

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI**

IB NO. 249/(ND)/2023

An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

Willis Lease Finance Corporation
4700 Lyons Technology Parkway,
Coconut Creek, Florida 33073, USA

...Operational Creditor

Versus

SpiceJet Limited
Terminal 1D, Indira Gandhi International Airport,
New Delhi South West Delhi,
Delhi- 110037, India

...Corporate Debtor

Order Delivered on: 04.12.2023

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant : Mr. Virendra Ganda, Sr. Adv. with Mr. Ashim Sood, Mr. Rajendra, Ms. Priyanka Shetty, Ms. Ambareen Mujawar, Ms. Aakansha Mathur, Ms. Tanya, Advs.

For the Respondent: Mr. Krishnendu Datta, Sr. Adv. with Mr. Sanjay Gupta, Ms. Sharmistha Ghosh, Mr. Kushagra Kaul, Mr. Rajat Sinha, Advs.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This is an Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (***‘the Code’***) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Willis Lease Finance Corporation** (***‘Operational Creditor’***) duly authorized by its Board for initiation of Corporate Insolvency Resolution Process (***‘CIRP’***) against **SpiceJet Limited**. (***‘Corporate Debtor’***).
2. **Willis Lease Finance Corporation** (Operational Creditor) is has its registered office at 4700 Lyons Technology Parkway, Coconut Creek, Florida 33073, USA. **SpiceJet Limited** (Corporate Debtor) is a company registered under the Companies Act, 1956 [CIN- L51909DL1984PLC288239], having its registered office at Terminal 1D, Indira Gandhi International Airport, New Delhi, Delhi, 110037, India. The Corporate Debtor has Authorized Share Capital of Rs. 15,00,00,00,000/- and Paid-Up Share Capital of Rs. 6,01,84,56,650/-.
3. The present Application was filed on 11.04.2023 before this Adjudicating Authority by Mr. Milan Chitalia, the Authorised Representative of the Operational Creditor, duly authorized to initiate Corporate Insolvency Resolution Process (***‘CIRP’***) proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 (***‘Code’***). The total amount due as on 10.04.2023 is claimed to be Rs 53,96,65,759/- (Rupees Fifty-Three Crore Ninety-Six Lacs Sixty-Five Thousand Seven Hundred and Fifty-Nine Only). The ***date of default*** is 10.04.2023.
4. The present application was reserved on the issue of maintainability/issue of notice vide order dated 30.10.2023. Vide order dated 17.10.2023, both the parties were directed by this Adjudicating Authority to submit their written submissions. In the instant application, advance notice was issued in terms of NCLT Rules, 2016, and on this basis Ld. Counsel appeared, and made submissions with respect to issue of maintainability, and for not issuing notice and filed written synopsis as per this Adjudicating Authority’s order dated 17.10.2023.

5. Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.

- a)** The Operational Creditor contends that the Company Petition is maintainable, and a notice ought to be issued to SpiceJet for, inter alia, the following reasons:
- i. WLFC is an operational creditor in terms of section 5 (20) of the Insolvency and Bankruptcy Code, 2016.
 - ii. SpiceJet has repeatedly acknowledged its dues to WLFC and in some instances paid the invoices addressed by WLFC to SpiceJet that were issued in relation to the underlying agreements.
 - iii. SpiceJet has, in fact, specifically acknowledged WLFC's right as a creditor by signing agreements and addressing admitted correspondence which identify that WLFC has the right to demand, receive and recover the same amounts, for whose default the present proceedings are initiated before this Hon'ble Tribunal.
 - iv. All the requirements under the Code are met and therefore the Hon'ble Tribunal ought to issue notice to SpiceJet.
- b)** All contentions raised orally by SpiceJet are denied by the Operational Creditor. At the stage for issuance of notice, SpiceJet entered appearance without filing any vakalatnama and attempted to orally raise several protracted and meritless objections on the maintainability of the Petition. WLFC repeatedly objected to such conduct. This Adjudicating Authority permitted SpiceJet, without being asked to place any facts or submissions in a counter-affidavit, to orally raise its objections on maintainability of the Company Petition. Hearings were held on 16 occasions, without issuing notice.
- c)** Malafide attempts are made by SpiceJet who has deliberately failed to make payments to various creditors, including the present Operational Creditor ought not to be permitted to raise formalistic pleas as a delay tactic, especially when it has repeatedly refused to file a counter in the present proceedings. The services provided to SpiceJet are not disputed by it, the invoices raised by the Operational Creditor are not disputed and in fact, acknowledged by SpiceJet when it signed documents in

favour of WLFC. Therefore, it is in the interest of justice and in accordance with the Code that a notice be issued against a habitually recalcitrant corporate debtor.

- d)** It is not disputed that WLFC acts as a 'Servicer' for the respective Lessors of all Lease Agreements which are subject matter of the present Petition. A compilation of these authorizations in favour of WLFC ("Servicing Agreements") are placed on record. Pursuant to these Servicing Agreements, WLFC is, inter alia (i) entitled to raise invoices on SpiceJet; (ii) direct SpiceJet to make payments to designated accounts (iii) enforce the rights and remedies of the Lessors under the Lease Agreements in the event of a non-payment by the due date. It is submitted that WLFC is entitled to recover the outstanding amounts from SpiceJet under applicable laws of the Lease Agreements. Further, SpiceJet was aware of and has at all times acknowledged WLFC's authority as a 'Servicer' of the individual Lessors
- e)** Further, without filing any counter, and for the first time in the hearings, SpiceJet has argued that WLFC ought to issue yet another demand notice before filing the present petition. Without prejudice to the argument that such grounds pertain to the merits of the procedure and ought to be raised in a counter, it is submitted that WLFC issued a Demand Notice dated November 4, 2022, under Section 8 of the Code calling upon SpiceJet to pay outstanding sum of USD 10,905,169.83/- together with interest as per the terms of the Lease Agreements.
- f)** In February 2023, WLFC filed the first Section 9 Petition, reflecting the entire amount of USD 10,905,169.83/-. At the hearing of the first Section 9 Petition, WLFC submitted that it is relying on the invoices which are not barred by operation of Section 10A. However, the Tribunal orally suggested that for convenience of the Tribunal WLFC can re-file the Petition after removing those invoices which are barred due to operation of Section 10A. Accordingly, the first Section 9 Petition was withdrawn by WLFC by an order of this Adjudicating Authority dated March 2, 2023.
- g)** Thereafter, WLFC, as an authorized 'Servicer' of the respective Lessors, filed the present Petition, which only excludes the invoices which fell within the period prescribed under Section 10A of the Code for the convenience of this Hon'ble

Tribunal. The other material particulars of the claim remain identical to the Section 8 Demand Notice.

- h)** The Section 8 Demand Notice sets out the entire outstanding debt due and payable by SpiceJet. Similarly, the present Company Petition sets out the entire outstanding amount payable by SpiceJet (i.e. USD 10,905,169.83/-) but identifies an aggregate sum of USD 6,581,839.57/-, by virtue of Section 10A of the Code as the basis for initiating the present proceedings. Therefore, there was no requirement, under law, to issue a fresh demand notice under Section 8 of the Code, against SpiceJet. The bar under section 10A is to the Petition only. Section 8 requires the entire amount to be in the Demand Notice. As such, any defect was only in the Petition, and the Section 8 Notice was in accordance with law and was not required to be reissued. SpiceJet's argument also overlooks that the normal practice before the NCLT is to refile the petition in such cases after excluding the 10A invoices and this has been done in several cases. It is therefore surprising that this argument is even being espoused by SpiceJet, in the face of that practice.
- i)** Without filing any counter, SpiceJet has wrongly and orally contended that since the first Section 9 Petition was withdrawn without liberty to file afresh, the present Petition is deemed as non-maintainable. The Order of this Adjudicating Authority dated March 2, 2023 specifically records that "Ld. Counsel for the Corporate Debtor is present. Ld. Counsel for the Operational Creditor has prayed for leave of the Tribunal to withdraw the present petition for filing a fresh petition after curing the defects. Therefore, liberty is granted to the Ld. Counsel for the Operational Creditor to withdraw the present petition.". It is evident that the Petitioner was granted liberty to file a fresh petition upon excluding such invoices that were raised during the period prescribed under Section 10A.
- j)** SpiceJet has argued that WLFC cannot maintain the present Petition in relation to debts falling due under different Lease Agreements and to four different Lessors. These are arguments on the merits of the matter, for which SpiceJet has not filed any counter despite being repeatedly reminded by the Applicant during the oral hearings. Without prejudice to the above, based on the documents provided by the Applicant in

its Application, it is submitted that all the Lease Agreements identify WLFC as the Servicer, which entity has raised invoices to SpiceJet in the past. In fact, SpiceJet has acknowledged its dues under the four Lease Agreements as payable to WLFC, and even signed an Agreement where SpiceJet has not only acknowledged WLFC as the Servicer but also admitted that the dues under these different lease agreements are payable to WLFC. In view of its own actions and conduct, SpiceJet is estopped from pleading otherwise.

6. Submission by the Learned Counsel appearing on behalf of the Corporate Debtor

- a)** It is submitted on behalf of the Corporate Debtor that the Petition is not maintainable in law and no notice deserves to be issued on such defective Petition. WLFC prior to the filing of present Petition had earlier filed a similar petition under Section 9 of the IBC which was “dismissed as withdrawn” by the Hon’ble NCLT vide order dated 02 March 2023. Extract of operative portion of the order dated 02 March 2023 is also reproduced herein below:

“... Ld. Counsel for the Operational Creditor has prayed for leave of the Tribunal to withdraw the present petition for filing a fresh petition after curing the defects. Therefore, liberty is granted to the Ld. Counsel for the Operational Creditor to withdraw the present petition. ...”

- b)** A bare perusal of the order dated 02 March 2023, would show that while WLFC had prayed for 2 liberties from the Hon’ble NCLT being (i) withdrawal of the petition, and (ii) filing of fresh petition, the Hon’ble NCLT had granted only given permission to withdraw the petition. Further, the requirements under Order XXIII Rule 1 of Civil Procedure Code for filing of fresh petition on same subject-matter/ cause of action after withdrawal of earlier petition are not fulfilled in present case. Thus, the earlier petition was withdrawn without any liberty to institute a fresh petition as is clear from the withdrawal Order. In view thereof, the principles underlying Order XXIII of the CPC will be applicable to the present case and the present Petition is not maintainable on the grounds of estoppel.

- c)** Section 8(1) of IBC provides that an operational creditor is required to deliver a demand notice for unpaid operational debt and the same is sine qua non for filing and maintaining Petition under Section 9 of the IBC. WLFC had earlier issued a Demand Notice dated 04 November 2022 pursuant to which a petition was filed and was “dismissed as withdrawn” by the Hon’ble NCLT vide order dated 02 March 2023. It is also the admitted case of WLFC that after the passing of order dated 02 March 2023, no fresh Demand Notice was issued by WLFC to SpiceJet, and WLFC in the present Petition is relying on its erstwhile Demand Notice of 04 November 2022.
- d)** Section 9 of the IBC mandates filing of Petition only after the issuance of Demand Notice under Section 8 of IBC and without a Demand Notice no Petition can be preferred and maintained under Section 9 of the IBC. In the present case, the Demand Notice dated 04 November 2022 issued prior to the withdrawal of erstwhile petition vide order dated 02 March 2023 cannot be treated as Demand Notice under Section 8 of the IBC for the purposes of present Petition.
- e)** Even otherwise, the amount claimed and the date of default in the Demand Notice of 04 November 2022 and amount claimed and date of default in the present Petition are different. Therefore, the same cannot be treated as a valid Demand Notice for the alleged debt amount now being claimed by WLFC in the present Petition. It is submitted that the Petition under Section 9 of the IBC is an extension of the Demand Notice issued under Section 8 of the IBC and the date of default mentioned in the Demand Notice cannot be changed subsequently. Therefore, the Demand Notice being relied upon by WLFC is defective and not a proper Demand Notice for the purposes of IBC
- f)** WLFC at Part-IV (Particulars of Debt) of Form 5/ Petition states that the debt is due and payable under various lease agreements which were admittedly executed by different lessors. That the Petition provides a tabulation of lease agreements under which debt is due and it also reflects names of 4 different lessors who have executed total 9 separate lease agreements. It can be seen that, firstly, WLFC is neither the operational creditor nor has any contractual agreement with SpiceJet, and secondly,

the present Petition is admittedly filed at the behest of 4 different lessors and therefore, is a joint petition, which is otherwise not maintainable in law.

- g)** It is submitted that neither any goods or services have been provided by WLFC to SpiceJet nor there is any contractual relationship between the parties. And admittedly, the dispute arises out of 9 lease agreements executed by SpiceJet with 4 different lessors. It is submitted that a perusal of Section 5(21) of IBC makes it clear that 'Operational Debt' is a claim in respect of provision of goods or services which should be based on a contract duly entered between the Corporate Debtor and the Operational Creditor. Further, it is settled law that an Operational Creditor is a person to whom an operational debt is owed. Therefore, in the absence of privity of contract between two parties it cannot be contended that an operational debt is owed to SpiceJet.
- h)** The amount under the respective lease agreements were being paid by SpiceJet to the respective lessors and not to WLFC and WLFC was vested with no right to payment. WLFC itself admits in the Petition that it is only the Servicer and Administrative Agent of the respective lessors and has inter-se arrangement with lessors in form of 'Servicing Agreements'. Admittedly, SpiceJet is not a party to such Servicing Agreements. Even otherwise, the Servicing Agreements do not provide for WLFC to be vested with any right to payment from SpiceJet. Further, in due course of argument, WLFC has also relied upon a Lease Termination and Forbearance Agreement dated 10 June 2022 in an endeavor to illustrate a purported privity of contract between the parties, however, it is a matter of record that the said document was never executed between the parties. The same is evidenced by the fact that there are no signatures on behalf of WLFC on the said document.
- i)** Therefore, it emanates from the documents filed by WLFC that the present petition, for which no demand notice was served upon SpiceJet, as per law, is a joint petition filed on behalf of 4 different lessors who have executed in total 9 separate lease agreements and that WLFC has no locus to have filed the same, in the absence of any privity of contract with SpiceJet. In view of the above legal submissions, the

present Petition filed by WLFC is non maintainable and deserves to be dismissed in limine.

Analysis & Findings

7. We have heard the Learned Counsels for the Operational Creditor and the Corporate Debtor, and further perused the averments made in the written submissions presented by both the parties. Since the registered office of the respondent Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority with respect to maintainability/issue of notice of Company Petition bearing C.P IB/249/ND/2023. Further, the present petition is filed within the period of limitation.
8. In order to analyze that whether the present petition is maintainable, we have to see whether the Applicant in the instant case, is operational creditor within the meaning of IBC, 2016. The term Operational Creditor and Operational Debt are defined under Section 5(20) and Section 5(21) of the Code which are as under:
 - a) Section 5(20): *operational creditor means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;*
 - b) Section 5(21): *operational debt means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;*
9. Thus, Operational Creditor is a person (i) to whom an operational debt is owed, (ii) to whom an operational debt is legally assigned or transferred. In order to examine, whether the instant Applicant is an Operational Creditor, we would refer to the pleading filed by the Applicant. On perusal of Part-I in Form-5 of the pleadings, it can be seen that the Applicant in the present case, i.e. Willis Lease Finance Corporation ("WLFC") claims as an Operational Creditor in the instant application.

The claims of the Applicant is based upon the Lease Agreement and invoices issued by the Lessors of the following Lease Agreement, namely (i) Willis Lease (Ireland) Limited; (ii) WEST III Engines (Ireland) Limited; (iii) West IV Engines (Ireland) Limited; and (iv) West V Engines (Ireland) Limited (previously known as Willis Engine Securitization (Ireland) Limited) (hereinafter referred to as the “Lessors”) with respect to various lease agreements with the Corporate Debtor i.e. SpiceJet Limited. None of the Lease Agreement, was executed by the Applicant and no invoices were issued by the instant Applicant. On perusal of each Lease Agreements placed on record in Annexure-II of the petition, it is evident that each Agreement is independently executed between the Lessors and the Corporate Debtor in the instant case. Further, in order to corroborate the same, this Adjudicating Authority deems fit to analyze the clauses of various Lease Agreements placed on record, as to who are the Parties in the Lease Agreements and to whom the payment is owed under such Agreements. Certain Lease Agreement on which reliance is placed in the instant Application and the relevant extract of the same are as follows: -

- i. On perusal of Clause 4 (a) of the General Terms Engine Lease Agreement (“GTA”) dated August 17, 2016 executed between Willis Lease (Ireland) Limited (“WLIL”) (“Lessor”) and SpiceJet Limited (“Lessee”), it is evident that the Lessee in this Agreement will pay the amount to Lessor, as Clause 4 (a) states that *“On the Delivery Date, **Lessee will pay to Lessor** an amount equal to the sum specified as the total payment in Article VII of the applicable Lease”*.
- ii. On perusal of Clause 10.1 of Engine Lease Assignment, Assumption and Amendment Agreement executed between Willis Lease (Ireland) Limited (“WLIL”) (“as Existing Lessor”) and SpiceJet Limited (“Lessee”), and West IV Engines (Ireland) Limited, it is evident that the Lessee in this Agreement will pay the rent due and payable under the lease to Lessor, as Clause 10.1. states that *“The New Lessor and the Existing Lessor agree that (i) all Rent due and payable under the Lease for periods ending prior to the Effective Time for the Engine shall belong to the Existing Lessor, (ii) **Rent due and payable under the Lease for periods***

beginning on and from the Effective Time for the Engine shall belong to the New Lessor....”

- iii. On perusal of Schedule 1 (which depicts payment clause) of Aircraft Engine Lease Agreement executed between WEST III Engines (Ireland) Limited ("Lessor") and SpiceJet Limited ("Lessee"), it is evident that the Lessee in this Agreement will pay the amount payable under the Lease to Lessor, as Schedule I states that ***“If the Delivery Date is other than the first day of a calendar month, Lessee will pay to Lessor, in arrears on the first day of the next succeeding calendar month, a pro rata Rent payment equal to the Monthly Rent”***
- iv. On perusal of Clause 3.2 of IATA (International Air Transport Association) Master Agreement i.e. (a) IATA Lease 896904 executed between Willis Lease (Ireland) Limited (“WLIL”) (Lessor) and SpiceJet Limited (Lessee) and (b) APU Lease P-5038 executed between Willis Lease (Ireland) Limited (“WLIL”) (Lessor) and SpiceJet Limited (Lessee), it is evident that the Lessee in this Agreement will pay the amount payable under the Lease to Lessor, as Clause 3.2 states that ***“Lessee shall pay to Lessor the Rent on each Rent Payment Date during the Term”.***

10. Moreover, on perusal of the invoices it can be seen that the payment details mentioned in the invoices, evidences that the payment were owed to the Lessors, who had issued the invoices. The Payment details as mention in one of the invoice (Pg. 1004- Volume- VI) is mentioned below:

Beneficiary Bank: Allied Irish Bank Dublin 4, Ireland
 Sort Code: 93-00-67
 SWIFT Code: AIBKIE2D
 IBAN No.: IE29AIBK93006718203511
 Account Name: Willis Lease (Ireland) Ltd
 Account No.: 18203511
 Reference: SN: P-5038 Invoice No: 45364

11. Further, on perusal of the invoices in the instant application, it is observed that the invoices were issued by the Lessors to SpiceJet Limited, and not by WLFC (Applicant) to SpiceJet Limited (Corporate Debtor). The Learned Counsel for the Applicant has

stressed during the oral arguments, that the name of the instant Applicant i.e. WLFC is mentioned in each invoices. However, on perusal of the invoice (Pg. 1019), it can be seen that the name of the Lessor in the said invoice is Willis Lease (Ireland) Limited, which is not the Applicant in the instant case. In the same invoices, it is written that WLFC (instant applicant), is the Servicer. Therefore, the debt is owed to the Lessors and not to the instant Applicant.

- 12.** In light of the aforementioned clauses of the respective Lease Agreements executed between SpiceJet Limited and different Lessors, it can be concluded that the amount was due and payable to the respective Lessors and not the Applicant in the instant case. On bare perusal of Section 5 (21) of IBC, it is clear that 'Operational Debt' is a claim in respect of provision of goods or services which should be based on a contract duly entered between the Corporate Debtor and the Operational Creditor. Moreover, it is settled law that an Operational Creditor is a person to whom an operational debt is owed. However, in the instant case, there was no debt owed to WLFC, which is evident from the perusal of the Lease Agreements and Part IV of the petition itself states that the debt is due and payable under various lease agreements, which was executed by different lessors.
- 13.** Additionally, under definitions in Section 5(20) "operational creditor means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred". However, in the instant case, neither the operational debt is owed to the instant applicant, nor it has been legally assigned or transferred to the instant applicant. The Applicant in the instant case does not have any direct contractual agreement with SpiceJet as neither any goods or services have been provided by WLFC to SpiceJet nor there is any contractual relationship between the parties. WLFC itself admits in the Petition that it is only the Servicer and Administrative Agent of the respective lessors and has inter-se arrangement with lessors in form of 'Servicing Agreements'. Also, the Corporate Debtor in the instant case is not a party to such Servicing Agreements. Therefore, it is undisputedly concluded that the Applicant is not a 'Operational Creditor' in the instant case.

14. Further, the Applicant in the instant case has relied upon Lease Termination and Forbearance Agreement dated 10 June 2022, wherein the Applicant attempted to show that there is a privity of contract between the Applicant and the Respondent in the instant case. However, on perusal of the same, it is evident that the said document was never executed between the parties. The same is evidenced by the fact that there are no signatures on behalf of WLFC on the said document as can be seen at Pg. 978, Volume VI of Petition. Therefore, in the absence of privity of contract between the Applicant and the Respondent, it cannot be contended that an operational debt is owed to SpiceJet, as held by Hon'ble NCLAT in **Harrish Khurana v. One World Realtech (P) Ltd. [2021 SCC OnLine NCLAT 5547]**. The relevant extract of the said judgment is reproduced here under:

“9. A reading of the definition of ‘operational debt’ makes it clear that it is a claim in respect of provision of goods or services including employment. This should be based on a contract duly entered between the Corporate Debtor and the Operational Creditor and Operational Creditor is a person to whom an operational debt is owed. Therefore, for a relationship of Operational Creditor and Corporate Debtor to exist between two parties under the IBC, the Operational debt must be owed to the Operational Creditor by the Corporate Debtor.”

15. Therefore, we observe that WLFC has no locus, to file the instant application, as there is no privity of contract between WLFC and SpiceJet Limited.

16. Further, with respect to the contention of the Corporate Debtor that the instant application is not maintainable in law as no Demand Notice was issued under Section 8 of the IBC, it is pertinent to note that Section 8 (1) of IBC provides that an Operational Creditor is required to deliver a demand notice for unpaid operational debt and the same is sine qua non for filing and maintaining petition under Section 9 of the IBC. However, in the instant case WLFC had issued a Demand Notice dated 04

November 2022 pursuant to which a petition was filed bearing CP IB No. 121 of 2023 and it was “dismissed as withdrawn” by the Adjudicating Authority vide order dated 02 March 2023.

- 17.** In the instant case, after the passing of Order Dated 02 March, 2023, no fresh Demand Notice was issued by WLFC to SpiceJet, and WLFC in the present Petition is relying on its erstwhile Demand Notice of 04 November 2022. In light of the same, the amount claimed and the date of default in the Demand Notice of 04 November 2022 and amount claimed and date of default in the present Petition are different. Therefore, in view of the aforesaid observation, the demand notice dated 04 November 2022, cannot be treated as a valid Demand notice for the alleged debt amount, which is claimed by WLFC in the present petition. Therefore, the Demand Notice being relied upon by WLFC is defective and not a proper Demand Notice for the purposes of IBC. Therefore, the contention of the Applicant with this regard, does not stand substantiated.
- 18.** Further, the contention made by the Applicant in its written submission and oral arguments, with respect to issue as to necessity of filing pleadings by Spicejet (Corporate Debtor), i.e. no party should be permitted to participate in proceedings, without first furnishing pleadings or affidavits setting out the case advanced. However, in this regard, this Adjudicating Authority is of the view that, this application is being analyzed on a prima facie issue, i.e. on the issue of maintainability of Section 9 petition. The Civil Procedure Code in its strict sense is not applicable under the present case and only the principle underlying therein may be applied wherever necessary. However, for the limited purpose of deciding preliminary issue of maintainability, no fruitful purpose would be served, by seeking written response, from the Corporate Debtor, when the application is at the stage of maintainability, i.e. whether the Applicant, is an Operational Creditor under the provisions of IBC or not. Therefore, principle of *Nandkishore Lalbhai Mehta v. New Era Fabrics (P) Ltd.*, (2015) 9 SCC 755, is not strictly applicable in the instant case.

- 19.** According, this Adjudicating Authority is of the view that the present application filed by **Willis Lease Finance Corporation** (Operational Creditor), under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **SpiceJet Limited** ('Corporate Debtor'), lacks merit, is not maintainable and therefore stands dismissed without costs. We have only examined the issue of maintainability of present application under Section 9 and we have not expressed any opinion in respect of the bonafide/interest of the claim referred to and necessary recourse regarding such claim may be taken in appropriate court/forum in accordance with law.
- 20.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(Rahul Bhatnagar)
Member (Technical)

Sd/-
(Mahendra Khandelwal)
Member (Judicial)