



2026:DHC:2396



\$~71, 81, 88 & 89

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

Date of decision: 18<sup>th</sup> MARCH, 2026

IN THE MATTER OF:

+ **OMP (ENF.) (COMM.) 32/2019**

MR. KALANITHI MARAN

.....Decree Holder

Through: Mr. Jayant Mehta, Senior Advocate  
with Ms. Nandini Gore, Ms. Sonia  
Nigam, Ms. Swati Bhardwaj, Mr.  
Akarsh Sharma, Advocates

versus

M/S SPICEJET LTD. & ANR.

.....Judgement Debtors

Through: Mr. Amit Sibal, Sr. Advocate with  
Mr. K. R. Sasiprabhu, Mr. Goutham  
Shivshankar, Mr. Yasharth Misra, Mr.  
Darpan Sachdeva, Advocates

+ **O.M.P. (COMM) 43/2019**

(81) AJAY SINGH

.....Petitioner

Through: Mr. Amit Sibal, Sr. Advocate with  
Mr. K. R. Sasiprabhu, Mr. Goutham  
Shivshankar, Mr. Yasharth Misra, Mr.  
Darpan Sachdeva, Advocates

versus

KAL AIRWAYS PVT LTD & ORS.

.....Respondents

Through: Mr. Jayant Mehta, Senior Advocate  
with Ms. Nandini Gore, Ms. Sonia  
Nigam, Ms. Swati Bhardwaj, Mr.  
Akarsh Sharma, Advocates



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+ **O.M.P. (COMM) 42/2019**

(88) SPICEJET LIMITED

.....Petitioner

Through: Mr. Amit Sibal, Sr. Advocate with  
Mr. K. R. Sasiprabhu, Mr. Goutham  
Shivshankar, Mr. Yasharth Misra, Mr.  
Darpan Sachdeva, Advocates

versus

KAL AIRWAYS PVT LTD & ORS.

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Through: Mr. Jayant Mehta, Senior Advocate  
wth Ms. Nandini Gore, Ms. Sonia  
Nigam, Ms. Swati Bhardwaj, Mr.  
Akarsh Sharma, Advocates

+ **OMP (ENF.) (COMM.) 31/2019**

(89) KAL AIRWAYS PVT. LTD.

.....Decree Holder

Through: Mr. Jayant Mehta, Senior Advocate  
wth Ms. Nandini Gore, Ms. Sonia  
Nigam, Ms. Swati Bhardwaj, Mr.  
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Darpan Sachdeva, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT (ORAL)**

**EX.APPL.(OS) 358/2026 in OMP (ENF.) (COMM.) 32/2019**



**I.A. 6746/2026 & I.A. 6807/2026 in O.M.P. (COMM) 43/2019**

**I.A. 6733/2026 & I.A. 6735/2026 in O.M.P. (COMM) 42/2019**

**EX.APPL.(OS) 346/2026 in OMP (ENF.) (COMM.) 31/2019**

1. EX.APPL.(OS) 358/2026 in OMP (ENF.) (COMM.) 32/2019 and EX.APPL.(OS) 346/2026 in OMP (ENF.) (COMM.) 31/2019 have been filed on behalf of Respondents/Decree Holders for necessary directions to the Petitioners/Judgment Debtors for deposit of the amount as directed by this Court *vide* Order dated 19.01.2026.

2. Further, I.A. 6746/2026 in O.M.P. (COMM) 43/2019 and I.A. 6733/2026 in O.M.P. (COMM) 42/2019 have been filed on behalf of Petitioners/Judgment Debtors for modification of the Order dated 19.01.2026 passed by this Court and extension of time for complying with the directions contained therein.

3. Lastly, I.A. 6807/2026 in O.M.P. (COMM) 43/2019 and I.A. 6735/2026 in O.M.P. (COMM) 42/2019 have been filed on behalf of Petitioners/Judgment Debtors for preponment of the date of hearing in the matter.

4. Before adjudicating upon the Applications enlisted above, this Court deems it appropriate to summarily recall the essence of the Order dated 19.01.2026, which is stated as under:

- (i) The Respondents/Decree Holders were the promoters and majority shareholders of the Judgment Debtor No.1, holding 58.46% therein.
- (ii) In 2013, the Judgment Debtor No. 1 (M/s Spicejet Limited) began facing acute financial distress and imminent cessation of operations and in order to ensure continuity of operations, the



Respondents/Decree Holders issued an Offer Letter dated 13.01.2015, proposing transfer of their entire shareholding to the Judgment Debtor No.2 for a nominal consideration of ₹2/-, coupled with an arrangement for infusion of committed financial support aggregating to ₹450 crores. Pursuant thereto, the parties entered into the Share Sale and Purchase Agreement dated 29.01.2015 [“SSPA”], which contemplated transfer of shares, issuance of warrants and non-Convertible Redeemable Cumulative Preference Shares [“CRPS”], and release of personal guarantees and securities furnished by the Respondents/Decree Holders.

- (iii) Under the contractual framework, the CRPS was structured as a debt instrument redeemable only after expiry of a period of eight years and subject to the terms stipulated in the SSPA.
- (iv) It is stated that disputes arose between the parties regarding performance of reciprocal obligations under the SSPA.
- (v) Since the Petitioners/Judgment Debtors failed to comply with their obligations under the SSPA, the Respondents/Decree Holders approached this Court by filing Petitions, being OMP (I) COMM. 71/2016 & OMP (I) COMM 72/2016 under Section 9 of the Arbitration and Conciliation Act, 1996 [“**Arbitration Act**”], seeking interim reliefs, which were disposed of *vide* Order dated 29.07.2016, wherein this Court directed the Petitioners/Judgment Debtors to deposit a sum of INR 579 crores with this Court, being the value paid by the Respondents/Decree Holders towards the value of warrants and



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CRPS.

- (vi) The Order dated 29.07.2016, was unsuccessfully challenged by the Petitioners/Judgment Debtors before the Division Bench of this Court, though the Division Bench by way of its Order dated 03.07.2017, modified the direction passed by the Coordinate Bench, by permitting the Petitioners/Judgment Debtors to furnish Bank Guarantee of INR 329 crores and deposit of the balance amount of INR 250 crores in cash.
- (vii) The Order dated 03.07.2017 was again unsuccessfully challenged by the Petitioners/Judgment Debtors before the Apex Court.
- (viii) Subsequently, for adjudication of disputes, arbitration was invoked and a three-member Arbitral Tribunal was constituted on 29.09.2016 in terms of the arbitration agreement contained in the SSPA. Upon completion of pleadings and hearings, the learned Arbitral Tribunal rendered its Award dated 20.07.2018 by directing Petitioners/Judgment Debtors to pay the sum of INR 308,21,89,461/- to the Respondents/Decree Holders along with pre-award and *pendente lie* interest @ 12% p.a. w.e.f. 01.11.2015 within two months. The Award dated 20.07.2018 was corrected and modified by the learned Arbitral Tribunal *vide* Order dated 20.09.2018 on an application filed by the Petitioners/Judgment Debtors under Section 33 of the Arbitration Act.
- (ix) Aggrieved by the Arbitral Award to the extent it allowed the counter claim of the Petitioners/Judgment Debtors, the



Respondents/Decree Holders filed Petitions under Section 34 of the Arbitration Act, being OMP (COMM) 450/2018 & OMP (COMM) 451/2018 before this Court.

- (x) The Petitioners/Judgment Debtors also challenged the Award by filing Petitions under Section 34 of the Arbitration Act, being OMP (COMM) 42/2019 & OMP (COMM) 43/2019, before this Court, to the extent of grant of claims in favor of the Respondents/Decree Holders.
- (xi) During the pendency of the petitions under Section 34 of the Arbitration Act, the Respondents/Decree Holders initiated enforcement proceedings under Section 36 of the Arbitration Act by filing OMP(ENF.)(COMM) 31/2019 & OMP(ENF.)(COMM) 32/2019 [***“Enforcement Petitions”***] before this Court wherein this Court *vide* Order dated 25.03.2019, directed the Registry of this Court to release a sum of INR 250 crores in favour of the Respondents/Decree Holders.
- (xii) Further, *vide* Order dated 20.09.2019, this Court disposed of the Enforcement Petitions by directing the concerned bank on which the BG was drawn, to amend the said BG to the balance amount due and payable by the Petitioners/Judgment Debtors. This Court also gave the Respondents/Decree Holders liberty to approach the Court again, in case of subsequent development with respect to the status of the Petitioners/Judgment Debtors.
- (xiii) Subsequently, the Respondents/Decree Holders once again approached this Court, seeking *inter alia* a direction to the



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Petitioners/Judgment Debtors to deposit the up-to-date interest component of the awarded sum. In the said Applications, the Respondents/Decree Holders also sought for an additional prayer for restraining the Petitioners/Judgment Debtors from allotting, transferring, issuing, alienating and/or pledging and/or creating any third-party interest(s) and/or encumbrance over any of the promoter shares of the Judgment Debtor No.1 Company. These Applications were tagged with Section 34 Petitions, which were pending before this Court and in the Order dated 02.09.2020, notice of the deteriorating financial health of the Judgment Debtor No. 1 Company was taken and it was observed that the same qualified as a ‘subsequent development’.

- (xiv) The Order dated 02.09.2020 was challenged by the Petitioners/Judgment Debtors before the Apex Court and the Civil Appeals were disposed of *vide* Order dated 13.02.2023 with the following directions:

*“15. Hence, we direct as follows :*

*(i) The bank guarantee shall be encashed immediately and the proceeds shall be payable to the respondent-decree holder within two weeks. This will ensure that quantum of the principal sum due in the award is paid over in its entirety;*

*(ii) The appellant shall, within a period of three months, pay an amount of Rs 75 crores to the respondent towards the liability on account of interest pending the disposal of the petition*



*under Section 34;*

*(iii) In the event that the appellant defaults in complying with the above direction for payment or any part thereof, the award shall become executable forthwith in its entirety.”*

- (xv) Since the above directions were also not complied with, the Petitioners/Judgment Debtors filed Applications before the Apex Court, seeking extension of time for compliance. The said Applications were dismissed by the Apex Court *vide* Order dated 07.07.2023 by holding that there was a breach of its earlier Order dated 13.02.2023 and resultantly, the Arbitral Award shall become executable.
- (xvi) The Petitioners/Judgment Debtors also filed E.A. No.1283/2023 & 1284/2023 in OMP (ENF.) (COMM) 32/2019 & OMP (ENF.) (COMM) 31/2019 respectively, which *inter alia* contained the averment that only INR 194,51,69,887 was payable and admittedly, since an amount of INR 50 crores was already paid in two tranches, only an amount INR 144,51,69,887/- was due and payable.

5. In essence, what this Court took note of while passing the Order dated 19.01.2026 was that applications seeking stay on the Arbitral Award were filed by the Petitioners/Judgment Debtors. *Per contra*, it was contended by the Respondents/Decree Holders that the directions of this Court as well as the Apex Court *inter alia* for deposit of the decretal amount, less so the filing of the affidavit of assets, were repeatedly not complied with even after the lapse of a period of three years.



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6. While the stand of the Respondents/Decree Holders was that since the Arbitral Award is in the nature of money decree, the amount should be deposited in this Court, the Petitioners/Judgment Debtors strongly contended that since applications seeking stay on the Arbitral Award were pending, no orders for deposit of amount could be passed.

7. Ultimately, this Court on 19.01.2026, after observing the fact that orders passed by the Apex Court were been complied with and there was continuous non-compliance on part of the Petitioners/Judgment Debtors, the fact that the applications seeking stay on the Arbitral Award were not been disposed of, cannot absolve the Petitioners/Judgment Debtors herein from complying with the orders of the Court. Since INR 50 crores were already deposited by the Petitioners/Judgment Debtors out of INR 194,51,69,887/-, this Court directed the Petitioners/Judgment Debtors herein to deposit the balance sum of INR 144,51,69,887/- with the Registry of this Court.

8. It is the above-discussed Order dated 19.01.2026 passed by this Court which is now sought to be modified by the Petitioners/Judgment Debtors by filing the applications being I.A. 6746/2026 in O.M.P. (COMM) 43/2019 and I.A. 6733/2026 in O.M.P. (COMM) 42/2019.

9. Material on record indicates that the Order dated 19.01.2026 was the subject matter of challenge before the Apex Court in SLP(C) No.7512-7515/2026. The Apex Court *vide* Order dated 27.02.2026 dismissed the SLPs by observing as under:-

*“1. We are not inclined to interfere with the impugned judgment(s) and order(s) passed by the High Court as we are of the opinion that it is an abuse of the process.*

*2. The special leave petition are dismissed with costs*



*quantified at Rs.1,00,000/- (Rupees One lakh) which shall be deposited with the “Supreme Court Advocate-on-Record Association (SCAORA)” within two weeks from today.*

*Pending application(s), if any, shall stand disposed of.”*

10. I.A. 6746/2026 in O.M.P. (COMM) 43/2019 and I.A. 6733/2026 in O.M.P. (COMM) 42/2019 are filed by the Petitioners/Judgment Debtors, with the prayer that instead of depositing the amount of INR 144,51,69,887/-, the Petitioners/Judgment Debtors may be permitted to give the property bearing Plot No.114, Udyog Vihar Phase I, Gurugram-122016 [**“Spicejet’s Property”**], which is owned by the Judgment Debtor No. 1 Company and valued by a Government Approved Valuer at INR 147,77,00,000/- as security, *in lieu* of cash deposit of entire amount of INR 144,51,69,887/-.

11. It is the case of the Petitioners/Judgment Debtors that the Section 34 Petitions are still pending, substantial amounts have already been paid by the Petitioners/Judgment Debtors and there is now a severe liquidity constraint and other financial difficulties being faced.

12. It is contended on behalf of the Petitioners/Judgment Debtors that it would be extremely difficult, if not impossible, for the Petitioners/Judgment Debtors to arrange a substantial amount of cash within a reasonable time frame. It is the case of the Petitioners/Judgment Debtors that no prejudice would be caused to the Respondents/Decree Holders if the Order dated 19.01.2026 is modified only to the extent of permitting the Petitioners/Judgment Debtors to give security of the abovementioned Spicejet’s Property *in lieu* of cash deposit of entire amount of INR



144,51,69,887/- with the Registry of this Court.

13. Learned Senior Counsel for the Petitioners/Judgment Debtors draws the attention of this Court to the Order XLI Rule 5 of the CPC and certain case laws of the Apex Court to buttress his contentions.

14. *Per contra*, learned Counsel for the Respondents/Decree Holders contends that the financial condition of the Petitioners/Judgment Debtors is not stable and that the current liabilities far exceeds the current assets by about Rs.3,000/- crores. He submits that notice of this deteriorating financial health of the Petitioners/Judgment Debtors has been taken by this Court as well as by the Apex Court but what is more important is that the Petitioners/Judgment Debtors itself admit that monetary issues have been creeping up for a while now.

15. Learned Counsel for the Respondents/Decree Holders indicates that till the month of March, 2025, the Spicejet's Property was not free from encumbrances. He also drew the attention of this Court to the relevant pages of the paper-book of the SLP which was filed by the Petitioners/Judgment Debtors against the Order dated 19.01.2026 before the Apex Court, which again contained the very same arguments of financial inability. He submits that despite the contention that a substantial amount has already been deposited in this Court being placed by the Petitioners/Judgment Debtors before the Apex Court, SLP came to be dismissed with exemplary costs being levied on the Petitioners/Judgment Debtors.

16. In rejoinder, learned Senior Counsel for the Petitioners/Judgment Debtors contends that the dismissal of the SLP does not preclude this Court from modifying its order. Reliance is placed on the Judgment passed by the Apex Court in Khoday Distilleries Ltd. and Others v. Sri Mahadeshwara



Sahakara Sakkare Karkhane Ltd., Kollegal, (2019) 4 SCC 376, to contend that *in limine* dismissal of an SLP by a non-speaking order does not amount to merger of the order of the High Court with that of the Apex Court.

17. Heard learned Senior Counsels for the parties and perused the material on record.

18. In the opinion of this Court, there is weight in the argument of learned Senior Counsel for the Respondents/Decree Holders, that all the grounds which are raised in these applications were raised before the Apex Court in the SLP filed against the Order dated 19.01.2026 and despite that, the SLP came to be dismissed with exemplary costs .

19. Moreover, the present case is not one of a review, but of modification. The dictum of the Judgment passed by the Apex Court in Khoday Distilleries (Supra), is that the *in limine* dismissal of an SLP by a non-speaking order does not amount to merger of the order of the High Court with that of the Apex Court and it is always open for the High Court to review its orders, provided a case for review is made out under Order XLVII of the CPC. Such is not the fact in the present case.

20. Though it is stressed by learned Senior Counsel for the Petitioners/Judgment Debtors that the Spicejet's Property is free from encumbrances, the material produced before this Court indicates that at least till March, 2025, the Spicejet's Property was under mortgage and there is nothing on record to show to the contrary. Moreover, nothing prevented the Petitioners/Judgment Debtors from selling the Spicejet's Property and depositing the money in this Court at any earlier stage which could have been considered as compliance of the orders of this Court.

21. Above all, once a plea of financial difficulty is pleaded before the



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Apex Court, and filing of the SLP against the Order dated 19.01.2026 has itself been observed to be an abuse of the process of law by the Apex Court, now it does not lie in the mouth of the Applicants to raise the very same argument of financial difficulty before this Court. On the same line, this Court is constrained to observe that even the instant Applications seeking modification of the Order dated 19.01.2026, are an abuse of the process of law, as the same arguments are being time and again advanced at various forums by the Petitioners/Judgment Debtors. All the questions pleaded in the SLP have been repeated and it cannot be raised again in the High Court.

22. Resultantly, I.A. 6746/2026 in O.M.P. (COMM) 43/2019 and I.A. 6733/2026 in O.M.P. (COMM) 42/2019 are dismissed.

23. As far as prayer made in I.A. 6807/2026 in O.M.P. (COMM) 43/2019 and I.A. 6735/2026 in O.M.P. (COMM) 42/2019 for preponment of the date of hearing is concerned, dates are fixed in the matters looking at the board position of the Court and therefore, this Court is not inclined to prepone the date of hearing in the matter. The cases have been listed on 18.07.2026, which is a Saturday, for final hearing. No other case has been fixed by this Court for hearing on that day and therefore, an endeavour shall be made to commence hearing on the said date. This Court is hopeful that hearing of the Section 34 Petitions would be concluded on that day itself.

24. Accordingly, I.A. 6807/2026 in O.M.P. (COMM) 43/2019 and I.A. 6735/2026 in O.M.P. (COMM) 42/2019 are also disposed of.

25. As regards prayers made by the Respondents/Decree Holders in EX.APPL.(OS) 358/2026 in OMP (ENF.) (COMM.) 32/2019 and EX.APPL.(OS) 346/2026 in OMP (ENF.) (COMM.) 31/2019 are concerned, in view of the fact that the I.A. 6746/2026 in O.M.P. (COMM) 43/2019 and



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I.A. 6733/2026 in O.M.P. (COMM) 42/2019 seeking modification of the Order dated 19.01.2026 stand dismissed and the time granted by this Court *vide* Order dated 19.01.2026 has come to an end, this Court is inclined to extend the time by four weeks, to enable the Petitioners/Judgment Debtors for making an endeavour to sell the Spicejet's Property and make necessary arrangements for the deposit of INR 144,51,69,887/- with the Registry of this Court.

26. With the above observations, EX.APPL.(OS) 358/2026 in OMP (ENF.) (COMM.) 32/2019 and EX.APPL.(OS) 346/2026 in OMP (ENF.) (COMM.) 31/2019 are also disposed of.

**SUBRAMONIUM PRASAD, J**

**MARCH 18, 2026**

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