

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

TRANSFER PETITION (CIVIL) NO.502 OF 2006

JET AIRWAYS (I) LTD.

Petitioner(s)

VERSUS

SAHARA INDIA COMMERCIAL CORP. LTD. & ORS.

Respondent(s)

(With appln(s) for stay and office report)

With Transfer Petition (C) No.590 of 2006

(With appln.(s) for stay and office report)

Date: 28/08/2006 These Petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.K. THAKKER

For Petitioner(s)

Mr. Harish N. Salve, Sr. Adv.

Mr. Soli J. Sorabjee, Sr. Adv.

Mr. Arun Jaitley, Sr. Adv.

Mr. Ram Jethmalani, Sr. Adv.

Mr. K.K. Venugopal, Sr. Adv.

Dr. A.M. Singhvi, Sr. Adv.

Mr. J. Dwarkadas, Adv.

Mr. R.J. Gagrath, Adv.

Mr. U.A. Rana, Adv.

Mr. Zal Andhyarujina, Adv.

Ms. Minakshi Grover, Adv.

Mr. Ankur Chawla, Adv.

Ms. Srabonee Roy, Adv.

Ms. Gayatri,Adv.

Mr. Ashish Kumar,Adv.

Ms. Palvi,Adv.

Ms. Shreyashee Chakrabarty,Adv.

for M/s. Gagrat & Co.,Advs.

For Respondent(s)

Mr. Mukul Rohatgi,Sr.Adv. ( In TP 502/2006)

Mr. R.F. Nariman,Sr.Adv. (In TP 502/2006)

Mr. D.A. Dave,Sr.Adv. (In TP 590/2006)

Mr. Saish Kishan Chandani,Adv.

Mr. Jatin Pore,Adv.

Ms. Radha Rangaswamy,Adv.

Mr. Rishi Agrawal,Adv.

Mr. Mahesh Agrawal,Adv.

Mr. Ramesh,Adv.

Mr. J.J. Bhat,Adv.

Mr. E.C. Agrawala,Adv.

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Mr. C.S. Vaidyanathan,Sr.Adv.

Ms. Pallavi S. Shroff,Adv.

Ms. Rashi Malhotra,Adv.

Mr. Indranath Bishnu,Adv.

for M/s. Suresh A. Shroff & Co.,Advs.

UPON hearing counsel the Court made the following

O R D E R

The transfer petitions are disposed of.

The proceedings at Lucknow are directed to be sent to the

Bombay High Court forthwith.

[ T.I. Rajput ]

[ V.P. Tyagi ]

A.R.-cum-P.S.

Assistant Registrar

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

TRANSFER PETITION (C) NO.502 OF 2006

Jet Airways (I) Limited

...Petitioner(s)

Versus

Sahara India Commercial Corpn. Ltd. & Ors.

...Respondent

(s)

With Transfer Petition (C) No.590 of 2006

O R D E R

These transfer petitions have been filed under Section 25

of the Code of Civil Procedure, 1908, seeking transfer of R.S.

No.33 of 2006 (Sahara India Commercial Corporation Limited &

Anr. vs. Jet Airways (India) Limited & Ors.) and R.S. No.36 of

2006 (Sahara India Investment Corporation Limited & Ors. vs. Jet

Airways (India) Limited & Ors.) from the court of District Judge,

Lucknow (Uttar Pradesh) to the High Court at Bombay.

Under Section 25 of the Code of Civil Procedure, 1908 [for short, "the Code"], this Court, if satisfied at any stage that it is expedient for the ends of justice, may direct that any suit, appeal or other proceedings be transferred from court in one State to a court in any other State.

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There is some controversy between the parties as to the timing of the filing of the petition at Lucknow. This controversy arises in view of the certificate of the Prothonotary of the Bombay High Court filed by the petitioner certifying that Arbitration Petition No.261 of 2006 was lodged with the office of the Prothonotary on 20th June, 2006 at 14.59.23 hours under Lodging No.320/2006. The first petition in Lucknow, as per the reply filed by Respondent Nos.1 and 2 in Transfer Petition (C) No.502 of 2006, was presented at 4.00 p.m.

The respondents have filed the aforesaid two petitions at Lucknow. In the first petition, the prayer, inter alia, is that Jet Airways (India) Limited, whether by itself or through its servants or agents or otherwise, be restrained from demanding and/or receiving the sum of Rupees 1500 crores deposited in the escrow account with Respondent No.3-ICICI Bank. The prayer is also

made to restrain the said Bank from releasing and/or remitting and/or returning a sum of Rs.1500 crores deposited in the escrow account with it to Jet Airways (India) Limited. This first petition was filed on 20th June, 2006, by two shareholders, who are parties to the Share Purchase Agreement [S.P.A.] dated 18th January, 2006. The second petition has been filed by the remaining five shareholders on 1st July, 2006 in the court of the District Judge, Lucknow. One of the prayers therein is for injunction restraining the petitioner herein, Jet Airways (India) Limited, to forthwith initiate or submit Respondent No.3-ICICI Bank not to release or return or remit any amount deposited in the escrow account either to Jet Airways (India) Limited or to any other person/entity

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on its behalf. This prayer is substantially the same as in the first petition. Another prayer in the second petition is to restrain the Jet Airways (India) Limited from invoking personal guarantee dated 29th March, 2006 of Subroto Roy Sahara from taking any further steps thereto requiring the payment of Rs.500 crores.

The petitioner, Jet Airways (India) Limited has also lodged two proceedings in the Bombay High Court, one under Section 9 of the Arbitration and Conciliation Act, 1996, and the other a

summary suit filed for recovery of the guarantee amount of Rs.500 crores.

We have perused the terms and conditions of the escrow agreement entered into between primarily three parties, namely, the seller, purchaser and the Bank-ICICI. One of the clause stipulates that any legal action or proceeding arising out of the terms and conditions and in relation to the transaction contemplated herein and the rights and obligations of the parties and the Account Bank may be brought in the High Court of Bombay and party irrevocably submitted itself to its jurisdiction of that court. Somewhat similar clauses in guarantee agreement and pledge agreement have also been brought to our notice.

It has been contended that all these agreements show that the parties agreed that all legal proceedings shall be taken at Bombay. Our attention has also been drawn to the arbitration agreement which cites Bombay as the situs of arbitration. Further reference has been made to the clauses which postulate the service to be effected on various persons of Sahara at Bombay.

On the basis of these clauses and considering that the parties

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agreed for all legal proceedings to be initiated at Bombay, it is contended that the two proceedings pending before the District Judge, Lucknow, be directed to be transferred to the High Court at Bombay. We have also perused the order dated 21st June, 2006 passed by the learned District Judge, Lucknow, in R.S. No.33 of 2006 restraining the petitioner, Jet Airways (India) Limited, from withdrawing the amount of Rs.1500 crores that is deposited in escrow account with ICICI Bank. The Bank was also restrained from making any payment of the amount to Jet Airways (India) Limited. We have further perused the order dated 23rd June, 2006, passed by the learned District Judge, Lucknow, where the prayer made by moving another application was to restrain Jet Airways from enforcing the pledge agreement dated 29th March, 2006 pending disposal of R.S. No.33 of 2006. By that order, the Jet Airways were restrained from enforcing the pledge agreement.

Vehemently opposing the petition seeking transfer, it was contended by the learned Counsel for Sahara that the main agreement between the parties is Share Purchase Agreement dated 18th January, 2006. All other agreements, be it escrow agreement, pledge agreement or guarantee agreement, are only to effectuate the Share Purchase Agreement. It has been pointed out by the learned counsel that the Share Purchase Agreement

was executed at Lucknow and that all the Directors of Sahara are residents of Lucknow. It is also submitted that the situs of arbitration being at Bombay by itself does not confer jurisdiction to the Bombay court. The learned counsel also sought to rely on Section 2(e) and Section 20 of the Arbitration and Conciliation Act,

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1996 to contend that Bombay High Court has no jurisdiction whatsoever and, therefore, to submit that since there is inherent lack of jurisdiction at Mumbai, the order of transfer may not be made.

For the view we are taking, it is not necessary to go into the question of lack of inherent jurisdiction in the Bombay High Court though an order in exercise of power under Section 25 of the Code can also be made to a court which may not have any jurisdiction but, in the present case, we are not going to that extent. We have referred to the proceedings pending at Lucknow court, the orders passed by the learned District Judge at Lucknow and the proceedings initiated at Bombay High Court only with a view to focus the controversy between the parties. We have not examined any factual or legal aspect as to the making of

the order of injunction or when the proceedings been initiated in

one or the other court.

As presently advised, having regard to the various clauses

of the Escrow Agreement, Pledge Agreement and the Guarantee

Agreement, in our view, ends of justice require that all

proceedings should take place in one court, namely, High Court

at Bombay, as that is what is contemplated by various clauses in

these agreements. This is subject to the High Court at Bombay

having jurisdiction to entertain the dispute between the parties.

In this respect, we express no opinion. In fact, we did not

permit the

learned counsel for the respondents to urge the argument that

the Bombay High Court lacks inherent jurisdiction and left it

to be

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agitated before the Bombay High Court. It would be open to the

respondents herein to urge before the High Court at Bombay that

it inherently lacks jurisdiction. When such a point is raised, it

would be decided in accordance with law. In the event the High

Court comes to the conclusion that it lacks inherent jurisdiction,

the consequences will follow. If, however, it is found that the

Bombay High Court has also jurisdiction then all the proceedings,

namely, the two initiated by the petitioner and the two by the respondents at Lucknow would be heard by the Bombay High Court. It would be desirable if all the four matters are heard together by the same learned Judge.

The injunction granted by the Lucknow Court will continue until further orders are passed by the Bombay High Court. However, having regard to the nature of the controversy and high stakes involved, we direct the parties to appear before the Prothonotary of the Bombay High Court on 11th September, 2006 and request the Bombay High Court to expeditiously decide the matter since the injunction, afore-noted, is continuing since June, 2006.

The transfer petitions are disposed of accordingly.

The proceedings at Lucknow are directed to be sent to the Bombay High Court forthwith.

.....CJI.

[Y.K. SABHARWAL]

.....J.

[C.K. THAKKER]

New Delhi,  
August 28, 2006.