



IBC16's Easy Explainers

JET AIRWAYS (INDIA) LTD.



JET AIRWAYS

The Background

It was started by a determined Naresh Goyal with 4 leased aircraft in 1993 and went on to become a renowned organization.

Difficulties first surfaced in August 2018, when the company put off sharing the results of its second quarter. Inconsistencies within the financials were immediately noticed, and an audit was conducted subsequently. Jet Airways announced a loss of approximately 1300 crores.

In September 2018, Jet Airways was suspected of financial misappropriation after a survey conducted by the Income Tax Department.

The Origin of Troubles

Now considered one of the biggest organizational failures in India, Jet Airways declared bankruptcy after it failed to repay its mounting debt and finally stopped its operations on 17th April 2019.

The main cause of the business troubles was unarguably its merger with Sahara Airlines, which it later rebranded as 'Jet Lite'. Mergers and acquisitions are always discussed as high-risk transactions. Successful airlines have gone down in history as failures because of a miscalculated adventures with their own brand.

The Notable Events, Chronologically Presented:

- **CIRP Initiated**

(20 June 2019: NCLT, Mumbai Bench)

The State Bank of India filed the insolvency application to start the insolvency resolution process of Jet Airways (“Jet”). Two additional applications were also filed by two parties, who claimed to be operational creditors to Jet.

The three petitions were dealt with through one common order. It was submitted that the combined default across the three applications was approximately four hundred and sixty crore rupees.

The matter was declared of national importance as 20,000 employees were at the receiving end of the resolution process. The application for initiation of the corporate insolvency resolution process of Jet Airways was admitted.

- **Imposition of a Restraining Order**

(5 July 2019: NCLT, Mumbai Bench)

A miscellaneous application was filed by the Resolution Professional as he sought a restraining order against Jet from de-registering an aircraft, till the insolvency resolution process was completed.

Jet attempted to unregister the aircraft beyond the purview of the Code and to use it for paying off some debt. The action was found incompatible with the mandate of the moratorium imposed under Section 14 of the Code.

The Tribunal issued a notice against Jet Airways, directing it to maintain the status quo.

- **The Question of Parallel Insolvency Resolution Processes**

(5 July 2019: NCLT, Mumbai Bench)

Jet Airways also had liquidation proceedings initiated against it in Holland (The Netherlands), where their 'regional hub' was located. This posed a problem, as neither country had territorial jurisdiction over the other and India did not have a cross-border insolvency mechanism.

An understanding was reached between the various entities involved, to comply with the Corporate Insolvency Resolution Process in India.

- **Uncooperative CoC**

(21 August 2019: NCLAT New Delhi)

The Administrator representing Jet Airways in the Netherlands highlighted that the CoC was not being cooperative. The Bench directed the CoC to collaborate with their counsel and file an affidavit regarding their final decision regarding cooperation with the Administrator of Jet Airways.

The CoC was also directed to iron out the creases in the resolution of the debtor's insolvency in these exceptional cross-border circumstances.

- **Claims Collection**

(4 September 2019: NCLAT New Delhi)

As per Section 18 of the IBC, the Interim Resolution Professional (“IRP”) has to enlist all the claims of the financial and operational creditors.

The asset of the ‘Corporate Debtor’, if any situated outside the country for the control and custody of the same as in the present case can only be taken with an arrangement with the Administrator of ‘Jet Airways India Ltd.’ (‘Offshore Regional Hub’).

The question as to whether the ‘Committee of Creditors’ have any role to play is left open for decision at appropriate stage / in an appropriate case but for the present, we allow the ‘Committee of Creditors’ to guide the ‘Resolution Professional’ to enable him to prepare a (draft) agreement showing the terms and conditions to take up the matter with the Administrator of Holland for his consent. If a draft agreement is agreed upon by the Administrator of Holland, it may be placed before this Appellate Tribunal.

- **Seeking Directions Against the CoC**

(25 September 2019: NCLT, Mumbai Bench)

Another miscellaneous application was filed by the Resolution Professional (“RP”) as they sought a direction to the CoC to sanction and disburse funds towards interim finance, which would have enabled the RP to carry out his duty without any delay.

The RP contended that the consortium faced several hardships in running Jet Airways, due to the unavailability of funds to meet the essential costs.

The Bench passed an order directing the members of the CoC to sanction necessary interim finance immediately and make the necessary funds available to Jet.

- **Cross-Border Insolvency Protocol**

(26 September 2019: NCLAT New Delhi)

In accordance with the guidelines given to them previously, the Dutch Administrator and the RP of Jet Airways filed their terms and conditions agreements.

The protocol was entered into between Ashish Chhawchharia as the Resolution Professional of Jet Airways Limited, and Rocco Mulder as the Dutch Administrator. The company was subject to parallel insolvency proceedings in India and in the Netherlands.

Objectives of the protocol included coordination within the proceedings, communication among parties and the CoC, information, and data sharing, preservation of the resources of the company by maximizing assets/recoveries, and reconciliation.

The Bench made it clear that the 'Committee of Creditors' had no role to play as the agreement reached between the 'Dutch Administrator' and the 'Resolution Professional' of India is on the basis of the direction of this Appellate Tribunal.

- **ORDER under Section 60(5) of IBC, 2016**

(11 June 2020: NCLT, New Delhi Bench)

The RP of Jet Airways had filed for an approval of the Tribunal for the sale of one of the non-core assets of the organisation to clear overseas debt and to clear six aircrafts from any encumbrances, so that it would maximize the value of Jet during the resolution process. The depreciated value of the six aircrafts was over USD 200 million.

The resolution for the sale had been passed at the 10th CoC meeting with 74.45% votes. The proceeds from the sale were decided to be utilized for clearing off the dues payable to the Export-Import Bank of the United States.

The sale was ratified by the Adjudicating Authority.

- **The Interlocutory Appeals**

(22 Feb 2021: NCLT, Mumbai Bench)

Apart from SBI, several operational creditors of Jet Airways such as Jet Airways' domestic pilot's body, the National Aviators Guild (NAG), Jet Aircraft Maintenance Engineers' Welfare Association (JAMEWA), Bhartiya Kamgar Sena (BKS), Jet Airways Cabin Crew Association (JACCA) and All India Jet Airways Officers' and Staff Association (AIJAOSA) filed separate applications pleading for permission to be furnished regarding the Resolution Plan once it is approved and to participate in the hearings and proceedings held by the Tribunal, and for being granted individual hearings, along with other reliefs.

Jet Airways filed separate replies to each applicant and contended that the applications deserved to be dismissed since granting this relief would exhaust the threshold of the number of parties that can rightfully participate in the proceedings.

Jet Airways also contended that IP regulations mandated the Resolution Professional to ensure and maintain the confidentiality of information being sought by the applicants.

The Bench emphasized the fact that the applicants were operational creditors, and that made their role in the resolution process extremely limited. Hence, they could not be entitled either to the plan or to participate in the process. Therefore, the three applications were rejected.

- [**An application under Section 60\(5\) of the I & B Code, 2016 r/w Rule 11 of the National Company Law Tribunal, Rules, 2016**](#)

(18 March 2021: NCLT, Mumbai Bench)

The application sought a declaration of the monthly fees payable to Mack Star Marketing Private Limited (“Mack Star”) under service agreements, permission to the applicant to file a claim for their payment, and for the payment to be treated as a CIRP cost, along with a few other reliefs.

Mack Star had permitted Jet Airways to use its premises in Mumbai for office purposes on a leave and license basis, in accordance with an agreement. Jet Airways failed to pay the monthly rent to Mack Star. When a notice was sent, Jet Airways failed to respond to it. Therefore, the Applicant issued a notice to vacate the premises, which was also ignored.

It was submitted that a letter was sent to Mack Star by Jet, which addressed the termination of the agreement; and that it sought a refund of the security deposit furnished by them. This letter was not annexed by the Applicant.

In accordance with the terms and conditions of the license agreement, the Bench observed, the Applicant was not entitled to any payment and had to refund the security deposit back. Jet was directed to hand over the possession of the premises.

- **Resolution Plan Approved**

(22 June 2021: NCLT, Mumbai Bench)

This significant application sought the approval of the resolution plan submitted by the consortium of Jalan and Fritsch.

The resolution plan was approved and came into force on the day itself. It was binding on Jet Airways, its employees, members, creditors, the Centre, and the States, along with any other authority to whom a debt in respect of payment was due.

The claims put forth by the Sahara Group companies were rejected, and they were to abide by the orders passed in the proceedings consequently.

A monitoring committee was provided, to facilitate the implementation of the resolution plan and is to file a Status Report of its implementation before the NCLT on a quarterly basis. Additionally, 95 percent of the Jet Airways employees are presently required to give their consent to Kalrock-Jalan's proposal or they would lose the benefits offered under it. Voting for the same would continue till 4 August 2021.

With the resolution plan approved, it is possible that Jet Airways would be able to operate again. However, the airline getting its slots back at airports would be a challenge, as the Civil Aviation Ministry and the Directorate General of Civil Aviation (DGCA) have previously made it clear that the airline cannot claim its old slots. Therefore, it is going to be challenging for Jet Airways to win back its slots, which were allocated amongst different airlines while it was going through the resolution process.