

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

Date of decision: 13th MARCH, 2023

IN THE MATTER OF:

+ **W.P.(C) 5909/2013**

DR. SUBRMANIAN SWAMY

..... Petitioner

Through: Petitioner in – person.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor, Ms. Kunjala Bhadwaj, Mr. Madhav Bajaj and Mr. Yash Upadhyay, Advocates for UOI.

Ms. Anjana Gosain, Ms. Nippun Sharma and Ms. Hetika Vadhera, Advocates for R-3 and R-6.

Mr. Rajiv Nayyar, Sr. Advocate with Mr. Jaiveer Shergil, Ms. Ruby Singh Ahuja, Mr. Varun Khanna, Mr. Ishan Gaur, Mr. Akshay Aggarwal Mr. Vasu Singh, Ms. Mandhira and Ms. Aakriti Vohra, Advocates.

Mr. Anupam S. Sharma, SPP-CBI with Mr. Prakarsh Airan, Ms. Harpreet Kalsi, Mr. Abhishek Batra and Mr. Ripudaman Sharma, Advocates.

Mr. Anupam S. Sharma, Special Counsel-ED with Mr. Prakarsh Airan, Ms. Harpreet Kalsi Mr. Abhishek Batra and Mr. Ripudaman Sharma,

Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SATISH CHANDRA SHARMA, C.J.

1. The instant writ petition has been filed as a Public Interest Litigation (PIL) challenging the decision dated 03.04.2013 passed by the Ministry of Finance, Department of Economic Affairs, Government of India approving M/s Air Asia Investment Ltd. (a Malaysian Company) to incorporate a new Joint Venture Company with foreign equity of 49% amounting to USD 15 Million (Rs. 80,98,27,500/- approx) and the balance 51% equity share was to be held in the ratio of 30% by M/s Tata Sons Ltd. and 21% by M/s Telestra Trade Pvt. Ltd. The relevant portion of the said decision reads as under:-

“5. The approval is for M/s Air Asia Investment Ltd., Malaysia to incorporate a new Joint Venture company with a foreign equity of 49% amounting to US \$ 15 million (Rs.80,98,27,500/- approx). The balance 51% equity is held in the ratio of 30% and 21% by M/s Tata Sons Ltd. And M/s Telestra Trade place Pvt. Respectively.

The consideration amount for the aforesaid investment will be paid out of the inward remittance of foreign exchange received through normal banking channels and as per RBI's Notification No. FEMA 20/200-RB dated 3.5.2000 as amended from time to time.”

2. It is the contention of the Petitioner that the said decision is contrary to the Foreign Direct Investment Policy (FDI) Policy of the Government of India and also contrary to the guidelines laid down by Respondent No.3, the Nodal Ministry, i.e., the Union Ministry of Civil Aviation which does not permit foreign investment by a foreign airline and is also in the teeth of the objections by the Nodal Ministry. The writ petition has been filed with the following prayers:-

“a) Issue a writ of Certiorari or any other writ or direction of similar nature to set aside and revoke the Impugned Decision dated 03.04.2013 of the Respondents Nos. 1 & 2 allowing the FDI Proposal in favour of Respondent No. 5;

b) Issue a writ of Certiorari or any other writ or direction of similar nature to set aside and revoke any action or decision or grant of any further approvals/ permissions/ NOC/ permits, etc. by the Respondent authorities, based upon, relying upon or in furtherance of the Impugned Decision dated 03.04.2013;

c) Issue a writ of Prohibition or any other writ or direction of similar nature to prohibit the Respondent authorities from taking any action contrary to the applicable FDI policy as per Press Note No. 6 of 2012 read with DGCA Guidelines dated 01.03.2013 or from granting any approval for foreign investment by a foreign airlines in a greenfield airline project;

d) Issue a writ of Mandamus or any other writ or direction of similar nature to direct the respondent authorities to define the terms "substantial ownership" and "effective control" as they are vital part of the applicable policy to prevent arbitrariness and illegality in decision making process.

e) Issue a writ of Mandamus or any other writ or direction of similar nature to the Central Bureau of Investigation to investigate into the role and functioning of the Respondents Nos. 1 & 2 leading to the Impugned Decision in contravention of executive policy of the Government of India, and report exclusively to this Hon'ble Court;

f) Pass any further orders, directions as may please the Hon'ble Court.”

3. The writ petition was accompanied with an application for stay restraining Respondent No.1/Union of India, Respondent No.2/Foreign Investment Promotion Board, Respondent No.3/Ministry of Civil Aviation and Respondent No.4/Ministry of Commerce & Industry from taking any action or decision or granting any further approvals/permission/NOC/permits etc. contrary to the FDI Policy based upon or in reliance of or in furtherance of the impugned decision dated 03.04.2013.

4. The stay application was rejected by this Court *vide* Order dated 11.02.2014. The Order dated 11.02.2014 was challenged by the Petitioner in SLP (C) 5132-33/2014 which was dismissed by the Apex Court *vide* an Order dated 21.04.2014.

5. It is stated that pursuant to the filing of the instant writ petition, there have been substantial changes in the shareholding of Air Asia (India) Pvt. Ltd. Material on record discloses that Air Asia (India) Pvt. Ltd. was incorporated as a Joint Venture between Tata Sons Ltd. and Air Asia Investment Ltd. with Tata Sons Ltd. having 50% shareholding of Air Asia (India) Pvt. Ltd. and apart from Tata Sons Ltd., the other shareholder Telestra Tradeplace Pvt. Ltd. holds remaining 50% shareholding of Air Asia (India) Pvt. Ltd.

6. It is stated that on 31.03.2014, the shareholding of Air Asia (India) Pvt. Ltd. was revised, whereafter Air Asia Investment Ltd. owned 49% of the shares, Telestra Tradeplace Pvt. Ltd. owned 21% of the shares and Tata Sons Ltd. owned 30% of the shares.

7. It is stated that as the consequence of the disinvestment of shareholding of Telestra Tradeplace Pvt. Ltd., the shareholding of Air Asia Investment Ltd. was further revised and Tata Sons Ltd. held 49% and Air Asia Investment Ltd. held 49%; two individuals, namely, Mr. R Venkatraman and Mr. S. Ramadorai held 1.50% and 0.50% respectively.

8. It is stated that in March, 2019, the shareholding of Air Asia Pvt. Ltd. was further revised with Tata Sons Ltd. obtaining 51% and Air Asia Investment Ltd. holding 49%. The shareholding structure of Air Asia (India) Pvt. Ltd. was again revised in December, 2020, as a result of which Tata Sons Ltd. held 83.67% and Air Asia Investment Ltd. held 16.33%.

9. It is stated that pursuant to the regulatory approvals of the Competition Commission of India (CCI) dated 14.06.2022 and the Directorate General of Civil Aviation approval dated 06.07.2022, the shareholding of Air Asia (India) Pvt. Ltd. was revised and Air Asia (India) Pvt. Ltd. became a wholly owned subsidiary of Air India Ltd. It is stated that the name of Air Asia (India) Pvt. Ltd. was changed to AIX Connect Pvt. Ltd. It is also stated that on 12.08.2020, Talace Pvt. Ltd. was incorporated as 100% wholly owned subsidiary of Tata Sons Pvt. Ltd. which holds 100% shares of Air India Ltd.

10. Material on record further discloses that *vide* an Order dated 11.07.2019, the Central Bureau of Investigation (CBI) was impleaded as Respondent No.6 in the writ petition and the CBI was directed to file the

Status Report in a sealed cover. Similarly, this Court *vide* Order dated 23.01.2020, permitted the Petitioner to implead Enforcement Directorate (ED), Ministry of Finance as Respondent No.8 and the ED was also directed to file the Status Report in a sealed cover. Status Reports in sealed covers have been filed before this Court and this Court has perused the Status Reports.

11. In view of the fact that there is no foreign investment as of today, the prayers made in the writ petition have become purely academic. The Petitioner, who appears in person, has stated that he is no longer interested in pursuing the writ petition.

12. In view of the statement made by the Petitioner appearing in person, the writ petition stands disposed of.

13. The sealed cover reports placed before this Court have been re-sealed and have been handed over to the learned Counsel for the CBI and the ED.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

MARCH 13, 2023

hsk