

IN THE HIGH COURT OF DELHI AT NEW DELHI
EXTRA ORDINARY CIVIL WRIT JURISDICTION
WRIT PETITION [C] NO. 15240 OF 2021
(PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

DR. SUBRAMANIAN SWAMY

..... PETITIONER

VERSUS

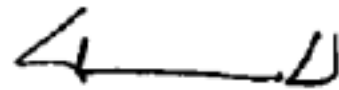
UNION OF INDIA AND OTHERS

... .. RESPONDENTS

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Filed by



PETITIONER-IN-PERSON
DR. SUBRAMANIAN SWAMY
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MOBILE: [REDACTED] / [REDACTED]

NEW DELHI
DATED: 05.01.2022

IN THE HIGH COURT OF DELHI AT NEW DELHI
EXTRA ORDINARY CIVIL WRIT JURISDICTION
WRIT PETITION [C] NO. 15240 OF 2021
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... .. RESPONDENTS

WRITTEN SUBMISSION ON BEHALF OF THE PETITIONER

1. That the Petitioner is aggrieved by the illegal, unreasonable, arbitrary, unconstitutional, discriminatory, unfair acts / procedure adopted by the Respondent Nos. 1-4 and 6 in the Air India Disinvestment process and not to the concept of privatization.
2. It is submitted that, there is no challenge before this Court as to the policy of disinvestment. The only question and challenge raised before this Hon'ble Court is whether the method adopted by the Government in exercising its executive powers to disinvest Air India is permissible or not under law. The transparency in the decision making of disinvestment of Air India is argued before this Court. It is submitted, the Acts of the Respondent-Union is contrary to the disqualification criteria / eligibility criteria laid down by the Government of India, Civil Aviation in the Preliminary Information Memorandum (PIM) with respect to Air India Disinvestment issued by the Ministry of Civil Aviation, Govt of India Dated 27.01.2020.

3. It is submitted, the non-transparent bid procedure and opaqueness in the entire process and the methodology adopted by the Respondent No. 1-4 in the valuation of the Air India disinvestment process is arbitrary, illegal, corrupt, unconstitutional, malafide and against the public interest at large. The injury caused to the public herein, has led to clear violation of the Constitutional & statutory duties and therefore demands the intervention of this Court.

4. In this privatization Air India has been grossly undervalued. The reserve price and sale price are arbitrarily low in light of Air India's several assets. It is submitted, this disinvestment of Air India, has affected the public at large because of the illegal and unconstitutional actions of the Union-Respondents and Respondent No. 6 as the base-price set is undervalued considering all the invaluable scarce resources including, Flying Routes, foreign airports Aerobridge rights, hanger rights, aircrafts costs etc. as after privatization the Union-Respondents are seeking additionally Rs. 62,000/- crores to pay off the liabilities but earlier Respondents clarified that the net liabilities on the Government after the privatization amounted to Rs. 28,444 crores. **[Annexure P5 at PAGE 299].**

5. That the Government of India, Ministry of Finance, [DIPAM], in Lok Sabha in Starred Question No. 109 on 06.12.2021, answered a question raised by Shri. A. Raja [Member of Parliament] with

respect to whether apart from other aircrafts, the new 30 new 777 jumbo jets each costing Rs. 2000/- crore delivered in 2018 are also part of the deal if so the details thereof, to which the Minister answered that Sixteen B-777 aircrafts in Air India are part of the transaction, of which fifteen aircrafts have been inducted during the period of 2007 to 2010 and one aircraft in 2018. Copy of the starred question No. 109 on 06.12.2021 in the Lok Sabha is attached as Annexure S-1. Flowing from that, it is submitted, prima facie there is manifestly arbitrariness and opaqueness in the entire valuation process causing loss to tax payers, the same is admitted by Respondent No. 2 in the Lok Sabha.

6. Hon'ble Supreme Court in Natural Resources Allocation In Re Special Reference No. 1 of 2012 [(2012) 10 SCC 1] held:

*“176. In the judgment in Meerut Development authority case this Court laid down, that in a tender process, a tenderer has the right to fair treatment and the right to be treated equally. **The evaluation of tenders, it has been held, must be transparent and free from any hidden agenda.** The view expressed in Wades Tretise on Administrative Law, **that public authorities cannot act in a manner which is open to private persons, was accepted. Public authorities, it was held, can neither act out of malice nor a spirit of revenge. A public authority is ordained to act, reasonably and in good faith and upon lawful and relevant grounds of public interest. Most importantly it was concluded, that the State "must" get the "full value" of the resources, specially when State owned assets are passed over to private individuals/entities. Not stopping there the Court added further, that whoever pays less than the full***

value, get the assets belonging to the citizens "at a discount", and as such the wealth that belongs to the nation slips away"

"159. First of all reference was made to the decision of this Court in S.G. Jaisinghani Vs. Union of India & Ors., AIR 1967 SC 1427, wherein this Court observed as under:

"14. In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the Rule of law. (See Dicey - Law of the Constitution - 10th Edn., Introduction cx). "Law has reached its finest moments," stated Douglas, J. in United States v. Wunderlich, (1951) 342 US 98, "when it has freed man from the unlimited discretion of some ruler.... Where discretion, is absolute, man has always suffered." It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield slated it in classic terms in the case of John Wilkes, (1770) 4 Burr 2528 at p. 2539 "means sound discretion guided by law. It must be governed by Rule, not by humour: it must not be arbitrary, vague, and fanciful."

*In the aforesaid case, it came to be emphasized that executive action should have clearly defined limits and should be predictable. In other words, the man on the street should know why the decision has been taken in favour of a particular party. What came to be impressed upon was, **that lack of transparency in the decision making process would render it arbitrary.**"*

[Emphasis Added]

7. It is submitted, M/s Tata Sons has a previous record of prime facie committing fraud in the Airline sector by vesting the substantial control with a foreign airline / national. Flowing from that, it is submitted, the below-mentioned Eligibility Criteria makes it clear that the Substantial Ownership and Effective Control of the AI and AIXL will be vested in Indian nationals. *“The Eligibility Criteria for the IBs are as follows:*

11.5. Continued Compliance with Substantial Ownership and Effective Control Criteria and FDI Policy: The IBs will be required to demonstrate to the relevant government authority and ensure continued compliance by AI, and AIXL with FDI Policy and the requirement that substantial ownership and effective control of the AI and AIXL will be vested in Indian nationals.”

8. It is again reiterated, that the FIR [Annexure P-4] with respect to a joint-venture of **Tata Sons Limited** [i.e. vide Air Asia India] and indirectly being substantially managed by a foreign entity (as recorded by the FIR). Therefore, disinvestment of Air India by way of the transfer of management control and sale of 100% equity share capital of Air India held by GOI which will include Air India’s shareholding interest of 100% in Air India Express Limited [AIEL] and 50% in Air India Air Transport Services Limited [AISATS] to *M/s Talace Pvt Ltd* [Respondent No. 6], a wholly owned subsidiary of M/s Tata Sons Pvt. Ltd is against the above-mentioned Eligibility Criteria i.e. 11.5 read with 13.2 (k) of the Preliminary Information Memorandum (PIM) with respect to Air India Disinvestment.

9. That all the Respondent(s) are duty bound and are concerned with prevention of corruption, maintenance of National Security and integrity of the Nation. That violation(s) of FIPB norms and FDI norms are made out prima-facie in the FIR, as the effective management control of Air Asia (India) is vested with Foreign entity. That the FIR filed by the CBI and the Enforcement Directorate under the PMLA against Air Asia which is substantially owned and effectively controlled by Tata Sons. The same can be reiterated and corroborated through Paragraph No. 1 & 2 of the FIR reproduced below:

*“1....A reliable source information has been received that M/s. AirAsia (India) Limited is a joint venture between M/s. Tata Sons Limited, M/s. Telestra Tradeplace Put. Ltd. & M/s. AirAsia Investment Limited, Malaysia. M/s. AirAsia (India) Ltd. (AAIL) submitted applications to the then Foreign Investment Promotion Board (FIPB) of India in February, 2013 and received a formal approval in April, 2013, followed by the No Objection Certificate (NOC) in September, 2013 and Air Operating Permit (AP) in May, 2014 for carrying out domestic aviation in India. Presently, **M/s. AirAsia (India) Limited is a joint venture between Tata Sons Ltd. (49%) and Malaysian carrier Ms. AirAsia, Berhad (49%). Rest 2% is owned by Chairman S. Ramadorai (0.5%) and R. Venkataramanan (1.5%). M/s. AirAsia, Berhad, Malaysia is being owned and controlled by Mr. Anthony Francis Fernandes Tony Fernandes, a Malaysian national of Indian origin.**”*

“2...that M/s AirAsia India Ltd. was indirectly controlled and operated by AirAsia Group and particularly AirAsia, Berhad violating the then various norms of then FIPB. This structure was

*indirectly formalized through a “brand License Agreement” signed between M/s AirAsia (India) Ltd. (represented by Mr. Tony Fernandes) And M/s Air Asia Berhad (represented by Tharumalingam Kanagalingam @ Bo Lingam) on 17.04.2013 which indirectly made M/s Air Asia a de-facto subsidiary rather than joint venture. As per the then FDI Policy, foreign airlines are allowed to own up to 49 percent shares in domestic airlines but effective management control much remain with the Indian partner. **It is further revealed that the shareholders and Indian partners at the joint venture, including the board members were not only aware of these intentions, but also consciously ensured violating the then FIPB Norms, hence violation of FDI norms were prima facie found by giving effective management control to a foreign entity.”***

10. That it is submitted, the FIR mentions R. Venkataramanan as the first accused, it is important to mention that, R. Venkataramanan was the OSD and Executive Assistant to Mr. Ratan Tata during his tenure as Chairman of Tata Sons and the Tata Group Companies. Furthermore, He continued as OSD to Mr. Tata as Chairman of the Tata Trusts. Along with that, he was appointed the Managing Trustee of the Tata Trusts which collectively own and control 65% of the shareholding of Tata Sons. The Trusts have three nominee Directors on the Board of Tata Sons with Veto Rights including that no decision of the Board of Tata Sons is valid without the affirmative vote of the Tata Trusts’ nominee.

Also, R. Venkataramanan was during his tenure as above appointed a Director of Air Asia from virtually its inception representing the Tata Sons shareholding in the airline. He

therefore acted effectively under the direction of Tata Sons which in turn acts under the direction of Tata Trusts of which he was the Managing Trustee.

11. Flowing from that, it is submitted that, Respondent No. 6 is a 100% subsidiary of Tata Sons which is the investment company that has bid for and is in the process of acquiring Air India.
12. That Air Asia as stated by the Respondent(s) is an 83.67% subsidiary of Tata Sons. The effective control of Air Asia as also Talace [R-6] is with Tata Sons and as a consequence ultimately with the Tata Trusts of which Venkataramanan was the Managing Trustee and Director of Air Asia concurrently. R. Venkataramanan is the common link as Managing Trustee of the Tata Trusts and at the same time a Director of Air Asia that controls Tata Sons which in turn has substantial ownership and effective control over Air Asia and Talace [R-6].
13. This clearly shows that the effective ownership and control of Air Asia and Talace [R-6] are by one and the same party (Tata Sons) one of which including its erstwhile Director (Air Asia) is facing an FIR under PMLA and has a bearing on the national security condition in the Air India disinvestment criteria.
14. That the News report published by business standard dated 18.11.2021 states that Tata Sons are also working on merging Air Asia India and Air India Express. Copy of the News report

published by business standard dated 18.11.2021 is attached as **Annexure S-2**. Further Vide the pending FIR on Air Asia attached as Annexure P-4 of the Writ Petition, and the aforementioned uncontradicted report invites the attention and intervention of this Hon'ble Court is court-monitoring / CBI inquiry to check the malice in methodology / procedure adopted by the Respondent(s).

15. That flowing from the above submission it is submitted, the preset Air India disinvestment process is also against the interest of national integrity, security as the above-mentioned FIR are with respect to a joint-venture of **Tata Sons Limited** [i.e. Air Asia India] and indirectly being controlled and operated by AirAsia Group and particularly AirAsia Berhad violating the then various norms of then FIPB and is against interest of national integrity and security. Therefore, disinvestment of Air India by way of the transfer of management control and sale of 100% equity share capital of Air India held by GOI which will include Air India's shareholding interest of 100% in Air India Express Limited [AIEL] and 50% in Air India Air Transport Services Limited [AISATS] to *M/s Talace Pvt Ltd* [Respondent No. 6], a wholly owned subsidiary of M/s Tata Sons Pvt. Ltd is also against interest of national integrity and security, as indirectly the control is being vested with a foreign national.

16. That it is submitted, the Consortium led by Sh Ajay Singh [the principal shareholder, Chairman and Managing Director of **SpiceJet**], has pending litigation filed by a decree holders under

Order XXXIX Rules 1 and 2 r/w Sections 51(e), 94 (c), 94 (e) and 151 of CPC seeking injunction to restrain the judgment debtor [i.e. SpiceJet] from transferring/alienating any of its assets to Spicexpress and Logistics Private Limited and seeking pending recovery of the amounts owed to decree- holders under their foreign decree [EX.P . 55/2021, before this Hon'ble Court]. Additionally, it is submitted, another similar litigation is pending before this Hon'ble Court i.e. EX.P. 41/2021 & EX.APPL.(OS) 614/2021. Importantly it is submitted that, Hon'ble High Court of judicature at Madras vide its Order dated 06.12.2021 in Company Petition No. 363 of 2015 has directed SpiceJet to wind up. Flowing from this, it is submitted, that there is non-transparency and opaqueness in the entire Air India Disinvestment process, therefore, cannot be allowed to sustain in law.

17. That it is submitted, the Preliminary Information Memorandum (PIM) with respect to Air India Disinvestment issued by the Ministry of Civil Aviation, Govt of India Dated 27.01.2020 [Annexure P-2], under the Disqualifications clauses / criteria has stated that:

“13.2 Without prejudice to any other rights or remedies available to GOI including the right to disqualify any IB at its sole discretion with or without assigning any reason, the GOI reserves the right to disqualify any IB (whether sole bidder or member of Consortium, as applicable) and exclude its EOI from further consideration for any reason, including without limitation those listed below:

.....(j) If at any time it is discovered that an IB (sole bidder or any member of Consortium, as applicable) and/or Affiliate (only in case IB is taking benefit of financial strength of such Affiliate) **is/are subjected to winding up/insolvency proceedings or other proceedings of a similar nature.”**

18. That Spice-jet in a Court filing before this Court stated that the promoter Ajay Singh in his individual capacity does not have the requisite resources to provide finances to SpiceJet of which he is the Promoter and Chairman having substantial ownership and effective control over the airline. It is therefore evident that Ajay Singh in his own “individual capacity” has pleaded inability to provide the requisite funds to SpiceJet. Yet the plea of the respondent is that Ajay Singh is the lead member of the consortium in his “individual capacity” and not SpiceJet. Copy of the News article by Hindu business times dated 30.08.2021 is attached as **Annexure S-3.**
19. That Ajay Singh is therefore disqualified under the relevant clause set out in para 13.2 (j) of the PIM as referred to in the Petition [**Page 177 of the WP**]. It is pertinent to state as admitted by the respondent that Ajay Singh is the lead member of the consortium.
20. These facts clearly bring out that Ajay Singh is disqualified as Promoter and Chairman having substantial ownership and effective control over SpiceJet. On this basis it is evident that the bid put up by Ajay Singh is allegedly a mere sham in order to fulfil

the requirement of there being more than one bidder. As stated by the Respondent(s) there were only 2 financial bids submitted of which Ajay Singh consortium was one, effectively a sham and disqualified leaving only one bidder namely, Talace owned by Tata Sons the owner of its other airline Air Asia facing an FIR under the PMLA.

21. That the Respondent No. 5 are duty bound to prevent corruption and moreover, the failure to carry out their duty will be a colossal threat to National Security, integrity and in violative of Article 14 and 21 of the Constitution of India.
22. That Hon'ble Supreme Court in *Dr. Subramanian Swamy Vs. Dr. Manmohan Singh* [(2012) 3 SCC 64] highlighted the importance of investigations and held that:

“46. In Vineet Narain's case, the Court entertained the writ petitions filed in public interest for ensuring investigation into what came to be known as `Hawala case'. The writ petition remained pending for almost four years. During that period, several interim orders were passed which are reported as Vineet Narain v. Union of India 1996 (1) SCALE (SP) 42, Vineet Narain v. Union of India (1996) 2 SCC 199, Vineet Narain v. Union of India (1997) 4 SCC 778 and Vineet Narain v. Union of India (1997) 5 SCALE 254. The final order was passed in Vineet Narain v. Union of India (1998) 1 SCC 226. In (1996) 2 SCC 199, the Court referred to the

allegations made in the writ petition that Government agencies like the CBI and the revenue authorities have failed to perform their duties and legal obligations inasmuch as they did not investigate into the matters arising out of seizure of the so-called "Jain Diaries" in certain raids conducted by the CBI. The Court took note of the allegation that the arrest of some terrorists led to the discovery of financial support to them by clandestine and illegal means and a nexus between several important politicians, bureaucrats and criminals, who were recipients of money from unlawful sources, and proceeded to observe:

"The facts and circumstances of the present case do indicate that it is of utmost public importance that this matter is examined thoroughly by this Court to ensure that all government agencies, entrusted with the duty to discharge their functions and obligations in accordance with law, do so, bearing in mind constantly the concept of equality enshrined in the Constitution and the basic tenet of rule of law: "Be you ever so high, the law is above you." Investigation into every accusation made against each and every person on a reasonable basis, irrespective of the position and status of that person, must be conducted and completed expeditiously. This is imperative to retain public confidence in the impartial working of the government agencies."

[Emphasis Supplied]

23. That the present petition demands the intervention of this Hon'ble Court and the illegal, malafide procedure adopted by Union-respondent invites judicial review. It is submitted that, the Hon'ble Supreme Court in Balco Employees Union (Regd.) vs Union of India & Ors [(2002) 2 SCC 333] held:


97. Judicial interference by way of PIL is available if there is injury to public because of dereliction of Constitutional or statutory obligations on the part of the government. Here it is not so and in the sphere of economic policy or reform the Court is not the appropriate forum. Every matter of public interest or curiosity cannot be the subject matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. **Courts will interfere only if there is a clear violation of Constitutional or statutory provisions or non-compliance by the State with it's Constitutional or statutory duties.** None of these contingencies arise in this present case.

[Emphasis Added]

24. Lastly, it is also submitted, Madras High Court in WP 25568/2021, has issued notice challenging the privatization of Air India wherein Interim Injunction is also granted with respect to employment of Air India workers.

25. The Writ Petition is made *bonafide* and in the interest of justice.

Filed by:



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MOBILE: [REDACTED] / [REDACTED]

NEW DELHI
DATED: 05.01.2022

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF INVESTMENT AND PUBLIC ASSET MANAGEMENT
(DIPAM)
LOK SABHA
STARRED QUESTION No.*109
TO BE ANSWERED ON MONDAY, DECEMBER 6, 2021
Agrahayana 15, 1943 (Saka)
Sale of Air India**

***109: SHRI A. RAJA**

Will the Minister of FINANCE be pleased to state:

(a) Whether it is a fact that Air India was sold off to Tata for a sum of Rs. 18,000/- crore of which Rs. 3,000/- crore is cash and rest Rs. 15,000/- crore is a loan transfer on paper;

(b) if so, the details thereof;

(c) whether apart from the other aircrafts, the 30 new 777 Jumbo jets each costing Rs. 2,000/- crore delivered in 2018 are also a part of the deal;

(d) if so, the details thereof; and

(e) the reason for diluting the assets of more than Rs. 1 lakh crore of Air India for Rs. 3000/- crore, which is actually three per cent of its value?

ANSWER

THE MINISTER OF FINANCE
(SMT. NIRMALA SITHARAMAN)

(a) - (e): A statement is laid on the Table of the House.

Page 1 of 3

**STATEMENT REFERRED TO IN REPLY TO PART (a) to (e) OF LOK
SABHA STARRED QUESTION No. *109 TO BE ANSWERED ON
MONDAY DECEMBER 6, 2021 REGARDING "SALE OF AIR INDIA"**

(a), (b) & (e): On account of huge accumulated debt of Air India, Government followed Enterprise Value (EV) bidding approach for strategic disinvestment of Air India and its identified subsidiaries/JVs (100% shareholding in AIXL and 50% shareholding in AISATS). Under the EV approach, bidders were to quote a combined debt and equity value with a split of 85% as debt and minimum 15% as equity consideration for allocation of quoted EV. The strategic disinvestment transaction has been carried out for the entire company as a going concern. Assets other than non-core assets and liabilities other than those excluded from the transaction will remain with the acquirer. Non-core assets of Air India and its subsidiaries (book value of Rs 14,718 crore as on August 31, 2021) are not a part of the disinvestment transaction and will not be taken over by the successful bidder but transferred to Air India Asset Holding Company (AIAHL), 100% owned by Gol. The strategic disinvestment transaction has been carried out through an open, transparent and competitive process.

(i) In the first stage of the transaction, seven Expressions of Interest (EOIs) were received of which five EOIs were rejected on grounds of non-fulfilment of eligibility criteria and two EOIs were shortlisted for the second stage.

(ii) Information was made available, under confidentiality undertaking through Virtual Data Room (VDR) to the Qualified Interested Bidders (QIBs), who also inspected the assets and facilities of the companies under the transaction.

(iii) The Request for Proposal (RFP) was issued to the bidders. The Share Purchase Agreement (SPA) was then finalized and issued to the QIBs before submission of bids. DIPAM has a set of indicative guidelines for strategic disinvestment transactions which are to be suitably customized to each specific transaction. The Share Purchase Agreement (SPA) are based on

Page 2 of 3

guidelines and have been finalized after detailed Inter- Ministerial consultations at several fora, the Inter-Ministerial Group (IMG), the Core Group of Secretaries on Disinvestment (CGD) and Air India Specific Alternative Mechanism (AISAM).

(iv) In keeping with the best market practices and extant guidelines, the Reserve Price for the transaction was fixed at Rs 12,906 crore on the basis

of Business valuation carried out by the Transaction Adviser and Asset Valuation carried out by the Asset Valuer. The Reserve Price was fixed only after receipt of sealed financial bids.

(v) Two financial bids were received following a competitive and transparent disinvestment process. The highest bidder, M/s Talace Pvt Ltd, a wholly owned subsidiary of M/s Tata Sons Pvt Ltd quoted an EV of Rs 18000 crore with a retention of debt in AI + AIXL of Rs 15,300 crore (85% of EV quoted) and the cash component of Rs 2,700 crore (15% of EV quoted).

(vi) The SPA has been signed on 25 October, 2021. As per the SPA, a set of Conditions Precedent (CPs) have to be satisfied by the successful bidder, Air India and Government of India before closing of the transaction.

(vii) The transaction has been supported by professional advice from experts - Transaction Adviser, Legal Adviser and Asset Valuer, who have been appointed through a transparent, competitive process.

(c) and (d): Sixteen B777 aircrafts in Air India are part of the transaction, of which fifteen aircrafts have been inducted during the period 2007 to 2010 and one aircraft in 2018.

Annexure S-2

Tata Sons working on merging AirAsia India and Air India Express: Report

Tata owns 84 per cent stake in AirAsia India, allowing it to create a single airline entity quickly.

Topics

Air India | AirAsia | Tata Sons

BS Web Team | New Delhi

Last Updated at November 18, 2021 11:20 IST

Tata Sons has started work on merging low-fare airline AirAsia India with Air India Express, the budget carrier of state-owned Air India that the conglomerate has bought from the government. The Tata group is looking to achieve synergies and cut operational costs, the Economic Times reported on Thursday citing unnamed sources.

Tata owns 84 per cent stake in AirAsia India, allowing it to create a single airline entity quickly, the sources told the newspaper. Tata is yet to finish talks with Singapore Airlines (SIA) on integrating the schedules of Vistara and Air India said. Tata owns 51 per cent of Vistara and SIA the rest.

"This is the most logical move at this stage and with Tata owning a majority in Air Asia, the integration is easier," said one source. "With many experts on deck, this integration will help the group swiftly set up the single airline structure it has been planning for a while."

Tata Sons resumed control of Air India after bidding \$2.4 billion, including equity and debt, in October, marking the end of years of struggle to privatise the financially troubled airline.

SS

//TRUE TYPED COPY//

Annexure S-3

Promoter has refused to infuse funds, SpiceJet tells High Court

Forum Gandhi Mumbai | Updated on August 30, 2021

Carrier hopes to raise ₹570 crore, 'fully collateralised', from lender banks

SpiceJet has informed the Delhi High Court that its promoter Ajay Singh has declined to infuse fresh funds in the debt-strapped airline.

“Singh has expressed his inability to inject further funds in the Company in his individual capacity. SpiceJet has also approached its bankers for additional credit facilities and other mechanisms for raising funds,” SpiceJet said in the court filing.

The court proceedings are related to a dispute with aircraft manufacturer De Havilland. The court filings also reveal that the Reserve Bank of India has rejected the airline's request for an extension of the timeline and ratio on the “one time restructuring”. The airline has sought fresh financing of approximately ₹570 crore from its existing lenders, the court document shows.

However, when contacted, a SpiceJet spokesperson said, “Singh is committed to the well-being and sustenance of SpiceJet and has already collateralised his considerable stake in the company with various banks. In fact, he has also offered to infuse more funds as part of SpiceJet's proposal to bankers.”

As a part of its court documents, SpiceJet attached an email it sent to Yes Bank on July 15. It requested for additional loans summing

up to approximately Rs 300 crore and bank guarantees of approximately Rs 140 crore for national oil companies. As a part of the contours of the proposal, SpiceJet said that "The promoters shall infuse Rs 500 million in the company. The infusion will happen by October 2021." However, the document submitted to the court is dated August 24, 2021 which mentions that Singh is unable to infuse funds in his individual capacity.

When asked about RBI's decision on OTR, the spokesperson added: "The matter with regard to RBI OTR is nothing specific to SpiceJet and there are many other industries which are governed by the same."

'Approached banks'

In response to questions on raising funds, the spokesperson said that: "SpiceJet is a low-debt company with significant collateral with banks. The company has requested banks to allow it to utilise fully collateralised unutilised limits."

The airline is looking to its existing bankers for additional funding to the tune of approximately ₹570 crore.

Penalty issue

According to documents submitted by SpiceJet to the Delhi High Court, De Havilland has refused to give the debt-strapped airline an extension to pay the £5,000,000 penalty. Earlier this month, SpiceJet had requested an extension of the timeline by 60 days and its request for provision of an alternative security.

The De Havilland dispute is regarding the non-payment of tranches on aircraft deliveries.

The aircraft maker approached the UK Court to seek remedies on the said dues. The UK court passed an order in favour of De Havilland and directed SpiceJet to pay £5 million within 28 days.

The aircraft maker then moved an application in the Delhi High Court to implement the same.

In this regard, the SpiceJet spokesperson said that “The matter with regard to De Havilland is pending adjudication before appropriate forum and the Company is contending and assailing the same. Since the same is sub-judice, we do not think it will be appropriate to get into its specifics. Adequate disclosure with regard to the same already forms part of our notes to the accounts.”

Published on August 29, 2021

SS
//TRUE TYPED COPY//

SERVICE: Copy of Written Submission on behalf of the Petitioner in Writ Petition (C) NO. 15240 OF 2021 [PIL] titled Dr. Subramanian Swamy Vs. Union of India and Others

1 message

Office of Dr Swamy <[REDACTED]>

5 January 2022 at 15:41

To: cgsc461@gmail.com, admin@dmd.law, uoidhc@gmail.com, SECY.MOCA@nic.in, SECYDIVEST@nic.in, CSOFFICE@nic.in, HSHSO@nic.in, HOZDEL@cbi.gov.in, ENKAPADIA@tata.com, dlacbidhc@gmail.com

SERVICE

Please find the attached copy of Written Submission on behalf of the Petitioner in Writ Petition (C) NO. 15240 OF 2021 [PIL] titled Dr. Subramanian Swamy Vs. Union of India and Others.

Kindly consider this as advance service and acknowledge receipt.

You can Contact Satya Sabharwal, Advocate [Mobile No: +[REDACTED]] for any further assistance.

Warm Regards

Dr. Subramanian Swamy
Petitioner In Person
AB-14 Pandara Road
New Delhi-110003
[REDACTED]

 **WS AIR INDIA.pdf**
373K