curtails operations, it shall immediately inform the Ministry of Civil Aviation and DGCA about such discontinuance or curtail operation. If resumption is not planned within six months, or if it is planned but not effected within six months, the

unutilized rights will be treated as surrendered and Ministry of Civil Aviation will be free to allocate them to other Airlines.”

15. As the guidelines would indicate the allotment of slots is not automatic and needs to be sought by the Airline twice a year respectively for the summer and winter seasons. Once the slots are not used by particular Airline or vacated by it, the same is immediately allotted to another in order to optimize airport capacity. As already indicated a slot in a Level-3 Airport could not be left idle. The principle laid down in *Aircel (supra)* would accordingly be distinguishable on facts and cannot be applied to the case in hand. Though the slots are integral to the operation of an Airline, the same however cannot be held as assets of the Airline. More so when the Airline has not been using the slots *in praesenti* and had stopped operation prior to the insolvency commencement date.
16. It is submitted that the guidelines need to be interpreted progressively and harmoniously. If the non-utilisation of the slots are justifiable the slots of the Corporate Debtor could be restored back to it. The justifiable reason being the intervening commencement of insolvency. In this connection reference is made to para IX. 8 (ii) of the guidelines. The guidelines provide that the slots can only be held by an Airline against a valid operating license and if the Airline ceases to hold a valid operating license the slot revert to the slot pool. In case of bankruptcy (or similar proceedings) the representative of the Airline should enter into dialogue with the coordinator to disuse their future intentions for the slots and provide the contact details of the Administrator. The guidelines further go on to provide that the slots may be reserved by the coordinator for a period of one month pending reinstatement of Airline's operating license. In the instant case no such steps have been taken since the Corporate Debtor had ceased to use the slots prior to the date the insolvency came into effect.
17. It is submitted by the SRA that the Government of India on different forums have indicated that the allotment of slots of the Corporate Debtor to other Airlines was

temporary in nature. This itself demonstrated that once the Airline became operational, the slots would automatically get reverted / restored to the Corporate Debtor. In this connection reference is made to the letter dated 30.05.2019 of the MoCA to the Chairman of the State Bank of India (Financial Creditor). The relevant extract is as under.

“3(c) With regard to “Protection of existing slots allotted to Jet Airways at domestic airports especially at New Delhi and Mumbai)” it is informed that crisis of Jet Airways and suspension of flights has caused inconvenience to many air passengers. Ministry is seized of this matter to reduce the inconvenience of passengers and facilitate induction of additional capacity. It has been decided to allot some of the slots vacated by Jet Airways to other Airlines on purely temporary basis, for a period of 3 months.

4. In order to ensure that the slots are allocated in most equitable and transparent manner a committee has been constituted by the Government comprising of DGCA and Joint Venture / Pvt. Airlines / Slot Co-ordinators. This Committee would be allocating slots on temporary basis for 3 months only.

5. The historic rights of Jet Airways, as per the provisions of the extant MoCA, Guidelines for slots allocations will be protected. These slots would be made available to Jet Airways as and when they revive their operations as per the extant guidelines”.

Further, in an answer to a question in the Rajya Sabha regarding slots vacated by the Corporate Debtor, the Hon’ble Minister of State in charge of the MoCA on 20.11.2019 indicated that the slots vacated by the Corporate Debtor in Delhi and Mumbai have been allotted to various other Airlines up to 28.03.2020 i.e. end of winter schedule purely on temporary basis. The slots have been extended with the direction that no historic rights or seasonal continuity rights of the Jet Airways slots can be claimed by the Airlines. The Hon’ble Minister in reply to a question in the Lok Sabha on 05.03.2020 stated that the slots falling vacant due to sudden closure of the operation by the Corporate Debtor have been allocated to other Airlines up to the end of summer schedule 2020 purely on temporary basis.

The allocation so made are as per standard operating procedure in order to ensure transparency and equity.

18. The correspondence indicated above and the stand taken by the Government in the Parliament indicate that the slots vacated by the Corporate Debtor had to be utilised to the maximum possible extent. The slots though allotted on a temporary basis to other Airlines would have to be guided by the standard operating procedure and the guidelines for getting them restored to the Corporate Debtor.
19. The procedure under para IX. 8 (ii) of the guidelines have not been followed and as the guidelines indicate the coordinator could not have kept the slots idle for more than one month. As already indicated the Corporate Debtor did not possess or operate the slots on the date of insolvency.
20. The amendment to section 14(1)(d) of the Code having come into force on 28.12.2019 could not be held to be operative on the insolvency commencement Date. Besides as has been held the slots could not be regarded as assets of the Corporate Debtor. The letter dated 30.05.2019, indicated that the slots are allocated temporarily for a period of three months. The CIRP period continued for two years almost to the date. The slots accordingly could not have been kept vacant or reserved for such a long time in violation of the guidelines. Besides other Airlines have utilised those slots for all these years. Depriving them of the slots which they are still utilising / operating would be prejudicial to their as well as public interest, more so when the Corporate Debtor / SRA is yet to commence operations and prove its worth in operating an Airline.
21. It is further submitted by the learned senior counsel appearing for the SRA that the advertisement / press release for disinvestment of Air India, a Government of India undertaking, clearly mentioned that the slots allocated in favour of the Air India could be made available to the company / entity that would take over the behemoth.

Thus, it is canvased that there is no reason why such treatment should not be meted out to the Corporate Debtor.

22. No documents however been placed to substantiate and to verify the terms and conditions expressed in relation to the transfer, if any, of the slots, presently held by Air India. Even otherwise the entity / company that would take it over would inherit what the Air India presently has. It can have no claim over what Air India, or for that matter any entity, does not have dominion over. The analogy could not be extended to the Corporate Debtor, in as much as the Corporate Debtor had been divested of these slots w.e.f. 17.04.2019 when it ceased operations and was not operating / using them on the date of the insolvency commencement.
23. The allotment and operations of slots also has international ramifications. The SRA submitted that but for the insolvency commencement the Corporate Debtor would have satisfied its eligibility in operating during the winter schedule. But as already noticed the Corporate Debtor had ceased its operation much prior to the insolvency commencement date and on the date of insolvency commencement it did not have any slots operating in its favour. Viewed from any perspective the slots cannot be allocated to the Corporate Debtor beyond the procedure prescribed under the guidelines. Therefore, the claim of historicity advanced by the Corporate Debtor / SRA cannot be made available to it. Despite the temporary allotment of slots to the other Airlines, their restoration has to be worked out within the parameters prescribed under the guidelines.
24. The facts and circumstances would indicate that presently the slots cannot be restored to the Corporate Debtor on a historic basis. The thumb rule being 'use it or lose it'. Be that as it may, we must remember that running an Airline, much less reviving one, is not a facile business. It involves entire gamut of complex and diverse activities from land to sky and everything in between. In the present day air travel has rather become a necessity, than a luxury considered merely a decade

back. Increase in the number of Airlines would encourage healthy competition and provide a level playing field to the operators. The result would only benefit the consumer. It is not in dispute that the Corporate Debtor had been one of the first leading and sought after Airlines in the Country, until the financial debacle and probably certain lack of professional management grounded it. Thus, when the Airline is sought to be revived, which is the sole object of the Code, all concerned need to make concerted efforts to see that the move succeeds. Not only that it would revive and resurrect a beleaguered Airline but would provide much needed fillip to the aviation scenario in the Country. Keeping in view the purpose of Insolvency Resolution we trust that the authorities concerned including the Government of India shall take a holistic approach and provide necessary assistance to the SRA / Corporate Debtor in terms of the guidelines in allocation of slots as and when they are sought, so that the Airlines takes off the ground and possibly regain its lost glory.

25. Even otherwise the Corporate Debtor immediately after the approval of the Resolution Plan would not be utilising all the slots. It can only seek slots as and when it had the Aircraft and the attendant wherewithal and logistical support in place, which according to the Resolution Plan would be in phases. Therefore, the SRA would periodically seek allocation of slots and we are confident that the authorities concerned would consider them favourably.
26. It is submitted by the learned senior counsel for the SRA that the eligibility of 80% for historic precedence in the next season cannot be applied to it as it ceased its operation before the closure of the summer season. Precisely for the same reason the historicity could not have been protected as in order to gain historicity the Airline had to utilise more than 80% of the allocation. Moreover, the principle would only apply to the slots in the following season and successive seasons. The same could not be applied to the Airline operating after a hiatus of two years. The

intervening insolvency would not be a saving factor. Therefore, the submission made by the learned senior counsel cannot be accepted.

27. Considering the peculiar nature of slots allotment and its usage, the principle of slots allotment could not come within the commercial wisdom of the CoC. As already held the slots being not assets of the Corporate Debtor, the CoC's decision on protection of historicity would not be of any help to the Corporate Debtor.
28. With reference to Section 14(1)(d) of the Code the learned senior counsel appearing for the Union of India relied upon the principle enunciated by the Hon'ble Apex Court in *Rajendra K. Bhutta v. Maharashtra Housing and Area Development Authority & Anr.*: (2020) 13 SCC 208, and submitted that the Corporate Debtor was not in possession of the slots on the date of the insolvency commencement. It accordingly cannot claim any right to the slots.
29. The Hon'ble Court in the referred judgment have taken into consideration the connotation of 'possession' and 'occupation' of property by the Corporate Debtor. Section 14(1)(d) deals with the move by the owner or lessor to recover a property in the possession or in occupation of the Corporate Debtor. The allocation of slots cannot be construed as a 'property' of the MoCA or the DGCA or for that matter the Government of India. Moreover, there has been no move by these authorities to wrest control of the slots from the Corporate Debtor.
30. It would accordingly be appropriate to refer to some of the observations of the Hon'ble Court in *Rajendra K. Bhutta (supra)*.

"7. A bare reading of Section 14(1)(d) of the Code would make it clear that it does not deal with any of the assets or legal right or beneficial interest in such assets of the corporate debtor. For this reason, any reference to Sections 18 and 36, as was made by the NCLT, becomes wholly unnecessary in deciding the scope of Section 14(1)(d), which stands on a separate footing. Under Section 14(1)(d)

what is referred to is the “recovery of any property”. The ‘property’ in this case consists of land, ad-measuring 47 acres, together with structures thereon that had to be demolished. ‘Recovery’ would necessarily go with what was parted by the corporate debtor, and for this one has to go to the next expression contained in the said subsection.

8. One thing is clear that “owner or lessor” qua “property” is then to be read with the expression “occupied or in the possession of”. One manner of reading this clause is to state that whether recovery is sought by an owner or lessor, the property should either be occupied by or be in the possession of the corporate debtor. The difficulty with this interpretation is that a “lessor” would not normally seek recovery of property “occupied by” a tenant – having leased the property, a transfer of property has taken place in favour of a tenant, “possession” of which would then have to be recovered. This

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11. Regard being had to the aforesaid authorities, it is clear that when recovery of property is to be made by an owner under Section 14(1)(d), such recovery would be of property that is “occupied by” a corporate debtor.

xxx xxx xxx

15. The conspectus of the aforesaid judgments would show that the expression “occupied by” would mean or be synonymous with being in actual physical possession of or being actually used by, in contradistinction to the expression “possession”, which would connote possession being either constructive or actual and which, in turn, would include legally being in possession, though factually not being in physical possession.”

31. In any view of the matter the principles laid down in Rajendra K. Bhuta would not be made applicable nor section 14(1)(d) of the Code would have relevance as far as the allocations of slots to the Corporate Debtor is concerned. The provision would accordingly have no application in the case at hand.
32. The success of the Resolution Plan and its implementation is contingent upon certain future events as provided under Clause 7.6 of the Resolution Plan (pdf 275-

276 of the Application). Since the revival of the Corporate Debtor is dependent upon these factors, the CoC has approved the Resolution Plan taking into consideration the necessity of the conditions which are integral to the successful implementation of the Plan. Thus, the effective date also depends upon the conditions being fulfilled. Despite the effective date being uncertain the CoC has approved the same. Considering the peculiarity of the facts and totality of the circumstances, we feel it appropriate to agree with such decision of the CoC and its fiscal prudence, subject to the following.

33. During the hearing, the uncertainty of the time frame for implementation of the Resolution Plan was discussed. It is stated by the SRA in clause no. 7.6.2 (pdf 276) of the Resolution Plan that the effective date would mean the date of the fulfillment of all the conditions precedent as stated in clause 7.6.1 thereof. The SRA, at clause no. 7.6.4, has gone on to add that the consortium would make all endeavor to ensure all the compliances are done for the fulfillment of the conditions precedent within a period of 90 days. In the unlikely event that the conditions precedent are not complied within this period, SRA would require a maximum of 180 days more to fulfil the conditions. Failing which the Resolution Plan would stand automatically withdrawn without any further act, deed or thing. In view of such uncertainty in the 'effective date' the Bench suggested that let the effective date be the 90th day from the Approval Date (clause 3.1 at pdf page 201). The SRA as well as the Applicant (RP of the Corporate Debtor) had agreed to the suggestion. This in our opinion is not in the nature of a substitution or addition to the decision, commercial or otherwise, of the CoC. The suggestion is made only to give finality and certainty to the effective date, which the SRA has otherwise committed in the Resolution Plan to endeavor to do. It could accordingly be ordered so. Failing which the SRA / Corporate Debtor would be at liberty to approach this Authority for appropriate orders with regard to extension of the timeline, as would be deemed proper. That would help prevent the SRA from the frustration of 'automatic withdrawal' referred to in clause 7.6.4 of the Resolution Plan.

34. The SRA has proposed to provide future credits to the passengers for flying within a window period of 30 days to be registered within 180 days of the effective date. In our considered opinion the window period of 30 days appears to be quite negligible in the present circumstances and the pandemic. People the world over are jittery of travelling, more so by Air. Under such a situation most of the prospective passengers may not avail the sop within the period of 30 days. That would also be prejudicial to their interest. Besides considering the various conditions precedent there is possibility that the SRA would not be in a position to commence flight operations within 30 days of the 180th day of the effective date. The same was also discussed during the hearing and the SRA as well as the Applicant had agreed to extend the window to one year from the stipulated 30 days. Similar concessions would also apply to the employees / workmen who would be given future credits for one year in place of 30 days in flying with the Corporate Debtor.
35. The Resolution Plan doesn't take into account the dues of the employees and workmen during the CIRP period in view of the fact that except for 50 employees retained as 'Asset Preservation Team' of the Corporate Debtor none of the other employees or workmen were under the employment of the Corporate Debtor nor did they work for the Corporate Debtor during that period. Decision in that regard appears to be reasonable based on the principle of 'no work no pay'.
36. It is beneficial to refer to the observation of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta &Ors.*: (2019) SCC OnLine SC 1478 as under:
- “67.
- A successful resolution Applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who successfully take over the business of the*

corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove.”

37. In view of the above ruling of the Apex Court, the Resolution Applicant takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject to orders passed herein. As already indicated the Resolution Plan has been approved by the CoC in its meeting held on 03.10.2020 with 99.22% votes.
38. In *K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257: (2019) 12 SCC 150* the Hon’ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2) of the Act. The Hon’ble Court observed that the role of the NCLT is ‘no more and no less’. The Hon’ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.
39. In **CoC of Essar Steel** (*supra*) the Hon’ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon’ble Court observed as under:

*“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (supra).”*

40. We do not consider preceding observations made by us violate the import of the principles laid down by Hon’ble Apex Court (*supra*). These have rather been made to safeguard the interest of the stakeholders and to ensure proper and successful implementation of the Resolution Plan.
41. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37 and 38 of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved as provided under Section 31 of the Code and subject to the observations above. Hence ordered.

ORDER

The Application be and the same is allowed. The Resolution Plan submitted by consortium of Mr Murari Lal Jalan and Mr Florian Fritsch annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.

- a. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

- b. The claim of two Sahara group companies has been dealt with and rejected in IA No. 2271 of 2020. The rights and liabilities of the parties in respect of the claim shall abide by the orders passed in the proceedings resulting from Execution Application No. 161 of 2009 initiated by Sahara.
- c. The demerger of employees / workmen to AGSL and protection of their salaries and emoluments including terminal benefits shall abide by the commitment made by the SRA at clause 6.4.2 pt. (i) (pdf pg. 235 to 237) of the Resolution Plan.
- d. The Effective Date would mean the 90th day from the Approval Date. In case the SRA / Corporate Debtor fails to secure fulfilment of all the conditions precedent as stated in clause 7.6.1 of the Resolution plan, it would be at liberty to approach this Authority for appropriate orders with respect to the extension of timeline.
- e. The window period of future credit to passengers and employees & workmen shall be one year from the Effective Date. The beneficiaries shall however, get themselves registered within 180 days from the effective date to avail the facility.
- f. As far as the permits held by the Corporate Debtor and the rights and benefits accrued therein, the Corporate Debtor (under the new Management) shall approach the authorities concerned for renewal and that the same may have to be considered by them favourably, subject to relevant Law and Rules, so that the implementation of Plan becomes smooth.
- g. With regard to the reliefs and concessions sought by the Resolution Applicant in respect of the Corporate Debtor, the Monitoring Committee or the new Management, as the case

maybe, may approach the respective authorities and departments for such reliefs. The authorities concerned may favourably consider such applications as deemed proper under law, keeping in view the object of resolution of the Corporate Debtor as envisaged in the Code and various pronouncements of the Hon'ble Apex Court.

- h. The DGCA and the MoCA shall consider the Application / Representation of the Corporate Debtor for renewal / grant of Airport Operating Permit with due despatch. The appropriate Authority shall consider the allocation of slots to the Corporate Debtor in terms of the observation made at Para 24 & 25 supra.
- i. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- j. Henceforth, no erstwhile creditors of the Corporate Debtor can claim anything other than the liabilities taken over by the Resolution Applicant.
- k. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- l. The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall file Status Report of its implementation before this Authority from time to time, preferably every quarter.

- m. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- n. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant for necessary compliance. The certified copy so granted shall include the Resolution Plan approved herein.

Sd/-

V. Nallasenapathy
Member (Technical)

Sd/-

Janab Mohammed Ajmal
Member (Judicial)

**NATIONAL COMPANY LAW TRIBUNAL
COURT No. – I, MUMBAI
URGENT BENCH**

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**I.A. No. 2081/2020
in
C.P. (IB) No. 2205/MB/2019**

**State Bank of India
V/s
Jet Airways**

***** ****

Dated 22nd June, 2021

ORDER

Sr. No. 2

The matter is taken up on VC. Counsel for the Applicant, Successful Resolution Applicant and CoC are present. Mr. Ashish Mehta, Counsel for DGCA and MoCA is also present. Order pronounced. IA No. 2081 of 2020 is allowed subject to certain directions, vide separate order.

**Sd/-
V. NALLASENAPATHY
Member (Technical)**

**Sd/-
JANAB MOHAMMED AJMAL
Member (Judicial)**