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

% *Judgement Pronounced on: 12.10.2023*

+ **W.P.(C) 7774/2023 & CM APPL. 45749/2023 and CM APPL. 36909/2023**

ACG AIRCRAFT LEASING IRELAND LIMITED Petitioner
Through: Mr. Nitin Sarin & Mr. Mukul
Katyal, Ms. Priyam Jinger,
Advocates.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Apoorv Kurup, Ms. Avshreya
Pratap Singh Rudy, G.P., Mr. Akhil
Hasija, Ms. Gauri Goburdhun and
Mr. Ojaswa Pathak, Advs. for R- 1.
Mr. Diwakar Maheshwari, Adv.,
Pratiksha Mishra & Mr. Shreyas
Edupugnati, Advocates for RP.
Mr. Gopal Jain, Sr. Adv. with Mr.
Dheeraj Nair, Mr. Angad Baxi, Ms.
Vishrutyi Sahni and Ms. Stanzin
Dolker, Advs. for COC.

+ **W.P.(C) 7663/2023, CM APPL. 36929/2023 & CM APPL 47071/2023**

DAE SY 22 13 IRELAND DESIGNATED ACTIVITY
COMPANY Petitioner
Through: Mr. Kevic Setalvad, Sr. Adv. with
Mr. Nimish Vakil, Mr. Pai Amit,
Ms. Bhavana Buhoon and Mr.
Abhiyudaya Vats, Advs.

versus

UNION OF INDIA AND ORS Respondents
Through: Ms. Anjana Gosain, SPC with Ms.
Avshreya Pratap Singh Rudy, G.P.,



Mr. Akhil Hasija, Ms. Gauri Goburdhun and Mr. Ojaswa Pathak, Advs. for R- 1 &2.

Mr. Rajesh Gogna, CGSC with Mr. Amit Acharya and Ms. Avshreya Pratap Singh, Advs. for DGCA.

Mr. Diwakar Maheshwari, Ms. Pratiksha Mishra & Mr. Shreyas Edupugnati, Advocates for RP.

Mr. Gopal Jain, Sr. Adv. with Mr. Dheeraj Nair, Mr. Angad Baxi, Ms. Vishrutyi Sahni and Ms. Stanzin Dolker, Advs. for COC.

+ **W.P.(C) 9432/2023 & CM APPL 47257/2023**

BOC AVIATION (IRELAND) LIMITED Petitioner

Through: Mr. Satvik Varma, Sr. Adv. with Mr. Ajay Kumar, Mr. Sunil Gonsalves, Mr. Ghazal Ghai and Mr. Hetaram Bishnoi, Advs.

versus

DIRECTORATE GENERAL OF CIVIL AVIATION
AND ORS

..... Respondents

Through: Ms. Anjana Gosain, SPC with Ms. Avshreya Pratap Singh Rudy, G.P., Mr. Akhil Hasija, Ms. Gauri Goburdhun and Mr. Ojaswa Pathak, Advs. for R- 1.
Mr. Diwakar Maheshwari, Ms. Pratiksha Mishra & Mr. Shreyas Edupugnati, Advocates for RP.
Mr. Gopal Jain, Sr. Adv. with Mr. Dheeraj Nair, Mr. Angad Baxi, Ms. Vishrutyi Sahni and Ms. Stanzin Dolker, Advs. for COC.

+ **W.P.(C) 6569/2023 & CM APPL. 36850/2023**



ACCIPITER INVESTMENTS AIRCRAFT
2 LIMITED

..... Petitioner

Through: Mr. Ravi Nath, Mr. Ankit Garg,
Mr. Ankur Mahindra, Mr. Rohan
Taneja & Mr. Aditya Kapur,
Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Anjana Gosain, Ms. Avshreya
Rudy, GP, Ms. Nippun Sharma &
Ms. Hetika Vadhera, Advocates for
R/UOI.

Mr. Neeraj Kishan Kaul, Senior
Advocate with Mr. Diwakar
Maheshwari, Adv., Mr. Deepak
Joshi, Ms. Pratiksha Mishra, Mr.
Shreyas Edupugnati and Ms. K.
Lakshmi, Advocates for RP.

Mr. Gopal Jain, Sr. Adv. with Mr.
Dheeraj Nair, Mr. Angad Baxi, Ms.
Vishrutyi Sahni and Ms. Stanzin
Dolker, Advs. for COC.

+ **W.P.(C) 6626/2023 & CM APPL. 36930/2023**

EOS AVIATION 12 (IRELAND) LTD.

..... Petitioner

Through: Mr. Ravi Nath, Mr. Ankit Garg,
Mr. Ankur Mahindra, Mr. Rohan
Taneja & Mr. Aditya Kapur,
Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Rajesh Gogna, CGSC with Mr.
Amit Acharya, GP and
Ms. Avshreya Pratap Singh Rudy,
Advocate for DGCA/UOI.



Mr. Neeraj Kishan Kaul, Senior Advocate with Mr. Diwakar Maheshwari, Adv., Mr. Deepak Joshi, Ms. Pratiksha Mishra, Mr. Shreyas Edupugnati and Ms. K. Lakshmi, Advocates for RP.

Mr. Gopal Jain, Sr. Adv. with Mr. Dheeraj Nair, Mr. Angad Baxi, Ms. Vishrutyi Sahni and Ms. Stanzin Dolker, Advs. for COC.

Mr. Ruchir Bhatia, Sr. Adv. with Ms. Deeksha Gupta, Adv. for Revenue.

+ **W.P.(C) 7214/2023, CM APPL. 28114-28115/2023, CM APPL. 36915/2023 & CM APPL. 37054/2023**
PEMBROKE AIRCRAFT LEASING 11 LIMITED Petitioner

Through: Mr. Vaijayant Paliwal, Ms. Medha Sachdev, Ms. Riya Basu, Ms. Meghna Rajadhyaksha, Mr. Rishabh Jaisani Mr. Harit Lakhani, Mr. Ajay Kumar, Ms. Snigdha, Advs.

versus

DIRECTORATE GENERAL OF CIVIL AVIATION
& ORS. Respondents

Through: Ms. Anjana Gosain, Ms. Avshreya Rudy, GP, Ms. Nippun Sharma & Ms. Hetika Vadhera, Advocates for R/UOI.

Mr. Neeraj Kishan Kaul, Senior Advocate with Mr. Diwakar Maheshwari, Adv., Mr. Deepak Joshi, Ms. Pratiksha Mishra, Mr. Shreyas Edupugnati and Ms. K. Lakshmi, Advocates for RP.



Mr. Gopal Jain, Sr. Adv. with Mr. Dheeraj Nair, Mr. Angad Baxi, Ms. Vishrutyi Sahni and Ms. Stanzin Dolker, Advs. for COC.

+ **W.P.(C) 7369/2023, CM APPL. 38321/2023 & CM APPL. 36931/2023**

SMBC AVIATION CAPITAL LIMITED AND
ORS

..... Petitioners

Through: Ms. Marylou Bilawala, Mr. Pranaya Goyal, Mr. Dhruv Khanna, Ms. Sharleen Lobo, Mr. Chiranjivi Sharma, Ms. Priya Desai, Ms. Apoorva Kaushik, Mr. Vasu Gupta, Ms. Saakshi Malpekar, Ms. Nehal Gupta & Mr. Uday Mathur, Advocates.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Rajesh Gogna, CGSC with Ms. Avshreya Pratap Singh Rudy, G.P. for R-1 & 2.

Mr. Neeraj Kishan Kaul, Senior Advocate with Mr. Diwakar Maheshwari, Adv., Mr. Deepak Joshi, Ms. Pratiksha Mishra, Mr. Shreyas Edupugnati and Ms. K. Lakshmi, Advocates for RP.

Mr. Gopal Jain, Sr. Adv. with Mr. Dheeraj Nair, Mr. Angad Baxi, Ms. Vishrutyi Sahni and Ms. Stanzin Dolker, Advs. for COC.

Ms. Ragini Sharma, Advocate for R-4 & 8.

Ms. Milanka Chaudhary, Ms. Ashly Cherian and Ms. Harshita Agarwal, Advs. for R-7.

+ **W.P.(C) 7773/2023 & CM APPL. 36891/2023**



SFV AIRCRAFT HOLDINGS IRE 9 DAC
LIMITED

..... Petitioner

Through: Ms. Marylou Bilawala, Mr. Pranaya Goyal, Mr. Dhruv Khanna, Ms. Sharleen Lobo, Mr. Chiranjivi Sharma, Ms. Priya Desai, Ms. Apoorva Kaushik, Mr. Vasu Gupta, Ms. Saakshi Malpekar, Ms. Nehal Gupta & Mr. Uday Mathur, Advocates.

versus

UNION OF INDIA THROUGH THE MINISTRY OF CIVIL
AVIATION & ORS.

..... Respondents

Through: Ms. Anjana Gosain, Ms. Avshreya Rudy, GP, Ms. Nippun Sharma & Ms. Hetika Vadhera, Advocates for R/UOI.

Mr. Neeraj Kishan Kaul, Senior Advocate with Mr. Diwakar Maheshwari, Adv., Mr. Deepak Joshi, Ms. Pratiksha Mishra, Mr. Shreyas Edupugnati and Ms. K. Lakshmi, Advocates for RP.

Mr. Gopal Jain, Sr. Adv. with Mr. Dheeraj Nair, Mr. Angad Baxi, Ms. Vishrutyi Sahni and Ms. Stanzin Dolker, Advs. for COC.

Ms. Ragini Sharma, Advocate for R-4 & 8

+ **W.P.(C) 8088/2023, CM APPL. 36928/2023 & CM APPL. 45187/2023 & CM APPL. 47072/2023**
GY AVIATION LEASE 1722 CO LIMITED
& ORS.

..... Petitioners

Through: Ms. Marylou Bilawala, Mr. Pranaya Goyal, Mr. Dhruv Khanna, Ms. Sharleen Lobo, Mr. Chiranjivi Sharma, Ms. Priya Desai, Ms. Apoorva Kaushik, Mr.



Vasu Gupta, Ms. Saakshi Malpekar, Ms. Nehal Gupta & Mr. Uday Mathur, Advocates.

versus

UNION OF INDIA THROUGH THE MINISTRY OF CIVIL AVIATION & ORS.

..... Respondents

Through: Mr. Apoorv Kurup, Ms. Avshreya Pratap Singh Rudy, G.P., Mr. Akhil Hasija, Ms. Gauri Goburdhun and Mr. Ojaswa Pathak, Advs. for R- 1 and 2.

Mr. Neeraj Kishan Kaul, Senior Advocate with Mr. Diwakar Maheshwari, Adv., Mr. Deepak Joshi, Ms. Pratiksha Mishra, Mr. Shreyas Edupugnati and Ms. K. Lakshmi, Advocates for RP.

Mr. Digvijay Rai, Mr. Archit Mishra & Mr. Vivek Gupta, Advocates for R-3/AAI.

Mr. Gopal Jain, Sr. Adv. with Mr. Dheeraj Nair, Mr. Angad Baxi, Ms. Vishrutyi Sahni and Ms. Stanzin Dolker, Advs. for COC.

Ms. Milanka Chaudhary, Ms. Ashly Cherian and Ms. Harshita Agarwal, Advs. for R-7.

Ms. Ragini Sharma, Advocate for R-4

+ **W.P.(C) 9594/2023 & CM APPL. 39368/2023**
JACKSON SQUARE AVIATION IRELAND

LIMITED

..... Petitioner

Through: Mr. Vaijayant Paliwal, Ms. Medha Sachdev, Ms. Riya Basu, Ms. Meghna Rajadhyaksha, Mr. Rishabh Jaisani Mr. Harit Lakhani,



Mr. Ajay Kumar, Ms. Snigdha,
Adv.

versus

DIRECTORATE GENERAL OF CIVIL AVIATION
AND ORS.

..... Respondents

Through: Mr. Apoorv Kurup, Ms. Avshreya
Pratap Singh Rudy, G.P., Mr. Akhil
Hasija, Ms. Gauri Goburdhun and
Mr. Ojaswa Pathak, Adv. for R- 1.
Mr. Neeraj Kishan Kaul, Senior
Advocate with Mr. Diwakar
Maheshwari, Adv., Mr. Deepak
Joshi, Ms. Pratiksha Mishra, Mr.
Shreyas Edupugnati and Ms. K.
Lakshmi, Advocates for RP.

+

W.P.(C) 9900/2023

SKY HIGH XCV LEASING COMPANY LIMITED
& ANR.

..... Petitioners

Through: Ms. Marylou Bilawala, Mr.
Pranaya Goyal, Mr. Dhruv
Khanna, Ms. Sharleen Lobo, Mr.
Chiranjivi Sharma, Ms. Priya
Desai, Ms. Apoorva Kaushik, Mr.
Vasu Gupta, Ms. Saakshi
Malpekar, Ms. Nehal Gupta & Mr.
Uday Mathur, Advocates.

versus

UNION OF INDIA THROUGH THE MINISTRY OF CIVIL
AVIATION & ORS.

..... Respondents

Through: Ms. Anjana Gosain, SPC with Ms.
Avshreya Pratap Singh Rudy, G.P.,
Mr. Akhil Hasija, Ms. Gauri
Goburdhun and Mr. Ojaswa
Pathak, Adv. for R- 1.



Mr. Neeraj Kishan Kaul, Senior Advocate with Mr. Diwakar Maheshwari, Adv., Mr. Deepak Joshi, Ms. Pratiksha Mishra, Mr. Shreyas Edupugnati and Ms. K. Lakshmi, Advocates for RP.

Mr. Gopal Jain, Sr. Adv. with Mr. Dheeraj Nair, Mr. Angad Baxi, Ms. Vishrutyi Sahni and Ms. Stanzin Dolker, Advs. for COC.

Ms. Milanka Choudhary, Ms. Harshita Agarwal and Ms. Ashly Cherian, Advs. for R-5.

Ragini Sharma, Advocate for R-6

+ **W.P.(C) 9901/2023**

STAR RISING AVIATION 13 LIMITED Petitioner

Through: Ms. Marylou Bilawala, Mr. Pranaya Goyal, Mr. Dhruv Khanna, Ms. Sharleen Lobo, Mr. Chiranjivi Sharma, Ms. Priya Desai, Ms. Apoorva Kaushik, Mr. Vasu Gupta, Ms. Saakshi Malpekar, Ms. Nehal Gupta & Mr. Uday Mathur, Advocates.

versus

UNION OF INDIA THROUGH THE MINISTRY OF CIVIL AVIATION & ORS. Respondents

Through: Mr. Apoorv Kurup, Ms. Avshreya Pratap Singh Rudy, G.P., Mr. Akhil Hasija, Ms. Gauri Goburdhun and Mr. Ojaswa Pathak, Advs. for R- 1. Mr. Neeraj Kishan Kaul, Senior Advocate with Mr. Diwakar Maheshwari, Adv., Mr. Deepak Joshi, Ms. Pratiksha Mishra, Mr. Shreyas Edupugnati and Ms. K. Lakshmi, Advocates for RP.



Mr. Gopal Jain, Sr. Adv. with Mr. Dheeraj Nair, Mr. Angad Baxi, Ms. Vishrutyi Sahni and Ms. Stanzin Dolker, Advs. for COC.

- + **W.P.(C) 10327/2023 & CM APPL. 39992/2023**
BLUESKY 31 LEASING COMPANY LIMITED Petitioner
 Through: Mr Ameya Gokhale with Mr. Vaijayant Paliwal, Ms. Medha Sachdev, Ms. Riya Basu, Ms. Meghna Rajadhyaksha, Mr. Rishabh Jaisani Mr. Harit Lakhani, Mr. Ajay Kumar, Ms. Snigdha, Advs.

versus

DIRECTORATE GENERAL OF CIVIL AVIATION
& ORS. Respondents
 Through: Ms. Anjana Gosain, SPC with Ms. Avshreya Pratap Singh Rudy, G.P., Mr. Akhil Hasija, Ms. Gauri Goburdhun and Mr. Ojaswa Pathak, Advs. for R- 1.
 Mr. Neeraj Kishan Kaul, Senior Advocate with Mr. Diwakar Maheshwari, Adv., Mr. Deepak Joshi, Ms. Pratiksha Mishra, Mr. Shreyas Edupugnati and Ms. K. Lakshmi, Advocates for RP.

- + **W.P.(C) 10386/2023 & CM APPL. 40199/2023**
BLUESKY 19 LEASING COMPANY LIMITED Petitioner
 Through: Mr Ameya Gokhale with Mr. Vaijayant Paliwal, Ms. Medha Sachdev, Ms. Riya Basu, Ms. Meghna Rajadhyaksha, Mr. Rishabh Jaisani Mr. Harit Lakhani,



Mr. Ajay Kumar, Ms. Snigdha,
Advs.

versus

DIRECTORATE GENERAL OF CIVIL AVIATION
& ORS.

..... Respondents

Through: Mr. Neeraj Kishan Kaul, Senior
Advocate with Mr. Diwakar
Maheshwari, Adv., Mr. Deepak
Joshi, Ms. Pratiksha Mishra, Mr.
Shreyas Edupugnati and Ms. K.
Lakshmi, Advocates for RP.
Mr. Gopal Jain, Sr. Adv. with Mr.
Dheeraj Nair, Mr. Angad Baxi, Ms.
Vishrutyi Sahni and Ms. Stanzin
Dolker, Advs. for COC.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Court Hearing/ Hybrid Hearing (as per request)]

JUDGMENT

**CM APPL. 45749/2023 in W.P.(C) 7774/2023/[Application for
modification of 05.07.2023 Order]**

**CM APPL 47071/2023 in W.P.(C) 7663/2023 & CM APPL.
47257/2023 in W.P.(C) 9432/2023 [Application seeking urgent
directions]**

1. The present Applications have been filed by the
Petitioners/Lessors *inter-alia* seeking:

- (a) Modification of the interim 05.07.2023 Order [hereinafter referred to as the "05.07.2023 Order"]; and
- (b) Urgent directions for full and proper access to and inspection of all *Aircraft* documents, records, including its maintenance record/storage preservation records.



2. By 05.07.2023 Order, this Court had passed the following interim directions :-

“....20.1 Therefore, with a view to obviate any further losses, the following directions are being passed:

(i) The Petitioners, their employees, agents, officers and/or representatives shall be permitted by the Respondent/DGCA and the appropriate Airport Authorities to access the Airport(s) where the 30 Aircrafts are parked [details of the Aircraft(s) is reproduced in the table in paragraph 3.2 herein] inter alia to inspect their respective Aircrafts, within the next 3 days;

(ii) The Petitioners, their employees, agents, officers and/or representatives shall be permitted to carry out inspection and all maintenance tasks of the Aircraft, its engines and other parts and components, of all 30 Aircrafts [as are set forth in table at paragraph 3.2 herein], at least twice every month, until the final disposal of the Writ Petitions;

(iii) Respondent/GoAir, its directors, employees, agents, officers and or representatives or the IRP/RP(s) or any person acting on their behalf, are hereby restrained from removing, replacing, taking out any accessories, parts, components or spares, etc. or any relevant operational or other Manuals /records, documentation from any of the 30 Aircraft, except with prior written approval of the Lessor of such Aircraft....”

3. Paragraph 20.1 of the 05.07.2023 Order, was modified by a Division Bench of this Court by its order dated 12.07.2023 [hereinafter referred to as the “DB Order”] The relevant extract reads is below:-

“16. In the meantime, direction (ii) contained in paragraph No. 20.1 of the impugned judgement is modified to the extent that GoAir, through RP, is permitted to carry out all maintenance tasks of the thirty subject aircrafts, their engines and other parts and components, which are parked at various airports, with due permissions mandated under extant rules/ law. The Lessors are also free to carry out periodic monthly inspections of the aforesaid aircrafts in accordance with law....”

4. A challenge to the DB Order was dismissed on 07.08.2023 by the Supreme Court in SLP(C) No.16762-69/2023 directing:

“1 Proceedings under Article 226 of the Constitution are pending before a Single Judge of the High Court of Delhi. The petitions are being argued on a day to day basis. The jurisdictional issues which are sought to be raised in these proceedings can be addressed before the High Court.



2 *The Special Leave Petitions are dismissed.*”

5. This Court also issued directions including on 28.07.2023 maintaining *status quo* in respect of the handling/non-revenue flights of the *Aircraft(s)*.

6. During the course of final hearing of the Petitions, some of the Petitioners/Lessors have been constrained to file interim applications seeking urgent directions including for modification of the orders already passed by this Court. Although the prayers in these Applications are different, the essential grievance of the Petitioners/Lessors emanate from orders of inspection and maintenance of the Aircraft’s which form subject matters of the petitions pending before this Court [hereinafter referred to as the “*Aircraft*”].

6.1 The Petitioners/Lessors appearing in *W.P.(C) 6569/2023, W.P.(C) 6626/2023, W.P.(C) 7214/2023, W.P.(C) 7369/2023, W.P.(C) 7773/2023, W.P.(C) 8088/2023, W.P.(C) 9594/2023, W.P.(C) 9990/2023, W.P.(C) 9991/2023, W.P.(C) 10327/2023, W.P.(C) 10386/2022* [hereinafter referred to as “Other Lessors”] have orally contended that they are facing similar issues and that their *Aircraft* are not being maintained in the appropriate manner. It is further contented that cannibalization of the *Aircraft*, its components and parts is taking place.

6.2 In view of the objection taken by the Respondent/RP on delay in adjudication of the present Petitions, learned Counsel appearing on behalf of the Other Lessors have submitted that they are adopting the arguments made by the Petitioners/Lessors in *W.P.(C) Nos.7774/2023, 7663/2023 and 9432/2023* in these Applications.



7. The submissions made by Mr. Kevic Setalvad, Senior Advocate in CM Appl. 47071/2023, Mr. Satvik Varma, Senior Advocate in CM Appl. 47257/2023 and Mr. Nitin Sarin, Advocate in CM Appl. 45749/2023 on behalf of the Petitioners/Lessors include:

- (a) By orders passed by this Court, the Petitioners/Lessors were granted orders of inspection and maintenance of their *Aircraft* leased with the Respondent/Go Air. The Respondent/RP of Go Air was also restricted from removing, replacing, taking out any accessories, parts, components or spares, etc. or any relevant operational or other Manuals/records, documentation from the *Aircraft*, except with prior written approval of the Petitioners/Lessors of the *Aircraft*, to prevent cannibalization and preserve their value and integrity of these highly complicated machines.
- (b) The attention of the Court has been drawn to the Lease Agreements entered into between the Petitioners/Lessors and the Respondent/Go Air to lease one or more *Aircraft* to the Respondent/Go Air on the terms and conditions as set forth therein [hereinafter the “Lease Agreements”] to submit, that the inspection of the *Aircraft* would necessarily include inspection of records/documents of the *Aircraft*. *Aircraft* and *Aircraft documents* are defined in the Lease Agreements as follows:

““*Aircraft*” shall mean the Airframe together with: (i) the two (2) Engines, whether or not installed on the *Aircraft*; (ii) all Parts and all components thereof; (iii) all ancillary equipment or devices furnished with the *Aircraft* under this Lease; (iv) all *Aircraft Documents*,



and (v) all substitutions, replacements and renewals of any and all thereof in accordance with the Lease. ”

“”Aircraft Documents” shall mean the maintenance and inspection records and all other current and historical records, documentation and mass storage media pertaining to the Aircrafts, including without limitation, the terms identified in Exhibit B hereto, those generated by Lessee during the Term and all such documents and records whether or not kept or to be kept in compliance with any regulation of the Aviation Authority and EASA”.

- (c) *Aircraft* are sophisticated and highly technical equipment, it is not sufficient to walk-around to inspect the *Aircraft*. It is essential that *Aircraft documents* as well as records of *Aircraft(s)* part removal have to be provided for to the Petitioner/Lessors for an effective maintenance. However, *Aircraft documents* including records pertaining to maintenance as well as removal of parts has not been provided to the Petitioner/Lessors, despite repeated requests.
- (d) The Petitioners/Lessors have upon their walk around inspection found that the *Aircraft* are not been maintained properly and that there is corrosion on the surface of the *Aircraft*, there is algae forming on the body of the *Aircraft* and scratches on panels etc. Further, certain parts of the *Aircraft* have also been removed.
- (e) The attention of the Court is drawn to the correspondence exchanged between the parties including emails dated 01.09.2023 and 02.09.2023 sent by the Petitioner/Lessors to the Respondent/RP of Go Air in W.P.(C)7663/2023 describing the condition of the *Aircraft*. The relevant extract of email dated 01.09.2023 is set forth below:



"Hi All,

The inspection MSN 11160 in Kannur (CNN) was performed on 31st Aug, with the below summary...

- Onsite GOW representative (Sujith) informed that no maintenance has been carried out on aircraft since August 3rd 2023, same was due non payment of staff salaries.

Same was received two days ago.

- Aircraft was initially under parking more than one month in flight ready condition.
- No non-revenue flight conducted or planned
- The program is now being shifted to storage up to one year.

Storage task has only commenced yesterday 31st August.

- After discussion with onsite person it was told that TD has been obtained from OEM to carry out this shift after a months gap of no maintenance documents were not shared to confirm.

Physically aircraft was in worse condition comparatively since our last inspection:

The top fuselage had a greenish deposit formed on top and completely dirty.

- Corrosion was observed at places like brake hoses, brakes and RH TAT probe (cover clip corroded). Refer images below.

- The **blanking's/protective covers were** removed before DAE inspectors arrival as Engine Runs were being carried out.

- **No covers were installed in cabin/cockpit seats** which would eventually lead to fungus formation.

When enquired about preservation documents, none were shared. Kindly note the quality of the preservation/storage is poor with no documentation to verify actual status.

[Emphasis supplied]

- (f) In addition, the Petitioners/Lessors have annexed photographs to evidence the missing components and parts from Aircraft belonging to the Petitioners/Lessors pursuant to the inspection(s) done.



- (g) The Petitioners/Lessors in W.P.(C) 7774/2023 served on Respondent/RP of Go Air a notice of contempt on 24.08.2023 highlighting the 05.07.2023 Order and the DB Order and requested for the inspection of the *Aircraft documents and/or records* [hereinafter referred to as “Notice of contempt”].
- (h) This Notice of contempt was replied to on 30.08.2023 by the Respondent/RP of Go Air, stating that there was no direction by the Court to provide the *Aircraft documents and/or records* and was limited to granting inspection to the Petitioner/Lessor of their *Aircraft* of the Petitioners/Lessors.
- (i) Therefore, the Petitioners/Lessors seek urgent directions to inspect the records pertaining to the *Aircraft*, its engines and other parts and components relating to the storage, preservation, maintenance performed (if any) and removal/change of such engines, parts and components (if any), of the *Aircraft*.
- (j) The Petitioners/Lessors further contend that in lieu of the deteriorating condition of the *Aircraft* and the fact that there are parts which have been removed and/or are missing from *Aircraft*, grave and irreparable harm is being caused to the Petitioners/Lessors for which urgent interim directions are necessitated by this Court.

8. Mr. Diwakar Maheshwari, Advocate on behalf of Respondent/RP of Go Air has made the following submissions:



- (a) This Court by 05.07.2023 Order, was not inclined to pass an order directing the Respondent/RP of Go Air to grant inspection of the *Aircraft documents and records* and has categorically chosen not to include these terms in the 05.07.2023 Order, even though the same was sought for in the Application seeking interim reliefs by some of the Petitioners/Lessors. Therefore, the Respondent/RP of Go Air is not mandated to provide the inspection of the *Aircraft documents and records* in terms of the 05.07.2023 Order.
- (b) The 05.07.2023 Order has been subsequently modified by the DB Order and the DB Order has attained finality after the Special Leave Petition of the Respondent/RP of Go Air was dismissed by the Supreme Court. Since, the 05.07.2023 Order has merged with the DB Order, this Court should not modify/clarify the 05.07.2023 Order as any modification would now be dealt by the Division Bench of this Court. Reliance is placed on the judgment of the Supreme Court in the case of *Kunhayammed v. State of Kerala*¹, that once a Order is modified by a Superior Court, it can only be varied by such Court as follows:

“12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy.

¹(2000) 6 SCC 359



Once the superior court has disposed of the lis before it either way — whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view.”

- (c) Reliance has also been placed on the judgment of a Coordinate bench of this Court in the case of ***B.S. Bhalla v. DDA***², which held that this Court should not provide additional directions or modify/clarify an Order which has been modified by a Division Bench/Superior Court Order.
- (d) Emphasis has been laid on the conduct of the Petitioners/Lessors who have first filed a Notice of contempt and thereafter filed these Applications during the final hearing of the Writ Petition contending that such Applications are only being filed with a view to delay the final hearing of the Petition.
- (e) The Petitioner/Lessors in WP(C) 7663/2023 has raised the same prayers before the National Company Law Tribunal [hereinafter referred to as “NCLT”] in IA No. 3253/2023 and therefore, the same cannot be dealt with by this Court as has already been adjudicated by the NCLT and the

²2016 SCC OnLine Del 2560



Petitioners/Lessors are forum shopping and have suppressed material facts.

- (f) The documents sought by the Petitioners/Lessors are in the care and custody of the Stock Holding Corporation Ltd., the designated custodians for these documents. Obtaining the documents is expensive and would take time.

9. In Rejoinder, it has been submitted on behalf of the Petitioners/Lessors that:

- (a) The doctrine of Merger will not apply to the present case as what has been modified by the DB Order is not the directions on ‘inspection’ which form part of Paragraph 20.1(i) of 05.07.2023 Order but of the ‘maintenance’ of the Aircraft, which form part of Paragraph 20.1 (ii) of the 05.07.2023 Order. Attention of this Court was drawn to the DB Order, which reads as follows:

“16. In the meantime, direction (ii) contained in paragraph No. 20.1 of the impugned judgement is modified to the extent that GoAir, through RP, is permitted to carry out all maintenance tasks of the thirty subject aircrafts, their engines and other parts and components, which are parked at various airports, with due permissions mandated under extant rules/ law. The Lessors are also free to carry out periodic monthly inspections of the aforesaid aircrafts in accordance with law.”

- (b) The Petitioners/Lessors in WP(C) 7663/2023 have categorically submitted that the objection of the Respondent/RP of Go Air in relation to the similar prayers being made before the NCLT is without any basis, as the same were not pressed and was dropped by the



Petitioners/Lessors in the Rejoinder that was filed before the NCLT. In this regard, the Petitioners/Lessors rely on the extract of the Rejoinder filed before the NCLT, which reads as follows:

"9. It is respectfully submitted that the prayer clauses (b) to (h) of the present Intervention Application relate to the issues contemplated and covered by the Supreme Court Order dated 7th August 2023. In the circumstances, without prejudice to all its rights and contentions, the Applicant is, for the present limiting its relief to Prayer (a) of the Intervention Application with liberty to agitate the other reliefs in appropriate proceedings in this Hon'ble Tribunal. The Applicant seeks liberty from this Hon'ble Tribunal in this regard.

10. ...It is respectfully clarified that the Applicant is, for the present, not pressing the remaining prayers in the present Intervention Application, in light of the Hon'ble Supreme Court's Order, and the direction contained therein that - similar issues which were raised in the Supreme Court are to be heard (and are presently being heard) by the Learned Single Judge of the Delhi High Court."

10. As set forth in order dated 04.09.2023, learned Counsel appearing on behalf of the Respondent/DGCA had submitted that the Respondent/DGCA did not wish to file a Reply and submitted that *lis* in the present Applications is between the Petitioners/Lessors and the Respondent/RP of Go Air alone.

11. The Petitioners/Lessors have contended that the superficial inspection which is being permitted by the Respondent/RP of Go Air i.e. 'walk-around the aircraft' is not sufficient without the *Aircraft documents* or records to ensure a proper inspection of the *Aircraft*, and hence have sought urgent directions.



12. The Respondent/RP of Go Air has primarily raised two objections. Firstly, that the interim directions passed by this Court by the 05.07.2023 Order were modified by the DB Order and that any modification to the directions for inspection and maintenance would have to be done by the Division Bench alone. Reliance has further been made on the judgment in the *Kunhayammed* case to submit that once an order has been modified by the Division Bench and then confirmed by the Supreme Court, the principle of merger becomes applicable and no modification can be made to the same by this Court.

12.1 It has additionally been contended by Respondent/RP of Go Air that the conduct of the Petitioners/Lessors has to be seen prior to granting any relief to them. The Petitioners/Lessors are forum shopping by filing interim applications and raising similar prayers before this Court and before National Company Law Tribunal [hereinafter referred to as “NCLT”]. The reliefs sought have already formed part of applications filed before this Court and that the Petitioners/Lessors are delaying the hearing and final disposal of the present matter and hence, the applications should not be entertained by this Court.

12.2 On merits it is contended by Respondent/RP of Go Air that since the 05.07.2023 Order did not specify that documentation of *Aircraft*, is to be given, it was not granted to the Petitioners/Lessors. Additionally, these *Aircraft Documents* are lying in escrow and obtaining the same would be onerous and time consuming.

13. The Lease Agreements executed between the Petitioners/Lessors and the Respondent/Go Air has defined *Aircraft* and *Aircraft Documents*.



The term *Aircraft* has been defined in the Lease Agreements to mean the Airframe, engines, all parts and components and *Aircraft Documents* is defined to include maintenance and inspection records pertaining to the *Aircraft* including the items set out in *Exhibit B* to the Lease Agreements.

13.1 *Exhibit B* which forms part of the Lease Agreements sets forth the *Aircraft Documents* in extensive detail [running into more than 8 pages], which include documents with respect to *Aircraft* maintenance records and summaries, engine records, certificates of worthiness, FAA approved Aeroplane Flight Manuals and other engineering documentation. These form part of the statutory compliances and are a requirement of the Aviation Authority i.e. Respondent No.3/DGCA.

13.2 *Aircraft* thus means and includes not only the particular *Aircraft*, but also its Engines, all parts and components; ancillary equipment or devices furnished under the Lease Agreements and all *Aircraft documents* including those set forth in *Exhibit B* to the Lease Agreement(s).

14. By the 05.07.2023 Order, this Court had after noting that the *Aircraft* are lying parked in a general common bay area for the *Aircraft* in and around the Airports of the Country, on 05.07.2023 passed interim directions for the preservation of the *Aircraft*:

“18. The Petitioners have submitted that the *Aircrafts at present are lying parked in a general common bay area for Aircrafts around the Country* including at the International Airports at Delhi and Mumbai. *These Aircrafts also contain documents, records, materials and highly valuable accessories which may be accessed by third parties. These documents, records, materials, accessories and parts of the Aircrafts could be removed and/or damaged, so as to cause huge losses to the Petitioners.* Further, the Aircraft MSN 7858 does not contain an engine or the Auxiliary Power Unit of the Aircraft, and hence is inoperable. 17 boxes of documents required for the maintenance of this Aircraft are also not in possession of



the Respondent/GoAir, being already returned to the Lessor – Pembroke Aircraft Leasing 11 Limited on 03.05.2023.

19. The Petitioners have made out a strong prima facie case in view of the provisions of the Aircrafts Rules as discussed herein. The balance of convenience is also in favour of the Petitioners. The Petitioners are suffering irreparable losses as the value of these Aircrafts are diminishing on a daily basis.

20. There can also be no denial of the fact that the Aircrafts of the Petitioners are extremely valuable and highly sophisticated equipment and require regular maintenance for their preservation.”

[Emphasis supplied]

15. Despite the directions of this Court on 05.07.2023 and thereafter, the cannibalization of the *Aircraft* parts is evident in the photographs which have been filed by the Petitioners/Lessors before this Court which include the photographs below:

Aircraft MSN: 7737

Aircraft Registration: VT-WGJ



Description:

- **Captains side stick is missing. Side sticks are used to fly the aircraft in pitch and roll.**
- **Tiller is missing. Tillers are used to steer the aircraft while on the ground.**



Description:

- Engine 2's forward nose cone / cover has been removed.

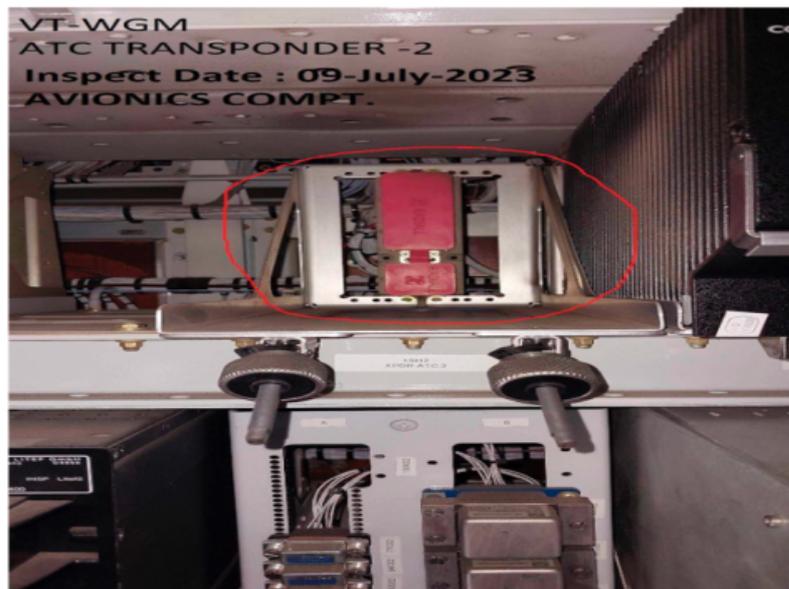
Aircraft MSN: 7859

Aircraft Registration: VT-WGM



Description:

- Captains side stick is missing. Side sticks are used to fly the aircraft in pitch and roll.



Description:

- ATC transponder has been removed. The ATC transponder allows ATC to detect the speed, altitude and direction (heading) of the aircraft while in flight.

16. We are unable to agree with the objection raised by Respondent/RPof Go Air on the doctrine of merger. The doctrine of merger enunciated by the Supreme Court, does not have a universal or unlimited application. For a merger to operate, the superior court must examine the issues and record findings on merits.

16.1 The *Kunhayammed* case also sets forth that doctrine of merger applies once a superior court has disposed of the *lis* before it. The Supreme Court in the case of *Kaikhosrou (Chick) Kavasji Framji v. Union of India*² has reiterated this and clarified that the merger principle is applicable to a decision on merits. The relevant extract is below:

“53. In our view, the principle of merger is fairly well settled. For merger to operate, the superior court must go into the merits of the issues decided by the subordinate court and record finding(s) one way or other on its merits. If this is not done by the superior court, a plea of merger has no application in such a case and the order of the subordinate court would

²(2019) 20 SCC 705



continue to hold the field(see S. Shanmugavel Nadar v. State of T.N. [S. Shanmugavel Nadar v. State of T.N., (2002) 8 SCC 361]).

54. In our view, this **Court while disposing of the appeals by its order dated 4-8-1998** [Union of India v. P.T. Anklesaria, (2014) 14 SCC 204, 211 (footnote 6)] , **did not go into the merits of the various contentions** which were decided by the High Court in its order dated 6-2-1979 and disposed of the appeal on the statement made by the respondents through the Solicitor General that Respondent 1 (Union of India) would take recourse to the remedy of the civil court by filing a civil suit.”

[Emphasis Supplied]

16.2 The position of law as settled above, is that the doctrine of merger is applicable only when an Appellate Court has gone into the merits of the case.

16.3 The DB Order in paragraphs 14 and 17 has, however, clarified that no opinion has been expressed on the merits of the matter.

“14.....We thus deem it appropriate in the interest of justice to refrain from entertaining the appeals at this juncture.....

17. It is clarified that we **have not expressed any opinion on the contentions noted hereinabove and the parties shall be free to urge the same before** the learned Single Judge or the NCLT, as the case may be, who would be free to proceed further in accordance with law.”

[Emphasis Supplied]

16.4 There is no impediment for this Court to pass additional interim directions either.

17. The other contention of Respondent/RP of Go Air that the Petitioners/Lessors are forum shopping by simultaneously filing the same Application before the NCLT and before this Court. However, admittedly, and as set forth in paragraph 8(b) above, and the Petitioners/Lessors in [W.P.(C) 7663/2023], have in their Rejoinder not proceeded with/dropped the similar prayers before the NCLT, in view of the orders passed in this matter.



17.1 So far as concerns the objection of delay in adjudication of the present Petition is concerned, the Respondent/RP of Go Air has yet to commence its final arguments and had on the last date of hearing sought time to examine the recent notification dated 03.10.2020 passed by the Ministry of Corporate Affairs.

17.2 Other than the request of supply of documents being time consuming and onerous, no objection on the merits of the matter has been taken by the Respondent/RP of GoAir. In fact, it is contended by the Petitioners/Lessors that this stand, as taken by Respondent/RP of GoAir in its response to the Petitioners/Lessors request for an inspection of the *Aircraft Documents* and its denial, has necessitated the filing of the present Applications.

17.3 The Respondent/RP of Go Air was directed in the 05.07.2023 Order, to maintain the *Aircraft*, to preserve their value and integrity. This intent was reflected by the DB Order as well. The extent that these directions are being complied with, will require examination.

18. It is clear from the aforesaid discussion that the term *Aircraft* includes *Aircraft Documents*, the inspection granted to the Petitioners/Lessors would necessarily have to include *Aircraft Documents* to facilitate and make the inspection of the *Aircraft* meaningful.

19. In any event, it has now been more than five months, since the *Aircraft* were grounded by the Respondent/RP of GoAir. A review of the documents and photographs filed by the Petitioners/Lessors show the evident cannibalization of the *Aircraft*. The Petitioners/Lessors have made out a *prima facie* case and it has become necessary for this Court to pass



additional directions to protect these highly valuable equipment during the pendency of the present case.

19.1 It is also deemed necessary that the Petitioners/Lessors be permitted to contract a 24 hour security services for all the *Aircraft*, to be provided at the expense of the Petitioners/Lessors.

20. In view of the foregoing discussions, the following directions are passed :

20.1 The Respondent/RP of Go Air shall within the next fourteen days provide access to the Petitioners/Lessors of the following documentation in relation to the *Aircraft*, the Airframe, its engines and other parts and components:

- (a) Records pertaining to removal of all parts and components including engines, Air Frame, etc;
- (b) Records relating to the storage of the *Aircraft*;
- (c) Historical records and hardcopy records in relation to the *Aircraft* which may be located at a storage facility including any online records;
- (d) Updated technical records, *Aircraft* status documents and statements in relation to the *Aircraft*;
- (e) Any other document or record as required to ascertain the airworthiness of the *Aircraft*, its engine(s), the Airframe and all parts and components of the *Aircraft*.

20.2 The Petitioners/Lessors are permitted to contract a 24 hour security service for all the *Aircrafts* at their own expense. Respondent No.3/DGCA shall permit, the duly verified security personnel/security agency so



appointed by the Petitioners/Lessors, access at the various airports in and around the country, where the *Aircraft* are lying parked.

20.3 The Respondent/RP of Go Air shall continue to maintain the *Aircraft* as already directed.

21. The directions in paragraph 20 above are being passed for all the 54 *Aircraft* as set forth in the table herein below:

S.No	Petition No. & Case Title	Details of the Aircraft Leased	
1	WP(C) 6569/2023-ACCIPITER INVESTMENTS AIRCRAFT 2 LTD V UOI	Airbus A320-214	A320-214 MSN 5990 IRM VT-GOQ
		MSN 5811 IRM VT-GOO	6. Airbus A320-271N MSN 8656 IRM VT-GOP
2	WP(C) 6626/2023-EOS AVIATION 12 (IRELAND) LTD. Vs. UOI	AirbusA320-271N MSN 11111 IRM VT-WDB	7. Airbus A320-214 MSN 5809 IRM VT-WGA
3	WP(C) 7214/2023-PEMBROKE AIRCRAFT LEASING 11 LTD VS DGCA AND ORS	Airbus A320NEO MSN 7858 IRM VT-WGN	8. Airbus A320-271N MSN 7330 IRM VT-WGE
4	WP(C) 7369/2023-SMBC AVIATION CAPITAL LIMITED AND ORS Vs. UNION OF INDIA AND ORS	1. Airbus A320-214 MSN 5675 IRM VT-GON	9. Airbus A320-214 - MSN 6072 IRM VT-GOR
		2. Airbus A320-271N MSN 7047 IRM VT-WGA	10. Airbus A320-271N MSN 7205 IRM VT - WGD
		3. Airbus A320-271N MSN 7074 IRM VT-WGB	
		4. Airbus A320-271N MSN 8498 IRM VT-WGY	
		5. Airbus	
5	WP(C) 7663/2023-DAE SY 22 13 IRELAND DESIGNATED ACTIVITY COMPANY Vs. UOI & ORS		1. Airbus A320- 271N MSN 11160 IRM VT – WDD 2. Airbus A320- 271N MSN 11052 IRM VT – WDA



6	WP(C) 7773/2023-SFV AIRCRAFT HOLDINGS IRE 9 DAC LIMITED Vs. UOI THROUGH DGCA& ORS.	Airbus A320 - 271N MSN 11130 IRM VT-WDC			IRM VT-WGS 6. Airbus A320-271N MSN 8382 IRM VT-WGT 7. Airbus A320-271N MSN 8458 IRM VT-WGV 8. Airbus A320-271N MSN 8464 IRM VT-WGW 9. Airbus A320-271N MSN 8482 IRM VT-WGX 10. Airbus A320-271N MSN 8503 IRM VT-WGZ
7	WP(C) 7774/2023-ACG AIRCRAFT LEASING IRELAND LIMITED Vs. UNION OF INDIA & ORS.	1. Airbus A320-271N MSN 7594 IRM VT-WGI 2. Airbus A320-271N MSN 7737 IRM VT-WGJ 3. Airbus A320-271N MSN 7753 IRM VT-WGK 4. Airbus A320-271N MSN 7859 IRM VT-WGM	9	W.P.(C) 9432/2023 BOC AVIATION (IRELAND) LIMITED v DGCA	Airbus A320NEO MSN 9332 IRM T-WJO
8	WP(C) 8088/2023-GY AVIATION LEASE 1722 CO LIMITED & ORS. Vs. UOI	1. Airbus A320-271N MSN 7813 IRM VT-WGL 2. Airbus A320-271N MSN 8146 IRM VT-WGP 3. Airbus A320-271N MSN 8152 IRM VT-WGQ 4. Airbus A320-271N MSN 8209 IRM VT-WGR 5. Airbus A320-271N MSN 8273	10	W.P.(C) 9594/2023 JACKSON SQUARE AVIATION IRELAND LIMITED v DGCA	1. Airbus A320NEO MSN 7172 IRM VT-WGC 2. Airbus A320NEO MSN 7507 IRM VT-WGF 3. AAirbus A320NEO MSN 7563 IRM VT-WGG 4. Airbus A320NEO MSN 7571 IRM VT-WGH 5. Airbus A320NEO MSN 8613



		IRM VT-WJB				
		6. Airbus A320NEO MSN 8621 IRM VT-WJC		12	W.P.(C) 9901/2023 STAR RISING AVIATION 13 LIMITED v UOI through DGCA	
		7. Airbus A320NEO MSN 8643 IRM VT-WJD				1. Airbus A320-271N MSN 9264 VT-WJN
		8. Airbus A320NEO MSN 8650 IRM VT-WJE				2. Airbus A320-271N MSN 9358 VT-WJP
						3. Airbus A320-271N MSN 9375 VT-WJQ
11	W.P.(C) 9900/2023 SKY HIGH XCV LEASING CO. LTD. & ANR v UOI through DGCA	1. Airbus A320 - 271N MSN 8583 VT-WJA				
		2. Airbus A320-271N-MSN 8720 VT-WJG		13	W.P.(C)-10327-2023 BLUESKY 31 LEASING COMPANY LIMITED v DGCA	
		3. Airbus A320-271N MSN 8736 VT-WJH				1. Airbus A320-271N MSN 8785 VT-WJJ
		4. Airbus A320-271N MSN 8445 VT-WGU			2. Airbus A320-271N MSN 9200 VT-WJL	
		5. Airbus A320-271N MSN 8757 VT-WJI		14	W.P.(C)-10386-2023 BLUESKY 19 LEASING COMPANY LIMITED v DGCA	
		6. Airbus A320-271N MSN 8850 VT-WJK				1. Airbus A320-271N MSN 9218 VT-WJM
				2. Airbus A320-271N MSN 9412 VT-WJS		
					3. Airbus A320-271N MSN 9598 VT-WJT	

21.1 It is clarified that these directions are being passed are in addition to the directions passed by this Court earlier.



22. Since, the aforesaid directions have been passed with respect to all 54 *Aircraft* which form part of the present petitions, modification of 05.07.2023 Order is not necessary. CM APPL. 45749/2023 is accordingly closed.

22.1 CM APPLs. 47071/2023 and 47257/2023 are also disposed of.

23. Parties will act based on the digitally signed copy of the order.

(TARA VITASTA GANJU)
JUDGE

OCTOBER 12, 2023/Sa/yg/r