

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 16/2018 and CM APPL. 1424/2018

Reserved on: 24.01.2018

Date of decision: 13.02.2018

IN THE MATTER OF:

INTERGLOBE AVIATION LIMITED & ANR. Petitioners

Through: Mr. Mukul Rohatgi and Mr. Sandeep Sethi, Senior Advocates with Mr. Gaurav Sarin, Mr. Arjun Krishnan, Mr. Ashish Tiwari, Mr. Ankur Singh and Mr. Sumit Srivastava, Advocates

versus

UNION OF INDIA AND ORS Respondents

Through: Ms. Anjana Gosain, Ms. Rabiya Singh Thakur and Ms. Shalini Nair, Advs. for R-1/UOI and R-4/DGCA.

Mr. Parag P. Tripathi, Senior Advocate with Ms. Vijaya Lakshmi Menon, Mr. Anish Kapur and Mr. Anirudh Bakhru, Advocates for R-2/DIAL. Mr. Digvijay Rai with Mr. Pulkit Tyagi, Advocates for R-3/AAI.

Mr. Dhruv Mehta, Senior Advocate with Mr. Saurabh Mishra, Advocate for R-5/Spicejet. Mr. Neeraj Kishan Kaul and Mr. Darpan Wadhwa, Senior Advocates with Mr. Rajshekhar Rao, Ms. Meghna Mishra and Mr. Ankit Rajgarhia, Advocates for R-6/GoAir.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

HIMA KOHLI, J.

1. The appellant No.1, a public listed company, that provides Scheduled Air Transport Services in the name and style of 'IndiGo' (hereinafter referred to as '**IndiGo**') is aggrieved by the judgment dated 20.12.2017 passed by the learned Single Judge, dismissing the writ petition filed by it (W.P.(C) 9820/2017) praying *inter alia* for issuance of a writ of certiorari and prohibition in respect of the directions contained in the letters dated 06.09.2017, 28.09.2017, 05.10.2017 and 21.10.2017 issued by the respondent No.2/Delhi International Airport Limited (in short '**DIAL**'), directing it to operate its flights to and fro Mumbai, Kolkata and Bengaluru w.e.f. 04.01.2018 from Terminal-2 (in short '**T-2**') of Indira Gandhi International Airport (in short '**IGI Airport**'). Additionally, the appellants/petitioners had prayed for issuance of a writ of certiorari in respect of a letter dated 14.06.2017 issued by the respondent No.1/Ministry of Civil Aviation, Union of India, permitting the respondent No.2/DIAL to decide a suitable course of action for shifting of the operations of the appellants/IndiGo, respondent No.5/Spice Jet Limited (in short '**SpiceJet**') and respondent No.6/Go Air (India) Limited (in short '**GoAir**') to ensure that Terminal-1 (in short '**T-1**') is decongested and T-2 is meaningfully utilized.

2. Before considering the arguments advanced by learned counsels for the parties, we may refer to the sequence of dates and events that culminated in the directions issued by the respondent No.2/DIAL, calling upon the appellants and the respondents No.5 and 6 to operate their flights in respect

of three sectors, i.e., Mumbai, Kolkata and Bengaluru w.e.f. 04.01.2018, from T-2.

3. Taking note of the exponential growth witnessed by the Indian aviation sector, particularly in the domestic sector and a steep rise in the operation of low costs carriers, the respondent No.1/UOI held a meeting on 05.10.2015, directing the respondent No.2/DIAL and respondent No.3/Airport Authority of India (in short '**AAI**') to take immediate steps to increase the number of boarding gates, widen airport entry gates, increase post security check-in areas and boost the CISF manpower deployment. As a result, the respondent No.2/DIAL took a decision to implement the approved Master Plan, 2016 for development and expansion of T-1 so that its existing capacity of 20 million passenger per annum (in short '**mppa**') is enhanced to 35-40 mppa, and to renovate/modernize the existing T-2, that is primarily used for Haj operations. Once the renovation work at T-2 was completed, several meeting were held by the respondent No.2/DIAL with the domestic airline operators in order to operationalize T-2 so as to ease the congestion at T-1. After some deliberations, the respondents No.1/UOI and respondent No.3/AAI decided on 07.06.2017 that all airlines operating from T-1 should discuss amongst themselves, the modalities of operationalizing T-2 and suggest the course of action to the respondent No.2/DIAL within one month. In furtherance to the said decision, the respondent No.2/DIAL made efforts to amicably resolve the issue so that an interim arrangement could be made to shift flight operations of the three airlines, i.e., IndiGo, SpiceJet and GoAir so that the entire redevelopment work could be executed in approximately 42 months.

4. Respondent No.2/DIAL addressed a communication dated 16.08.2017 to all the three airlines, calling upon them to take a decision of their own as to which of their operations did they propose to shift from T-1 to T-2. The respondent No.2/DIAL took a stand before the learned Single Judge that only when the three airlines had failed to intimate their decision, was DIAL compelled to issue a communication dated 06.09.2017, stating *inter alia* that w.e.f. 29.10.2017, all flight operations of the three airlines, to and fro the three sectors, referred to hereinabove, shall be shifted from T-1 to T-2. Despite the said communication, the appellants/IndiGo, the respondent No.5/SpiceJet and the respondent No.6/GoAir did not start the process of shifting of their operations to T-2.

5. This was followed by a letter dated 28.09.2017 addressed by the respondent No.2/DIAL to all the three airlines stating that the respondent No.6/GoAir would be shifting its entire operations from T-1 to T-2. In its subsequent letter dated 05.10.2017, the respondent No.2/DIAL intimated that w.e.f. 29.10.2017, all the flights of the appellants/IndiGo and the respondent No.5/SpiceJet operating to and fro Mumbai, Kolkata and Bengaluru shall be operated from T-2 and that the respondent No.6/GoAir had expressed its willing to shift its entire operations from T-1 to T-2 w.e.f. 29.10.2017. Vide letter dated 21.10.2017, the respondent No.2/DIAL revised the deadline for the appellants to shift its operations of flights for the aforesaid three sectors to 04.01.2018. On 27.10.2017, the respondent No.2/DIAL issued a press release declaring that no additional slot shall be provided to any airline at T-1 for a period of three years.

6. The appellants/IndiGo approached the court in November, 2017, challenging the decision of the respondents No.1/UOI and respondent No.3/Airport Authority of India (**A.A.I.**) to shift the operation of its flights in respect of the three sectors mentioned above to T-2. The pleas taken on behalf of the appellants/IndiGo before the learned Single Judge were that the respondent No.2/DIAL had failed to address the concerns of IndiGo as flagged by it in several meetings and written communications relating to the passengers' inconvenience; lack of transparency in the decision making process and absence of a consultative approach and of ignoring the operational difficulties likely to be faced by IndiGo due to the unrealistic approach of splitting and shifting its operations that would adversely impact its overall efficiency and cost. The appellants/IndiGo also pleaded that the permission given by the respondent No.2/DIAL to the respondent No.6/GoAir to shift its entire operations to T-2 is discriminatory and arbitrary inasmuch as no such option was given to them to retain their entire operations at T-1.

7. As for the respondent No.5/SpiceJet, it had objected to the proposal of the appellants/IndiGo to exclusively operate from T-1 on the ground that it would be anti-competitive. SpiceJet had also referred to various difficulties that it shall have to face in operating flights partially from T-1 and partially from T-2.

8. Coming to the respondent No.2/DIAL, it was canvassed before the Single Judge that shifting of the flight operations of the three airlines was a purely an interim measure taken in public interest for enhancing the existing capacity of T-1 from 20 mppa to 35-40 mppa; that the difficulties expressed

by IndiGo of splitting its operations and of the financial implications and operational difficulties likely to be faced by it, could not take priority over public interest; that several efforts were made by DIAL to amicably resolve the issue by calling upon all the three airlines to take a decision on their own as to which of the operations they proposed to shift but due to their adamant attitude, an administrative decision had to be taken by it as to the manner in which the available space could be put to optimum use between T-1 and T2 during the period of the ongoing renovations; that the decision communicated by DIAL on 16.08.2017 was backed by a detailed and comprehensive study. It was further submitted on behalf of the respondent No.2/DIAL that the communication dated 06.09.2017, directing all the three airlines to shift their operations for the three sectors from T-1 to T-2 w.e.f. 29.10.2017, was based on a comprehensive study and analysis of the traffic data that had factored in the passengers' convenience and safety norms, but when the appellants/IndiGo and respondent No.5/SpiceJet had simply refused to cooperate, the date of shifting had to be pushed to 04.01.2018.

9. Responding to the objection raised by the appellants/IndiGo that DIAL had discriminated against it by permitting the respondent No.6/GoAir to move its entire operations to T-2 from 29.10.2017, learned counsel for the respondent No.2/DIAL had contended before the Single Judge that the said decision had to be taken in view of the rigid stand taken by IndiGo and SpiceJet of not shifting a part of their operations to T-2 and also keeping in mind the fact that GoAir's passenger traffic for the year 2016-17 was the least at 3.6 mppa, as against 16.1 mppa for IndiGo and 4.3 for SpiceJet. Faced with a situation where IndiGo and SpiceJet were unwilling to budge

an inch and the willingness expressed by the respondent No.6/GoAir to shift its entire operations to T-2, the respondent No.2/DIAL allowed GoAir to do so in the interest of public safety, safety of flight operations and primarily for expediting the redevelopment activity at T-1.

10. Due to the urgency in the matter, the learned Single Judge appears to have dispensed with completion of pleadings in the writ petition filed by the appellants/IndiGo and had directed the respondent No.2/DIAL to produce all the relevant records pertaining to the Internal Assessment Reports that formed the basis of its decision to shift flight operations of all the three airlines in respect of the three sectors, from T-1 to T-2. The said records were duly produced by the respondent No.2/DIAL and perused by the learned Single Judge. Thereafter, on the basis of the submissions made by learned counsels for the parties and on examining the relevant records and the case law cited by them, vide judgment dated 20.12.2017, the learned Single Judge dismissed the writ petition filed by the appellants/IndiGo by holding that the impugned decision taken by the respondent No.2/DIAL did not warrant any interference. However, having regard to the fact that the deadline for the appellants/IndiGo and the respondent No.5/SpiceJet to commence their operations from T-2 was going to expire on 04.01.2018, the timeline for shifting their operations was extended upto 15.02.2018. It was also directed that in the event, the appellants/IndiGo and the respondent No.5/SpiceJet make a request to the respondent No.2/DIAL to shift the volume of operations of their flights, which would be at par with the identified sectors, namely, Mumbai, Kolkata and Bengaluru, within seven days from the date of pronouncing the judgment, it would be open for the

respondent No.2/DIAL to consider and dispose of such a request within seven days from the date of receipt thereof. Aggrieved by the impugned judgment, the appellants/IndiGo have filed the present appeal.

11. It is noteworthy that when the present appeal was listed for admission on 16.01.2018, in view of the submission made by Mr. Mukul Rohatgi, learned Senior Advocate appearing for the appellants/IndiGo that the learned Single Judge has erred in taking into consideration a projection of traffic at T-1 for the year 2016-17 as 16.1 mppa for IndiGo as furnished by the respondent No.2/DIAL, whereas the actual volume of passengers traffic flying with IndiGo, would stand at 14.62 mppa, directions were issued to the respondent No.4/DGCA to file a brief affidavit alongwith a tabulated compilation of the passenger volumes of the three airlines for the years 2016-17, upto 31.12.2017. With these directions, the matter was adjourned to 18.01.2018.

12. On 18.01.2018, Ms. Anjana Gosain, learned counsel for the respondent No.4/DGCA had handed over a short affidavit with copies to all the parties. Enclosed with the said affidavit was a schedule of “*Domestic Revenue Passenger Statistics*” in respect of the three airlines for the period between April, 2017 to December, 2017, to and fro Delhi, which records the domestic revenue passengers of the appellants/IndiGo as 12.17 mppa, of the respondent No.5/SpiceJet as 3.7 mppa and of the respondent No.6/GoAir as 3.2 mppa. On the same date, learned counsel for the respondent No.4/DGCA was directed to furnish projections of the volume of passenger traffic for the quarter ending March, 2018, in respect of the three airlines, which was duly furnished and reflected that the projected passenger statistics from April,

2017 to March 2018 were 16.72 mppa for IndiGo, 4.97 mppa for SpiceJet and 4.61 mppa for GoAir.

13. Mr. Parag P. Tripathi, learned Senior Advocate appearing for the respondent No.2/DIAL had stated that the said statistics furnished by the respondent No.4/DGCA were not inclusive of the non-revenue passengers of all the three airlines, which is ordinarily between 2% to 3% of the figures projected by the DGCA and if the same is added, then the projections furnished by the respondent No.2/DIAL and recorded in para 8 of the impugned judgment would be justified.

14. At that stage, we had deemed it appropriate to grant one last opportunity to all the parties to hold a meeting in the course of the day so as to find an amicable resolution to the dispute, failing which it was made clear that they should be ready to address arguments on the next date, i.e., on 19.01.2018. On 19.01.2018, counsels for the parties had stated in unison that they had made some headway in the meeting and if granted some more time, there was a likelihood of their reporting an amicable resolution. At joint request, the matter was adjourned to 24.01.2018. However, it was made clear that in the event no settlement is reported on the next date, the parties shall be ready to address arguments on merits. On 24.01.2018, learned counsels for the parties stated that their efforts to resolve the matter had not borne any results. Accordingly, the parties were called upon to address arguments on merits.

15. The arguments of Mr. Mukul Rohatgi, learned Senior Advocate appearing for the appellants/IndiGo were founded on the alleged inaccurate projections of the passenger traffic at T-1 by the respondent No.2/DIAL, as

recorded in para 8 of the impugned judgment. It was his submission that knowing very well that the respondent No.2/DIAL had itself addressed a letter dated 16.08.2017 to all the three airlines informing them that no new flights shall be permitted during the period of renovation, it had furnished the said projections of passenger traffic at T-1 for the year 2016-17 on a wrong assumption that the volume of passenger traffic was likely to rise. Disputing the volume of passenger traffic at T-1 furnished by the respondent No.2/DIAL in respect of the appellants/IndiGo for the year 2016-17 as 16.1 mppa, learned counsel had asserted that the correct figure is 14.62 mppa and that 16.1 mppa only reflects the maximum capacity of IndiGo for the said year and not the actual number of passengers flying with it. Alluding to the three options given by the respondent No.2/DIAL in the meeting held on 04.01.2017 to deliberate on the management of passenger traffic during the expansion phase of T-1, he submitted that all of them are flawed and impractical and would lead to splitting of operations, thereby causing immense inconvenience to the passengers and stretching the finances and infrastructure of IndiGo, which was an avoidable exercise. It was vehemently argued that keeping in mind the statistics furnished by the respondent No.2/DIAL that revealed that in the year 2016-17, the volume of passenger traffic flying with SpiceJet was 4.3 mppa and of those flying with the respondent No.6/GoAir was 3.6 mppa, the respondent No.2/DIAL ought to have accepted the suggestion made by the appellants/IndiGo to retain all their operations at T-1 and instead, call upon the respondent No.5/SpiceJet and the respondent No.6/GoAir to relocate their entire operations to T-2.

16. Referring to DIAL's Supplementary Report dated 03.07.2017 on assessment of T-1 capacity during the development work (Annexure A-5), learned counsel for the appellants/IndiGo canvassed that even as per the respondent No.2/DIAL, T-1 has a capacity of 20 mppa and if the said capacity is likely to be scaled down to 13-17 mppa on the commencement of the expansion work, IndiGo can be fully accommodated in T-1 since its actual passenger traffic in the year 2016-17 was 14.62 mppa, which was well within the optimum capacity at T-1, capped at 17 mppa. It was urged that no useful purpose would be served by calling upon the appellants/Indigo to split its operations between T-1 and T-2, when remaining at T-1 during the period of renovation, was the most viable option. Further, keeping in mind the passenger capacity of T-2 which is 12 mppa, even if the respondent No.5/SpiceJet and respondent No.6/GoAir are asked to shift their entire operations to T-2, having regard to their collective traffic volume in the year 2016-17, which is 7.9 mppa, T-2 would have enough capacity to cater to additional traffic volumes upto 4 mppa, over the next three years. Learned counsel also sought to highlight the fact that though the arguments advanced on behalf of the appellants have been recorded in para 10 of the impugned judgment, they have not been dealt with and the learned Single Judge has been swayed by the pleas taken by the by the respondent No.2/DIAL alone.

17. Much stress was laid on behalf of the appellants/IndiGo on the fact that the scope of the judicial review was not so narrow that the court would refuse to interfere in the decision taken by the respondent No.2/DIAL, when such a decision is not based on relevant material and considerations, as was the case here. Reference was made to the decision in the case of Coimbatore

District Central Co-operative Bank vs. Coimbatore District Central Co-operative Bank Employees Association & Anr. reported as **(2007) 4 SCC 669** and Teri Oat Estates (P) Ltd. vs. U.T. Chandigarh & Ors. reported as **(2004) 2 SCC 130**, where the Supreme Court had recognized the fact that the doctrine of proportionality had come to stay in the legal system and it was contended that if the action taken by an authority is contrary to law, improper, irrational or otherwise unreasonable, courts are empowered to interfere by exercising their powers of judicial review, by examining the process method and manner adopted by the decision maker to arrive at a decision.

18. The aforesaid arguments were countered by Mr. Parag P. Tripathi, Senior Advocate appearing for the respondent No.2/DIAL, who defended the impugned judgment and asserted that there was no scope of judicial review in a purely administrative decision of the nature involved in the present case. Referring to the decision of the Supreme Court in the case of Essar Steel Ltd. vs. Union of India and Ors. reported as **(2016) 11 SCC 1**, it was canvassed that in exercise of their powers of judicial review, the courts must not sit in judgment over commercial and business decisions taken by parties, unless and until such a decision is in clear violation of the statutory provisions or is perverse or taken for extraneous considerations or improper motives. He submitted that none of the aforesaid conditions exist in the present case and nor have the appellants attributed any *malafides* against the respondent No.2/DIAL for taking such a decision, that was preceded by due deliberations and is based on prior internal assessments.

19. It was further argued on behalf of the respondent No.2/DIAL that if two or more views are possible in a given situation, then merely because a better alternative may exist, would not be a ground for the court to examine the matter afresh. To substantiate the said submission, reliance was placed on the judgment of the Supreme Court in the case of Directorate of Film Festivals and Ors. vs. Gaurav Ashwin Jain and Ors. reported as **(2007) 4 SCC 737**. Stating that it has consistently been held by the Supreme Court in several decisions that judicial review is concerned with the decision making process and not the merits of the decision taken, reference was made to V. Ramana vs. A.P. SRTC and Ors., reported as **(2005) 7 SCC 338**. The decisions in the cases of Narmada Bachao Andolan vs. Union of India and Ors. reported as **(2000) 10 SCC 664** and Directorate of Film Festivals (supra) was cited to press home the argument that courts cannot sit in appeal over administrative decisions and nor can they interfere on the ground that the acts of the respondents are erroneous. Arguing that the courts are ill-equipped to enter into matters of complex technical nature like the present one and some play in the joints must be allowed to the authorities, reliance was placed on the decisions of the Supreme Court in the cases of Union of India and Ors. vs. J.D. Suryavanshi reported as **(2011) 13 SCC 167** and Metropolis Theater Company vs. City of Chicago reported as **228 US 61 (1913)**.

20. As for the respondent No.5/SpiceJet, Mr. Dhruv Mehta, Senior Advocate appearing for the said respondent opposed the present appeal and stated that any suggestion made by the appellants/IndiGo of shifting the

entire operations of SpiceJet to T-1, is anti-competitive in nature and will hurt its business interests. He stated that SpiceJet has accepted the decision taken by the respondent No.2/DIAL and as suggested, it is ready and willing to shift a part of its operations from T-1 to T-2, purely as a temporary arrangement and in the larger public good. He urged that the arguments of the appellants/IndiGo that since the volume of its passenger traffic is below 17 mpps, it ought to be permitted to retain all its operations at T-1, is fallacious and misconceived inasmuch as the Supplementary Report dated 03.07.2017 prepared by the respondent No.2/DIAL records that during the construction phase, the peak handling capacity of T-1 will be reduced by 1/3rd and its annual handling capacity will be reduced from 20 mppa to 13 mppa. He thus submitted that even if the data of passenger traffic for the year 2016-17 at 14.62 mppa, as projected by the appellants/IndiGo is accepted as correct, as against 16.1 mppa projected by the respondent No.2/DIAL, T-1 will not have sufficient capacity to cater to the passenger traffic of IndiGo.

21. We have carefully considered the arguments advanced by the learned counsels for the parties, perused the records and examined the case laws cited before us. We may note at the outset that during the initial stage of arguments, the impugned judgment was sought to be assailed on the ground that the learned Single Judge had not followed the settled procedure while disposing of the writ petition as no notice was issued to the respondents at any point of time and nor were they called upon to file their counter affidavits. Instead, arguments were permitted to be addressed right away,

causing serious prejudice to the appellants. We had then expressed our willingness to permit completion of pleadings in the appeal, but had made it clear at the same time that operation of the impugned judgment will not be stayed in that duration. At this, the aforesaid plea was dropped by the appellants/IndiGo and it was agreed by the parties that arguments shall be addressed in the appeal right away.

22. Another ground taken on behalf of the appellants/IndiGo was on the aspect of the special favour extended to the respondent No.6/GoAir, which was allowed to shift its entire operations from T-1 to T-2. However, at the time of addressing arguments, Mr. Rohatgi, learned Senior Advocate appearing for the appellants had fairly stated that he did not propose to press the said ground as IndiGo did not wish to upset the apple cart for the respondent No.6/GoAir that had already shifted its operations to T-2. Therefore, we do not intend to examine the said ground taken in the present appeal.

23. The main thrust of the arguments on behalf of the appellants/IndiGo were focused on the grave error allegedly committed by the learned Single Judge in overlooking the public interest and in assuming that the appellants were motivated only by commercial considerations and for failing to consider the passenger data submitted by IndiGo, in the correct prospective which, as per them, amply demonstrates that the actual number of passengers flown by them in the financial year (in short 'FY') 2016-17 was 14.62 mppa and not 16.1 mppa, as projected by the respondent No.2/DIAL. For ready reference, the projections of traffic volume at T-1, furnished by

the respondent No.2/DIAL and reproduced in para 8 of the impugned judgment are extracted below:-

Airlines	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
INDIGO	6.6	7.1	9.1	12.1	16.1	18.1
SPICEJET	4.2	4.4	4.0	3.6	4.3	4.9
GOAIR	2.1	2.4	2.8	3.1	3.6	4.0
TOTAL	12.9	13.9	15.9	18.8	24.0	27.0

24. To get a clear and objective picture of the passenger traffic generated by all the three airlines for the period between April, 2017 to December, 2017, on an actual basis and the projections from January, 2018 to March, 2018, on basis of the growth rate of the average of the previous months to and fro Delhi, we had called upon the respondent No.4/DGCA to file affidavits which it did. Following is the table prepared by the respondent No.4/DGCA indicating the volume of passenger traffic at T-1, in respect of each of the three airlines, to and fro Delhi :-

Month	INDIGO	SPICEJET	GO AIR	TOTAL
Apr-17	1.37	0.39	0.31	2.07
May-17	1.49	0.41	0.35	2.25
Jun-17	1.34	0.41	0.37	2.12
Jul-17	1.23	0.42	0.32	1.97
Aug-17	1.24	0.42	0.32	1.98
Sep-17	1.20	0.41	0.35	1.96
Oct-17	1.45	0.42	0.39	2.26
Nov-17	1.38	0.40	0.37	2.15

Dec-17	1.47	0.41	0.43	2.31
Jan-18	1.49	0.42	0.45	2.36
Feb-18	1.51	0.42	0.47	2.4
Mar-18	1.53	0.43	0.49	2.45
@Total (including projected figures for Jan, Feb & March 2018)	16.7	4.97	4.61	26.3

As can be seen from the aforesaid tabulated statement, the total volume of passenger traffic in respect of all the three airlines from April, 2017 to March, 2018 at T-1 has been pegged at 26.3 mppa, out of which, more than 60% of the passenger traffic falls to the share of the appellants/IndiGo.

25. Coming next to the projection of the revenue passengers in respect of the three airlines for the next three financial years, to and fro Delhi, the respondent No.4/DGCA has furnished the following data:-

Projected Figures of Revenue Passengers Traffic To and From Delhi in respect of Indigo, Spicejet and Go Air for the next three years.				
(In Million)				
YEAR	INDIGO	SPICEJET	GO AIR	TOTAL
2018-19	20.00	5.76	5.55	31.31
2019-20	23.92	6.68	6.67	37.27
2020-21	28.62	7.74	8.02	44.38
<i>Note: Growth rates of 2016-17 over 2015-16 and 2017-18 over 2016-17 were calculated for each airline. Simple Average of these two growth rates was considered for projecting the figures for next three years for respective airline.</i>				
<i>@ The projected figures for 2018-19, 2019-20 & 2020-21 may vary due to external factors like Jet fuel price fluctuation, seasonal demand, political situation, weather conditions etc.</i>				

26. In its affidavits, the respondent No.4/DGCA has clarified that the aforesaid data has been collated by it on the basis of the passenger figures submitted to it by each of the three airlines and has been calculated in terms of Form-B prescribed by the International Civil Aviation Organization (ICAO).

27. To test the correctness of the plea taken by the respondent No.2/DIAL that before arriving at the impugned decision, it had undertaken an extensive exercise to evaluate the projections of the total passenger traffic at T-1 during the FY 2016-17 along with the airlines-wise passenger traffic and the estimates of traffic from April, 2017 to March, 2018, we have examined the documents submitted by learned counsel for respondent No.2/DIAL in a sealed cover. The said documents include the Report dated 17.10.2016 (hereinafter referred to as '**the first Report**'), a Supplementary Report dated 3.7.2017 and a second Supplementary Report dated 4.9.2017 prepared by a Committee of Experts comprising of the Chief Engineering and Project Officer, Senior Consultant-Master Planning, Head-Airside Management, Head-Terminal Operations and Head-Airline Marketing & Route Development.

28. The first Report of the Committee refers to the projections furnished by an American consultancy Firm, Landrum & Brown, USA in the Master Plan 2016 wherein, the passenger traffic at T-1 in FY 2016-17 was estimated at 22 mppa. Noting that the actual traffic growth at IGI Airport had already exceeded the said projections, the first Report emphasized the necessity of developing additional runways, taxi ways, apron, landside activity and suitable city side connectivity. The total domestic passengers at IGI Airport were forecast to grow to about 57 mppa in the FY 2025-26, out of which 35

mppa were expected to be accommodated at T-1 alone. In other words, the designed capacity of T-1, which is 20 mppa, was being planned to be extended upto 35 mppa. While arriving at the aforesaid estimate, the first Report took into consideration that collectively, the Indian carriers operating from T-1, i.e., IndiGo, SpiceJet and GoAir had placed orders for over 400 aircrafts and their fleets were expected to grow by an average of about 8% in the coming years.

29. Based on the aforesaid Report, the respondent No.2/DIAL had convened a meeting with the CEO's of IndiGo, GoAir and SpiceJet on 4.1.2017 to discuss various options to monitor the expansion and capacity constraints of T-1. In the said meeting, the respondent No.2/DIAL had presented the following three options to monitor passenger traffic during the renovation of T-1:-

"Option - 1 - Shift one airline from T-1 to T-2 on interim basis.

Option - 2 - Relocate some flights of all three airlines from T-1 to T-2.

Option - 3 - Reduce flights in peak hours by 20% for all three airlines in T-1 and spread it to non-peak hours of T-1. In addition, all new flights/frequencies from 1st February, be operated from T-2."

30. In the said meeting, only the representatives of the respondent No.5/SpiceJet had expressed a view that Option-2 appeared to be workable. However, the representatives of the appellant/IndiGo and the respondent No.6/GoAir had expressed their reservations on all the three options. The meeting had ended with a decision that all the three airlines will discuss the above options in-house and/or will develop other alternatives not thought

out and revert back by 10.1.2017. Thereafter, several meetings were held by the respondent No.2/DIAL with the representatives of all the three airlines and voluminous correspondence was exchanged between the parties but the impasse continued.

31. In this duration, a Supplementary Report dated 3.7.2017 was prepared by the same Committee that had submitted the first Report, wherein it was observed that since none of the airlines had taken any steps to relocate their operations from T-1 to T-2 and in the meantime, the passenger traffic had grown substantially and touched 24 mppa during the FY 2016-17, the situation had to be reviewed, to update their earlier report. On analysing the graph of passenger growth at T-1 over the past ten years, the Committee observed that while the growth of passenger traffic at T-1 for the period between FY 2012-13 to FY 2015-16 was 13.5% p.a., the same had more than doubled to 27.4% during FY 2016-17 as T-1 has handled 24 mppa in that duration. The Supplementary Report records the following breakup of the passenger traffic for FY 2016-17:-

S No.	Airline	Passengers Handled FY 16-17 (in Millions)
1	Indigo	16.1
2	SpiceJet	4.3
3	GoAir	3.6
	Total	24.0

32. Noting that T-1 was already handling passenger traffic of 24 mppa as against its annual capacity of 20 mppa and the said traffic was likely to shoot up to 27 mppa during FY 2017-18, on examining the data of the passengers handled by each of the three airlines between April, 2017 to July, 2017 and taking the projections for the next nine months, ending in March, 2018, the Committee estimated the aggregate domestic passenger growth at

T-1 for FY 2017-18 as follows:-

	Indigo	Spicejet	Go Air	Total
% increase in Apr'17-Jun'17 over Apr'16-Jun'16	12.53%	14.08%	10.19%	12.44%
Estimated total traffic in Jul'17-March'18	13.81	3.72	3.01	20.54
Estimated total traffic at T1 in FY17-18	18.09	4.91	4.01	27.00

33. Mindful of the fact that if the operational capacity of T-1 continues at the projected growth rate, then the passenger traffic is likely to double to 27 mppa during FY 2017-18 and having regard to the fact that due to the ongoing construction and renovation work at T-1 scheduled to carry on till September, 2021, its handling capacity would stand reduced by 1/3rd, thereby reducing the handling capacity of passengers from 20 mppa to 13 mppa, the Committee re-evaluated its earlier recommendations as extracted below:-

"Review of Capacity Balancing options:

This committee had earlier recommended the following options. Based on the Terminal 1 traffic review, this committee is re-evaluating the earlier suggested options.

Options	Earlier options	Evaluation remarks
Option 1	Move one airline to Terminal 2 on interim basis from Terminal 1	In case SpiceJet relocates, 4.91 million passenger would be relocated to Terminal 2 leaving 22.09 million passengers which is more than the capacity available at Terminal 1 during the construction.

		• Further, if GoAir have to move alone, 4.01 million passenger would be relocated to Terminal 2 leaving 22.99 million passengers which again is more than the capacity available at Terminal 1 during the construction. • Indigo's expected traffic of 18.09 million coupled with required parking stands (35) cannot be accommodated at Terminal 2 which has the passenger capacity of 12 million only and maximum 28 parking bays.
Option 2	Relocate some flights of all three airlines from Terminal 1 to Terminal 2	• This option is feasible, and is being evaluated further in detail, herein below.
Option 3	Reduce flights in peak hour by 20% for all three airlines in Terminal 1 and spread it to non-peak hours. In addition all new flights/frequencies to be operated from Terminal-2.	• During the discussion, Airlines have indicated that this option is not workable due to operational and commercial reasons. Hence, the option to spread the flights to non-peak hours is not being considered further.

It is apparent from the fact stated above that Terminal 1 has the capacity of 20 mppa. This capacity is likely to scale down to 13-17 million once the expansion work starts. Terminal 1 handled 24 million passenger in FY 16-17 which is likely to increase to 27 million pax during FY 17-18.

This situation has called for emergent measures to align the flight operations at Terminal 1 to the scaled down capacity. Therefore the most logical solution is to shift the traffic in excess of 16 million from Terminal 1 to Terminal 2.

DIAL and MoCA have given ample opportunity to airlines to arrive at a mutually acceptable solution to achieve the above objective, but same has not met with a positive response. Instead they have expressed the inability to arrive at a common solution.

Recommendation

In this backdrop, it is suggested as under:

All the airlines operating at Terminal 1 to distribute traffic between Terminal 1 and Terminal 2 in such a manner that one third of their existing flights are handled and operated from Terminal 2, on pro rata basis. Accordingly, airlines may be asked to provide the suitable details. In this case, the traffic would be capped at ~17 million at Terminal 1.

(b) The number of parking bays available during the first phase of construction of Terminal 1, would be limited to 33. Accordingly, night parking of aircrafts will also need to be allocated on a pro rata basis, with the balance to be parked at Terminal 2.

(c) During construction period no new flights shall be allocated in Terminal 1. Any fresh demand for flights and parking slot will be considered for allocation at Terminal 2 or 3.

(d) The relocation and shifting of flight operations to be effective and commence from 1st October, 2017.

It is to be noted that the above options has been suggested keeping the principles of fairness, equity and non-discrimination, while giving utmost regard to the convenience of passengers and efficient functioning of Terminal 1 and Terminal 2 with all incidental and ancillary service."

34. The aforesaid recommendations made by the Committee in its Supplementary Report dated 3.7.2017, were communicated by the respondent No.2/DIAL to all the three airlines, vide letter dated 16.8.2017. The appellants/IndiGo responded on 30.8.2017, highlighting key issues of concern relating to passenger inconvenience impact on efficiency, increase in costs and the options offered being anti-competitive in nature, stated as follows:-

"Having set out our key concerns above, we also believe that we have to find a mutually acceptable solution so that DIAL's expansion of Terminal 1 can commence as planned. While the capacity for Terminal 2 is below IndiGo's need by 4 million passengers per annum (based on Financial Year 2016-17 numbers provided by DIAL pursuant to the meeting held on July 31, 2017 between DIAL and airline representatives), with some terminal modification for growth, it would provide a far better customer experience than your proposed split operation between Terminal 1 and Terminal 2. Based on DIAL's estimates (provided by DIAL pursuant to the meeting held on July 31, 2017 between DIAL and airline representatives), Terminal 1's capacity has already been exceeded by over 4 million passengers per annum. We have offered this in the past and would like to state once again that Indigo would be willing to find a way to take on the additional complexity and burden of moving our entire operations to Terminal 2 if a solution can be found for additional bussing gates and adequate night parking bays. We will need support from DIAL to make this move happen within a timeline acceptable to us, but in principle, we are open to discussing the idea.

However, we still believe that for all the reasons outlined above, the best option for all of our customers is to find a way for some airline(s) to move their complete operation out of Terminal 1 to Terminal 2 for the period of time during which the expansion and upgrade of Terminal 1 is undertaken by DIAL."

35. It is apparent from the tone and tenor of their reply that the appellants/IndiGo were insistent that splitting of their operations between T-1 and T-2 was not feasible and instead, suggested that during the period of expansion and upgradation of T-1, one of the other two airlines move their operations out of T-1 to T-2. Exhaustive correspondence on the same lines was exchanged between respondent No.2/DIAL and the appellants/IndiGo till a second Supplementary Report was prepared by the same Committee after two months, on 4.9.2017, wherein reference was made to the earlier Supplementary Report dated 3.7.2017 and an update of the current situation was taken note of.

36. On analysing the destination wise passenger share, as operated by all the three airlines from T-1 during FY 2016-17, running into 42 destinations, the Committee concluded that since the top three destinations from Delhi were Mumbai, Bangaluru and Kolkata constituted 30% of the total passenger traffic, therefore, the passenger traffic in respect of the said three destinations could be re-located from T-1 to T-2. The other option was to relocate the passenger traffic for 30 destinations from T-1 to T-2. After carrying out necessary evaluations, the Committee made the following recommendations in its second Supplementary Report:-

"Recommendation

- *In view of all the above, it is recommended to implement Option 1 i.e. the three airlines to be advised to be shift the flight operations to and from Mumbai, Bengaluru and Kolkata from Terminal 1 to Terminal 2. In this case, the traffic would be capped at ~17 million at Terminal 1.*
- *Since, the winter schedule is starting from 29th October 2017 which is approximately seven weeks from now,*

there is adequate time available with airline to inform passenger and make the necessary arrangement for the above said operations.

- *Any fresh demand for flights and parking slot will be considered for allocation at Terminal 2 or 3."*

37. On receiving the above recommendations, the respondent No.2/DIAL again wrote a letter dated 6.9.2017 to the appellants/IndiGo reiterating *inter alia* that as against its capacity of 20 mppa, T-1 was handling capacity of 24 mppa and during the expansion phase of T-1, its capacity will be further reduced, therefore, traffic equivalent to 8 mppa shall have to be transferred to T-2. As a result, one third of the existing flights of all the three airlines were proposed to be transferred from T-1 to T-2 on a pro rata basis. The said letter further stated that the number of parking bays available in the first phase of expansion of T-1 would be limited to 33 and all the three airlines would be offered night parking of aircrafts on a pro rata basis, capped at 33 and the balance were to be parked at T-2 only. The appellants/IndiGo was informed that w.e.f. 29.10.2017, i.e., on the commencement of the winter schedule 2017, flights in the specified sectors of Mumbai, Kolkata and Bangaluru would operate from T-2 and steps be taken to shift the operations in respect of the said sectors at the earliest.

38. The appellants/IndiGo wrote back to the respondent No.2/DIAL on 18.9.2017, expressing their inability to shift the flight operations in respect of the three sectors from T-1 to T-2 by the suggested date. Finally, on 28.9.2017, the respondent No.2/DIAL informed the appellants/IndiGo in writing that the respondent No.6/GoAir shall be shifting its entire operations from T-1 to T-2 w.e.f. 29.10.2017. For the sake of passengers' convenience,

respondent No.2/DIAL also offered to provide free of cost inter-terminal transfer service between T-1 and T-2 for a period of three months from the date of commencement of operations at T-2, over and above the usual transfer shuttle buses available for inter-terminal transfer.

39. On 03.10.2017, the appellants/IndiGo lodged a protest with regard to the permission given by the respondent No.2/DIAL to the respondent No.6/GoAir to shift its entire operations to T-2 and reiterated that given the size of its operations, the best option was to permit them to run their entire operations from T-1. The appellants/IndiGo categorically declined to shift the flights of the three sectors from T-1 to T-2, by the cutoff date i.e., by 29.10.2017.

40. On 5.10.2017, the respondent No.2/DIAL again wrote to the appellant/IndiGo and the respondent No.5/SpiceJet reiterating 29.10.2017 as the date of commencement of operations at T-2 and stating that the respondent No.6/GoAir had expressed its willingness to shift its entire operations from T-1 to T-2 by the aforesaid date. Several letters on this issue were exchanged between the appellants/IndiGo and the respondent No.2/DIAL in the month of October, 2017. Finally, vide letter dated 21.10.2017, respondent No.2/DIAL granted further time to the appellant/IndiGo to commence its operations in respect of the three sectors identified by them, from 4.1.2018. It was at that stage that the appellant/IndiGo approached the High Court for relief.

41. What clearly emerges on a careful perusal of the Internal Assessment Report submitted by the respondent No.2/DIAL and on examining the data compiled by the respondent No.4/DGCA and placed on record through two affidavits, is that the maximum passenger traffic that T-1 could

accommodate is 20 mppa. The expansion phase of T-1 has been estimated as 42 months, i.e., three and a half years for it to gear up and cater to passenger traffic of 35 mppa. During the construction phase, the handling capacity of T-1 shall have to be scaled down to one-third, thereby plunging to 13 mppa.

42. Besides the statistics furnished by the respondent No.2/DIAL indicating the growth of the three airlines from FY 2014-15 to 2020-21, and projecting the total passenger traffic for all the three airlines as 28.71 mppa for FY 2018-19, 30.44 mppa for FY 2019-20 and 32.26 mppa for FY 2020-21, on our directions, projections have been furnished by the respondent No.4/DGCA in respect of the scheduled traffic revenue passengers for the same period, which have been collectively estimated for all the three airlines as 31.31 mppa for FY 2018-19; 37.27 mppa for FY 2019-20 and 44.38 mppa for FY 2020-21.

43. If the passenger traffic generated by the appellants/IndiGo alone from FY 2016-17 to 2020-21 is broken down, we find that as per the projections of the respondent No.2/DIAL, the graph steadily increases from 16.1 mppa in FY 2016-17 to 16.57 mppa in FY 2017-18 to 18.40 mppa in FY 2018-19, 19.5 mppa in FY 2019-20 and finally, to 20.67 mppa in 2020-21. If we compare the projections furnished by the respondent No.2/DIAL to those furnished by the respondent No.4/DGCA, the statistics furnished by DIAL appear to be more conservative. DGCA has projected the passenger traffic of the appellants/IndiGo for FY 2018-19 at 20 mppa, for FY 2019-20 at 23.92 mppa and for FY 2020-21 at 28.62 mppa.

44. Considering the aforesaid exponential estimated growth rate projected for the next three years for the appellants/IndiGo, even if variations due to external factors like jet fuel price fluctuation, seasonal demand, weather

condition, etc., are taken into consideration, quite clearly, T-1 does not have the capacity to handle volumes beyond 13 to 17 mppa over the next three and a half years and that too, if the expansion phase is concluded within the estimated timeline.

45. Given the above analysis of data furnished by two separate agencies, the submission made on behalf of the appellants/IndiGo that in FY 2016-17, the passenger traffic generated by it at T-1 was not 16.1 mppa, as recorded by the learned Single Judge in para 8 of the impugned judgment, but was 14.62 mppa, pales into insignificance. Once the capacity of T-1 is ultimately required to be scaled down to 13 mppa, during the expansion phase, then any volume of passenger traffic over and above 13 mppa shall necessarily have to be relocated to T-2, that has a passenger capacity of 12 mppa and a maximum of 28 parking bays. The argument advanced by the appellants/IndiGo that the recommendations made by the Expert Committee in its Supplementary Report dated 3.7.2017 itself states that the passenger traffic at T-1 would be capped at 17 mppa and it's passenger traffic volume will not exceed the said capacity, is found to be too simplistic a view. This figure of 17 mppa cannot be read in isolation, when the very same Report states in clear terms that on the commencement of the expansion work, the capacity of T-1 shall have to shrink to 13-17 mppa. There is no good reason for this Court to put a question mark on the projections furnished by the respondent No.2/DIAL in respect of the volume of passenger traffic at T-1 pegged at 24 mppa for FY 2016-17 and at 27 mppa for FY 2017-18.

46. It is clarified that the aforesaid exercise has been undertaken by us only to test the argument advanced on behalf of the appellants/IndiGo that instead of calling upon them to split their operations between T-1 and T-2, if

T-1 would be dedicated exclusively for them, then all their passenger traffic could be absorbed there itself and that was a viable option overlooked by the respondent No.2/DIAL. But that is not the position. The separate set of statistics provided by both, respondent No.2/DIAL and the respondent No.4/DGCA completely belies the said plea and is sufficient to demolish the edifice of the arguments advanced by the appellants/IndiGo. Having undertaken the above exercise solely to examine the decision making process adopted by the respondent No.2/DIAL, we are afraid, there does not appear any irrationality, arbitrariness or impropriety therein.

47. The Court is also mindful of the self-imposed limitations placed on it while exercising its powers of judicial review. In the case of Union of India & Ors. vs. J.D. Suryavanshi, (2011) 13 SCC 167, the government had challenged the judgment of the High Court of Madras in a PIL filed by the respondent for issuing several directions to the Railway administration ranging from providing additional berths in three tier sleepers and AC class coaches, to completion of a second track between Gwalior and Indore, to rescheduling train timings, filling of vacant posts of coolies, etc. The Railways had approached the Supreme Court pleading that the High Court was not justified in issuing directions for providing additional coaches or for changing frequencies of timing of a particular train. In the above context, the Supreme Court had observed as below:-

"6. The Railway Administration is a specialised field. It has to cater to the needs of the entire country. It has limited resources and limited number of railway engines and railway coaches, particularly AC coaches, more particularly AC I class coaches. The Railways will have to distribute and utilise the available resources and the available rolling-stock equitably, uniformly and appropriately to serve all the sections of the

country. It is possible that in a particular section there may be hardships, inconveniences and need for introduction of more trains, better timings, and better facilities. But one sector is not India. **We shudder to think what would happen if every High Court starts giving directions to the Railways to provide additional trains, additional coaches and change timings wherever they feel that there is a shortage of trains or need for better timings.** Even in the State of Madhya Pradesh, we are sure that apart from Gwalior-Indore sector, there are other sectors which may be facing similar hardships and problems. The Railways does not exist to cater to a particular sector. It is for the Railway Administration to decide where, how and when trains or coaches should be added or the timings should be changed. **The Courts do not have data inputs, specialised knowledge or the technical skills required for running the Railways. The High Court cannot interfere in regard to only one sector without having any material or information about the requirements of other sectors, available infrastructure, existing demands and constraints, safety requirements, etc. Nor can the High Court direct introduction of trains or additional coaches of a particular category or direct change in timings of a train.** Changing the timing of a train is not a simple process, but requires coordinated efforts as it would affect the timings of other trains. There are also different types of trains — express trains, superfast trains, passenger trains, goods trains, with different speeds and priorities. Any attempt to pick and choose one train or one sector for improving the functioning will lead to chaos involving technical snags and safety problems.

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11. **This Court has repeatedly warned that courts should resist the temptation to usurp the power of the executive by entering into arenas which are exclusively within the domain of the executive.** How many coaches should be attached, what types of coaches are to be attached, on which lines what trains should run, what should be their timings and

frequency, are all matters to be decided by the Railway Administration using technical inputs, depending upon financial, administrative, social and other considerations. **This Court has repeatedly held that courts should not interfere in matters of policy or in the day-to-day functioning of any departments of Government or statutory bodies.** Even within the executive, the need for separation of roles has been voiced." (emphasis added)

48. The scope of judicial review does not permit a court to act as an appellate body and examine the correctness or suitability of a policy, nor are courts expected to don the hat of the executive body or act as its advisor when it comes to matters of policy. In other words, the object of judicial review is to ensure that an individual receives fair treatment at the hands of the authorities and there is no violation of the fundamental rights of the citizen or any arbitrariness in the decision making process. [Ref. Chief Constable of the North Wales Police vs. Evans, (1982) 3 ALL ER 141; BALCO Employees' Union (Redg.) vs. Union of India; (2002) 2 SCC 333; Federation of Railway Officers Association & Ors. vs. Union of India; (2003) 4 SCC 289 and Directorate of Film Festivals vs. Gaurav Ashwin Jain, (2007) 4 SCC 737].

49. A similar view was expressed in the case of Essar Steel Limited vs. Union of India & Ors., (2016) 11 SCC 1, where on examining several decisions on the aspect of the extent of powers vested in courts to review policy decisions, the Supreme Court had concluded by observing that courts should exercise great caution and restraint when it comes to commercial matters and should not question the wisdom of the executive policies unless and until the aggrieved person can demonstrate that the said policy is arbitrary, unreasonable or *mala fide* or it offends the provisions of the

Constitution of India. [Ref.: Peerless General Finance & Investment Co. Ltd. Anr. vs. Reserve Bank of India, (1992) 2 SCC 343; Narmada Bachao Andolan vs. Union of India, (2000) 10 SCC 664; Delhi Development Authority & Anr. vs. Joint Action Committee, Allottee of SFS Flats & Ors., (2008) 2 SCC 672; and Villianur Iyarkkai Padukappu Maiyam vs. Union of India & Ors., (2009) 7 SCC 561].

50. The common underlying thread in all the above decisions is that the courts should avoid interfering with the decisions of the executive unless and until they are so illogical or suffer from the vice of procedural impropriety or so shocking to the conscious that they cannot be sustained. The guiding factor in exercise of judicial review is to examine the deficiencies in the decision making process and not the decision itself. [Ref : Tata Cellular vs. Union of India, (1994) 6 SCC 651 & V. Ramana vs. A.P. SRTC & Ors., (2005) 7 SCC 338].

51. The Court cannot claim to be the repository of specialized knowledge or possessed with technical skills essential for operating a terminal at the airport. There are several considerations entailed for operating airport facilities, which include factoring in the number of passengers, runways, taxi ways, apron, city side infrastructure, car parking facilities, widening and realigning of roads, increasing entry gates and departure gates, catering to hand baggage and the commensurate increase in the baggage belts. All these logistics are aspects that need expertise in the technical field and have attendant financial and administrative dimensions of serious magnitude, apart from other practical considerations, best left to be handled by experts.

52. In the case in hand, there are several technical questions that would have engaged the Expert Committee constituted by the respondent

No.2/DIAL before it had submitted three sets of reports dated 17.10.2016, 3.7.2017 and 4.9.2017. Further, the said reports are based on projections obtained from a foreign consultant specially engaged by the respondent No.2/DIAL for capacity building of T-1.

53. It was vehemently argued that the respondent No.2/DIAL was expected to have exercised the least restrictive alternative by permitting the appellant/IndiGo to continue all its operations at T-1, without splitting them between T-1 and T-2. The said argument does not hold water inasmuch as on scrutinizing the decision making process adopted by the respondent No.2/DIAL before the appellants/IndiGo and the respondent No.5/SpiceJet were directed to transfer one third of their operations from T-1 to T-2, we find that great pains were taken by DIAL to explore different options by obtaining technical reports and constituting a Committee of Experts to assess the capacity of T-1 during the renovation period and undertake capacity balancing for that duration. Out of the three options suggested by the Committee to the respondent No.2/DIAL, after deliberations with all the airlines, the Committee had itself ruled out the third option as unworkable, thereby leaving two options: the first one of moving one airline from T-1 to T-2 on an interim basis and the second one, of relocating some flights of all the three airlines from T-1 to T-2.

54. The argument of the appellants/IndiGo that its passenger traffic for FY 2016-17 will remain stagnant at 14.62 mppa, is falsified by IndiGo's own letter dated 30.08.2017, extracted in para 34 above where they had stated that the capacity for T-2 is below its need by 4 mppa. Thus, if the volume of passenger traffic generated by the appellants/IndiGo in FY 2016-17 is accepted as 14.62 mppa and not 16.1 mppa, as projected by the

respondent No.2/DIAL, and the figure of 4 mppa is added to 14.62 mppa, it would total to 18.62 mppa, which is in excess of 17 mppa, the optimum capacity of T-1 during the expansion phase. In fact, the Supplementary Report dated 03.07.2017 has clearly stated that during the construction of phase 3-A, scheduled to go along upto September, 2021, the peak hour handling capacity of T-1 will be reduced to 1/3rd and axiomatically, the annual handling capacity will be reduced from 20 mppa to 13 mppa.

55. In any event, the volume of passenger traffic at T-1 is just one aspect of the matter. The respondent No.2/DIAL also has the task of making alternate arrangements for parking bays to accommodate the planes during the construction phase. This aspect has been highlighted in the evaluation remarks against option one mentioned in the Supplementary Report dated 03.07.2017, where the respondent No.2/DIAL has noted that IndiGo's expected traffic of 18.09 mppa coupled with the required parking stands (35) cannot be accommodated at T-2, which has the passenger capacity of 12 mppa and a maximum of 28 parking bays.

56. Given the above facts and circumstances, we are of the firm view that the suggestion of the appellants/IndiGo that T-1 be dedicated to exclusively to its use, while calling upon the respondent No.5/SpiceJet to move out its entire operations to T-2, springs from the appellant's own commercial considerations and has not been made in the larger public good. Simply because it suits a Corporate Goliath like the appellants/IndiGo with its voluminous passenger traffic to remain in T-1, will not mean that the respondent No.5/SpiceJet should be boxed in a corner and completely nudged out from T-1, only because its volume of passenger traffic is one fourth that of the appellants'. The respondent No.5/SpiceJet is as much a

business rival of the appellants/IndiGo as the respondent No.6/GoAir is a competitor of the respondent No.5/SpiceJet and the appellants. Going by the volumes of passenger traffic generated by them, the appellants/IndiGo may be on top of the heap, followed by the respondent No.5/SpiceJet and then the respondent No.6/GoAir, but this consideration would not entitle IndiGo to claim monopoly over T-1, to the exclusion of the rest. Such a suggestion of “Only us and None else” at T-1, if implemented, would have reduced it into a one horse race, giving a clear edge to the appellants/IndiGo, over its competitors and the respondent No.2/DIAL would have been accused of adopting a partisan approach of promoting IndiGo’s dominant position instead of offering a level playing field to all the low cost carriers. Respondent No.2/DIAL has not shown bias but has tried to balance the interests all the parties as best as is possible, given the severe constraints of available space.

57. There is merit in the submission made by learned counsel for the respondent No.5/SpiceJet that any attempt on the part of the appellants/IndiGo to claim exclusive use to T-1, is bound to hurt its business prospects and will be anti-competitive. Despite the operations of the respondent No.5/SpiceJet being much smaller vis-à-vis the appellants/IndiGo, SpiceJet had fairly stated before us that it has bowed down to the decision taken by the respondent No.2/DIAL to relocate one third of its passenger traffic from T-1 to T-2. The operational difficulties that the respondent No.5/SpiceJet will face in relocating may be at a smaller scale, but will be no different from those likely to be faced by the appellants/IndiGo.

58. Therefore, the impugned decision of the respondent No.2/DIAL cannot be said to be unreasonable only because it may operate harshly against the appellants/IndiGo. It is settled law that when public interest competes with private interest, then the latter has to give way to public interest. [Refer: Hanif Quareshi vs. State of Bihar, **AIR 1958 SC 731**; Puthumma vs. State of Kerala, **AIR 1978 SC 771**; P.P. Enterprises vs. Union of India, **AIR 1982 SC 1016**; Sales Tax Officer vs. Shree Durga Oil Mills, **(1998) 1 SCC 572**; Friends Colony Development Committee vs. State of Orissa and Ors., **(2004) 8 SCC 733**; Baitarani Gramiya Bank vs. Pallab Kumar and Ors., **(2004) 9 SCC 100** and Md. Murtaza and Ors. vs. State of Assam and Ors., **(2011) 12 SCC 413**].

59. In the present case, public interest lies in expediting the redevelopment activity at T-1, which is a purely administrative decision. The date of shifting a part of the operations from T-1 has had to be pushed thrice over, thereby delaying the date of commencement and postponing the conclusion of the renovation work. It is not as if the appellants/IndiGo, and for that matter, SpiceJet and GoAir have been banished forever from T-1. If we may twist the American idiom, “My way or the Highway” to fit the present context, then the appellants/IndiGo cannot be heard to say that it is either their way, or the run way. The appellants/IndiGo are tending to forget that this part relocation from T-1 to T-2 proposed by the respondent No.2/DIAL, is only a temporary measure and once T-1 is renovated and commences its operations after capacity building, all the airlines can operate from there full throttle and take wings.

60. In the light of the above discussion, we are of the opinion that there is no illegality, arbitrariness or infirmity in the impugned judgment that

warrants interference. Moreover, the learned Single Judge has gone to the extent of watering down the option given by the respondent No.2/DIAL to the appellants and the respondent No.5/SpiceJet by directing that in the event they make a request to shift one third of their operations by excluding the three identified sectors, i.e., Mumbai, Kolkata and Bengaluru, they may do so within one week from the date of the judgment. In that eventuality, respondent No.2/DIAL has been directed to consider such a request and dispose of it within one week from the date of receipt.

61. In the course of arguments addressed before us on 24.1.2018, on some prodding, learned counsel for the appellants/IndiGo had handed over a sheet in long hand, identifying ten sectors where the volume of their passenger traffic would work out to 4.8 mppa, which would work out to one third of their operations. But when asked to obtain clear instructions as to whether IndiGo is willing to switch the said ten sectors identified by it for the three prime sectors of Mumbai, Kolkata and Bengaluru shortlisted by the respondent No.2/DIAL for relocation from T-1 to T-2, learned counsel for the appellants had stated on instructions that they are not willing to exercise such an option.

62. As we have now upheld the impugned judgment, we grant a last opportunity of one week to the appellants/IndiGo and the respondent No.5/SpiceJet to approach the respondent No.2/DIAL to suggest other sectors that they would be ready and willing to shift from T-1 to T-2, as long as they collectively meet the yardstick of one third passenger traffic volumes of their operations at T-1. In the event such a request is received by the respondent No.2/DIAL within the stipulated timeline, the same shall be considered and a decision taken under written intimation to both the airlines

within one week from the date of receipt. If no such request is received within the stipulated timeline, then the respondent No.2/DIAL shall fix a deadline for shifting one third of the flight operations of the concerned airlines from T-1 to T-2, under written intimation to them.

63. The appeal is dismissed as meritless, while leaving the parties to bear their own expenses.

HIMA KOHLI, J,

REKHA PALLI, J

FEBRUARY 13, 2018

rkb/sk/na