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

\+ **<u>W.P.(C) 3277/2018 and CM Nos. 12895/2018, 30065/2018 & 35597/2018</u>**

BANK ONE LIMITED ..... Petitioner

Through: Mr Ramji Srinivasan, Senior Advocate with Ms Ankita A. Xalxo, Mr Shresth Chaudhary, Mr Nikhil Ramdev and Mr Sagar Chakravarty, Advocates.

Versus

DIRECTORATE GENERAL OF CIVIL AVIATION AND ORS ..... Respondents

Through: Ms Anjana Gosain, Advocate for DGCA.
Ms Uday Pratap Singh, Advocate for R-3.
Mr Sudhir Nandrajog, Senior Advocate with Mr Rishabh Mastaram, Mr Dhawal Mohan, Advocate for R-4.

**CORAM:**
**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**<u>O R D E R</u>**

% **02.05.2019**

**<u>VIBHU BAKHRU, J</u>**

1. The petitioner has filed the present petition, *inter alia,* praying that directions be issued to respondent no. 1 (DGCA) to cancel the registration of the Aircraft – a Cessna Citation 560 XLS Aircraft VT-AON – in terms of the Aircraft Rules, 1937 (hereafter 'the Rules'). The said aircraft is, hereafter, referred to as 'the Aircraft'. The

petitioner also prays that DGCA be directed to not extend the validity of the Certificate of Registration (COR) without the petitioner's knowledge.

2. The controversy involved in the present petition, essentially, relates to the action of DGCA in not entertaining the petitioner's request for deregistration of the Aircraft and permitting the petitioner to remove the same from this country.

3. Ms Gosain, learned counsel appearing for DGCA had drawn the attention of this Court to the provisions of Rule 30 of the Rules and the Civil Aviation Requirement (CAR) issued pursuant thereto. She relied on Clause 9.3 of the CAR and contended that a COR can be cancelled only at the instance of the registered owner or its authorised representative. She also submitted that in terms of Clause 9.3 of the CAR, the applicant is required to specify the Clause of Rule 30 of the Rules and the relevant Clause of CAR under which the cancellation is sought.

4. She also emphasised that DGCA has not declined the petitioner's request but had merely sought the relevant documents from the concerned parties. She submitted that DGCA required the original Irrevocable Deregistration and Export Request Authorisations (IDERA) or a notarised copy of the same, in order to proceed further. However, the same has not been filed.

5. Mr Nandrajog, learned Senior Counsel appearing for respondent no.4 (OT Global Holdings Ltd.) submitted that the dispute involved in

the present petition is, essentially, a contractual dispute between the petitioner and respondent no.4. He further submitted that respondent no.4 had borrowed certain sums from the petitioner, which were secured against the Aircraft. He stated that respondent no.4 has already paid more than 60% of the amount due to the petitioner and there is serious dispute as to whether any further amount is payable to the petitioner.

6. The aforesaid controversy arises in the context of the following facts.

7. Admittedly, respondent no. 4 – a company incorporated in the British Virgin Islands – is the owner of the Aircraft. The Aircraft was leased to respondent no. 5, Bluesky Aviation (Ireland) Limited, a company incorporated in Ireland (hereafter 'the Lessor') in terms of a Head Lease Agreement dated 01.03.2011.

8. The Lessor, in turn, sub-leased the Aircraft to respondent no. 3, Air One Aviation Private Limited, in terms of the Operating Lease Agreement dated 04.03.2011.

9. The Aircraft was registered with DGCA and a COR was issued on 18.04.2011.

10. Respondent no. 5 availed for a loan from the petitioner and on 10.07.2012, executed the Loan Agreement reflecting a loan of US$ 5,425,000. Respondent no. 5 also executed various documents for creating security interest in the Aircraft in favour of the petitioner.

11. The petitioner claims that the said loan was also guaranteed by M/s Amby Valley Limited.

12. On 14.06.2016, the petitioner issued a notice to respondent no.4 claiming that an amount of US$ 3,054,464.35 was outstanding as on 10.06.2016. The petitioner claims that subsequently, the petitioner also issued a Notice of Enforcement to respondent no.4 on 08.09.2017.

13. The petitioner states that on 18.10.2017, it served a Notice of Termination of the Lease. Thereafter, on 30.10.2017, the petitioner filed a Request for Deregistration of the Aircraft with the DGCA. Since the petitioner was not endorsed as a mortgagee of the Aircraft on the COR, the DGCA raised certain queries.

14. There was an exchange of communications between the DGCA and the petitioner and the representatives of the petitioner also met the concerned officials from the office of the DGCA. Although the petitioner filed a copy of the IDERA with the DGCA, the same was not notarised. It is stated that respondent no.3 was also called upon to submit the requisite documents to DGCA, but the same were not submitted.

15. Since the petitioner's request for deregistration of the Aircraft and permission to export was not granted, the petitioner filed the present petition.

***Reasons and Conclusion***

16. Before proceeding further, it would be relevant to refer to Sub-

clauses (1), (6) and (7) of Rule 30 of the Rules (the Aircraft Rules, 1937), which are set out below:-

> "30. **Certificate of Registration** –(1) The authority empowered to register aircraft and to grant certificate of registration in India shall be the Central Government. The certificate of registration shall include the following particulars, namely:
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> > Type of aircraft, constructor's number, year of manufacture, nationality and registration marks referred to under these rules, full name, nationality and address of the owner, usual station of aircraft and the date of registration and the period of validity of such registration:
> >
> > Provided that in the case of a leased aircraft, the certificate of registration shall also include the validity of the lease and the names, nationalities and addresses of the lessor and the lessee:
> >
> > xxxx xxxx xxxx
>
> (6) The registration of an aircraft registered in India may be cancelled at any time by the Central Government, if it is satisfied that –
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> > (i) such registration is not in conformity with the provisions of sub-rule (2); or
> >
> > (ii) the registration has been obtained by furnishing false information; or
> >
> > (iii) the aircraft could more suitably be registered in some other country; or
> >
> > (iv) the lease in respect of the aircraft, registered in pursuance of sub-clause (iv) of clause (a) of sub-rule (2), has expired or has been terminated in accordance with terms of lease; or

(v) the certificate of airworthiness in respect of the aircraft has expired for a period of five years or more; or

(vi) the aircraft has been destroyed or permanently withdrawn from use; or

(vii) it is inexpedient in the public interest that the aircraft should remain registered in India.

(7) The registration of an aircraft registered in India, to which the provisions of the Cape Town Convention and Cape Town Protocol apply, shall be cancelled by the Central Government, within five working days, without seeking consent or any document from the operator of the aircraft or any other person, if an application is received from the IDERA Holder along with:—

(i) the original or notarised copy of the IDERA recorded with the Director-General; and

(ii) a priority search report from the International Registry regarding all Registered Interests in the aircraft ranking in priority along with a certificate from the IDERA Holder that all registered interests ranking in priority to that of the IDERA Holder in the priority search report have been discharged or that the holders of such interests have consented to the deregistration and export of the aircraft:

Provided that such cancellation of registration of the aircraft shall not affect the right of the Central Government or of any entity thereof, or any inter-governmental organisation in which India is a member, or other private provider of public services in India, to arrest or detain or attach or sell an aircraft object under its laws for payment of amounts owed to the Government of India, any such entity, organisation or provider directly relating to the services provided by such aircraft in respect of that object.

> Explanation.— For the purpose of this sub-rule, "International Registry" "means the Registry established under Article 16 of the Cape Town Convention"."

17. It is also necessary to refer to Clause 9 of the CAR issued on 10.09.1998, which is relevant inasmuch as it relates to cancellation of the registration of an aircraft. Clause 9 of the said CAR is set out below:-

> "9. CANCELLATION OF REGISTRATION OF AIRCRAFT
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> 9.1 The registration of an aircraft registered in India may be cancelled at any time by the DGCA, if it is satisfied that:-
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> i. such registration is not in conformity with para 3.1 of this CAR, or
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> ii. the registration has been obtained by furnishing false information; or
>
> iii. the aircraft could more suitably be registered in some other country; or
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> vi. the aircraft has been destroyed or permanently withdrawn from use; or
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> v. it is inexpedient in the public interest that the aircraft should remain registered in India; or
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> vi the lease in respect of the aircraft registered pursuant to paragraph 3.1(iv)
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> a) has expired, or
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> b) has been terminated by mutual agreement between the lessor and the lessee, or c) has been otherwise terminated in

accordance with the provisions of the Lease Agreement, or terms of lease

vii. the Certificate of Airworthiness in respect of the aircraft has expired for a period of five years or more.

9.2 The registration of an aircraft registered in India, to which the provisions of the Cape Town Convention or Cape Town Protocol apply, shall be cancelled by the DGCA, as provided in the Cape Town Protocol, if an application is received from IDERA Holder prior to expiry of the lease along with-

(i) the original or notarized copy of the IDERA; and

(ii) a certificate that all Registered Interests ranking in priority have been discharged or the holders of such interest have consented deregistration and export.

Provided that the deregistration of an aircraft by the DGCA under para 9.1 and 9.2 shall not affect the right of any entity thereof, or any organization, or other private provider of public services in India to arrest or detain or attach or sell an aircraft object under its laws for payment of amounts owed to the Government of India, any such entity, organization or provider directly relating to the services provided by it in respect of that object.

9.3 The registered owner or his authorized representatives may apply to DGCA, New Delhi for cancellation of registration, enclosing original C of R. The applicant should also specify the clause of Rule 30 and the relevant paragraph of this CAR under which cancellation is sought. In case, it is proposed to invoke para

> 9.1 (vi)(c) of this CAR, the request for deregistration shall be supported by full explanation regarding the relevant provision of the lease agreement and the justification for using the provisions."

18. The petitioner claims to be a lender and had lent funds to the owner of the Aircraft – respondent no.4. There is no dispute that the Aircraft was leased to the Lessor (respondent no.5) and the Lessor had, in turn, subleased the Aircraft to respondent no.3. Insofar as the DGCA is concerned, there is no controversy as to the aforesaid because the same is reflected in the COR issued by DGCA.

19. The COR also reflects that the lease was valid till 31.03.2018. Concededly, no information or documents have been provided to DGCA which would lead the DGCA to accept that the lease of the Aircraft in favour of respondent no.3 had been extended. Thus, indisputably, the operating lease of the Aircraft in favour of respondent no.3 has expired by efflux of time. In view of Clause 9.1(vi)(a) of the CAR, the registration of an aircraft is required to be cancelled once the lease has expired.

20. Although, a controversy is sought to be raised with regard to the termination of the operating lease and whether DGCA can cancel the COR under Clause 9.1(vi)(b) of the CAR; there is no controversy that COR can be cancelled under Clause 9.1(vi)(a) on account of the expiry of the operating lease by efflux of time. The CAR is in conformity with Rule 30(6)(iv) of the Rules inasmuch as the same also provides for cancellation of the registration in case where the lease of

the aircraft is expired.

21. In ***Awas 39423 Ireland Limited &Ors vs Director General of Civil Aviation &Anr.: W.P.(C) 871/2015 and Willmington Trust SP Services (Dublin) Limited v. Director General of Civil Aviation &Anr: W.P.(C) 747/2015, decided on 19.03.2015***, a Coordinate Bench of this Court had considered the scope of Rule 30 of the Rules relating to the cancellation of registration of an aircraft. The court held that upon termination of the lease, DGCA was required to cancel the registration of an aircraft as the lease would not be in force. The relevant extracts from the said judgment are set out below:-

> "21.1 As would be evident upon a careful reading of the proviso to sub-rule (1) that, in case of a leased aircraft, the COR should include inter alia the factum of the validity of the lease. In the cases under discussion, the lease is no longer valid; the lease agreements having been terminated.
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> 21.2 The Central Government, which in this case, would be the DGCA, upon termination of the lease is required to cancel the registration of an aircraft, inter alia, under clause (iv) of sub-rule (6) of Rule 30 if, the lease is not in force.
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> 21.3 The argument advanced on behalf of the petitioners, proceeds as follows, which is, that, a perusal of clauses contained in sub-rule (6) of Rule 30 would show, once the conditions stipulated therein are fulfilled, there is no discretion left with the DGCA, to defer the de-registration of the aircraft.
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> xxxx xxxx xxxx xxxx

> 21.8 One cannot quibble with the proposition that a court cannot issue a writ of mandamus where, an authority, is not required to act in a particular manner by express provisions of law. This dicta finds reflection even in Paragraph 12 of that judgement rendered in the case of UP SRTC &Anr. Vs. Mohd. Ismail &Anr. The obligation, cast on DGCA under clause (iv), sub-rule (6) of Rule 30 of the Aircraft Rules requires it to de-register an aircraft if, the lease agreement qua the aircraft object is not in force. Notably, like under clause (iv), each of the circumstances set out in subrule (6) are independent of each other. It may be, in a given situation that, more than one circumstance is attracted."

22. It is apparent from the above, that the DGCA is required to cancel the COR of a leased aircraft if the lease in not in force. It makes little difference whether the lease is terminated by the efflux of time or prematurely by the concerned parties.

23. In view of the above, DGCA is required to cancel the COR as it is admitted that the operating lease expired on 31.03.2018.

24. It is also relevant to state that the petitioner has produced copies of certain documents including (a) Deregistration Power of Attorney dated 10.07.2012 executed by respondent no.4; (b) IDERA (Irrevocable Deregistration and Export Request Authorisation) dated 10.07.2012 executed by respondent no.3 in favour of the petitioner; (c) IDERA dated 10.07.2012 executed by respondent no.3 in favour of the petitioner; (d) IDERA dated 10.07.2012 executed by the Lessor, Bluesky Aviation (Ireland) Limited, in favour of the petitioner; (e) IDERA dated 10.07.2012 executed by respondent no.4 in favour of the petitioner; (f) Loan Agreement dated 10.07.2012; (g) Mortgage and

Security Agreement dated 10.07.2012 executed by respondent no.4 in favour of the petitioner; (h) Security Assignment dated 10.07.2012 executed by respondent no.4 in favour of the petitioner; and (i) Lease Agreement dated 10.07.2012 executed by respondent no.4 and the bank in favour of the petitioner.

25. It is relevant to state that there is no dispute as to the execution of the said documents and the same are admitted. There is some controversy as to the whereabouts of some documents, however, that need not detain this Court or the DGCA, since there is no dispute that the said documents were executed by the concerned parties.

26. At this stage, it would be also relevant to refer to certain Clauses of the Mortgage and Security Agreement dated 10.07.2012. Clause 5.3(a) provides for the remedies available to the petitioner upon default. Clause 5.3(a) of the said Agreement is set out below:-

> "5.3 Rights and Remedies Upon Event of Default.
>
> (a) Remedies Upon Event of Default. Upon the occurrence and during the continuance of any Event of Default, the Security Trustee may exercise any rights or remedies which it may have under any of the Transaction Documents and/or under Applicable Laws and/or under the Cape Town Convention, including, without limitation, all rights and remedies under Articles 12(1), 12(2), 12(3), 12(5), 12(6), 13(1), 13(2), 13(3), 13(4), 13(5), 14, 16, 17(1), 17(2), 19, 20(1), 20(4), 20(6), 20(8), 21, 22, 26(1), 26(2), 27(1), 27(4), 27(5), 27(6), and 28(2) of the Cape Town Convention, upon written notice to the Mortgagor and Lessee; provided that any failure to give such notice shall neither prejudice any remedy nor create any rights hereunder or

> under Applicable Laws, To the extent permitted by Applicable Law, Mortgagor and the Security Trustee agree that the Security Trustee shall not be required to provide notice to Mortgagor as set forth in Article 15(4) of the Cape Town Convention in connection with a proposal to procure the de-registration and export of the Aircraft without court order in connection with the exercise of its remedies hereunder. Mortgagor expressly agrees to permit Security Trustee to obtain from any applicable court, pending final determination of any claim resulting from an Event of Default, speedy relief in the form of any of the orders specified in Article 20 of the Cape Town Convention as the Security Trustee shall determine in its sole and absolute discretion, subject to any procedural requirements prescribed by Applicable Law. Presentment, demand, protest and notice of any kind (except as expressly provided above) are hereby expressly and irrevocably waived by the Mortgagor; provided that the failure to supply any notice shall not deprive the Security Trustee of any right or remedy hereunder."

27. In terms of the aforesaid Clause, the security trustee (the petitioner herein) is entitled to exercise any rights and remedies available under any of the transaction documents and/or applicable laws and / or under the Cape Town Convention.

28. Clause 5.11 of the said Agreement also provides for execution of a power of attorney in favour of the Security Trustee (the petitioner) for enforcement of security interest. Clause 5.11 of the said Agreement is set out below:

> "5.11 Power of Attorney. The Mortgagor does hereby irrevocably constitute and appoint each of

the Security Trustee and its respective successors and assigns as the Mortgagor's true and lawful attorney-in-fact, exercisable upon the occurrence and during the continuation of an Event of Default, with full power (in the name of the Mortgagor or otherwise) and at the expense of Mortgagor but for the use and benefit of the Security Trustee, to ask, require, demand, receive, collect, compound and give acquittance and discharge for any and all moneys and claims for moneys due and to become due arising out of the Collateral, to endorse any checks or other instruments or orders in connection therewith, to settle, compromise, compound or adjust any such claims, to exercise and enforce any and all claims, rights, powers or remedies of every kind and description of the Mortgagor arising out of the Collateral, to file, commence, prosecute, compromise and settle in the name of the Mortgagor, the Security Trustee, or otherwise any suits, actions or proceedings at law or in equity in any court, to collect any such moneys or to enforce any rights in respect thereto on all other claims, rights, powers and remedies of every kind and description of the Mortgagor arising out of the Collateral and generally to sell, assign, transfer, pledge, malce any agreement with respect to or otherwise deal with the Aircraft, either Engine, any Part, and any of such other claims, rights, powers and remedies as fully and completely as though the Security Trustee was the absolute owner thereof for all purposes, and at such times and in such manner as may seem to the Security Trustee to be necessary or advisable or convenient or proper in its absolute discretion; provided that the Security Trustee may act, at any time, in the name of the Mortgagor to the extent the Mortgagor has failed to take appropriate actions to protect or preserve the Collateral. In furtherance of this power, the Security Trustee is

> specifically entitled to register and de-register the Aircraft from time to time in such jurisdictions as the Security Trustee may select in accordance with the Transaction Documents, in the name of the Mortgagor or otherwise. This appointment as attorney-in-fact is coupled with an interest."

29. Admittedly, respondent no. 4 has executed the Power of Attorney and a copy of the same is available on record. The Power of Attorney is not revocable, as it is coupled with interest.

30. It is also a conceded position that DGCA does not necessarily require the original IDERA and can act on a notarised copy as well. Ms Gosain had, emphatically, argued that without the original documents or a notarised copy, DGCA could not act any further. However, that issue is not substantial as the documents filed by the petitioner, including IDERAs, are admitted and a part of the record of this Court.

31. In this view, this Court directs DGCA to accept the aforesaid documents on record as authentic copies thereof and act on the same, notwithstanding that the original of the IDERAs have been filed with DGCA.

32. DGCA shall also take necessary action to forthwith cancel the COR without any further delay, as there is no dispute that the operating lease has since expired.

33. DGCA shall also facilitate the export of the Aircraft, provided all other formalities are duly complied with.

34. Insofar as the contention that there are contractual disputes between the petitioner and respondent no. 4 is concerned, it is clarified that all rights and remedies of the parties are reserved and nothing stated in this order shall preclude respondent no.4 or the petitioner to initiate any appropriate proceedings for adjudication/resolution of their *inter se* disputes.

35. The petition is disposed of with the aforesaid terms. All the pending applications are also disposed of.

36. Order *dasti* under signature of Court Master.

**VIBHU BAKHRU, J**

**MAY 02, 2019**
**RK**