IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT ROOM NO. 1,

MUMBAI BENCH

I.A. 2737 of 2026 & I.A. 3221 of 2026

IN

C.P. (IB) No. 2205 of 2019

Interlocutory Applications under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 & Rule 11 of National Company Law Tribunal Rules, 2016

I.A. 2737 of 2026

Jet Airways (India) Limited,
Through Mr. Satish Kumar Gupta,
Liquidator of Jet Airways (India) Limited
having its Corporate Office at
Sterling Centre, 401-407, 4th Floor,
Opposite Divine Child High School,
Andheri Kurla Road, Chakala,
Mumbai, Maharashtra -400 093 ... **Applicant**

VERSUS

The Boeing Company,
100 North Riverside, Chicago, Illinois 60606,
United States of America ... **Respondent**

I.A. 3221 of 2026

The Boeing Company,
100 North Riverside, Chicago, Illinois 60606,
United States of America ... **Applicant**

VERSUS

Jet Airways (India) Limited,
Through Mr. Satish Kumar Gupta,
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Sterling Centre, 401-407, 4th Floor,
Opposite Divine Child High School,
Andheri Kurla Road, Chakala,
Mumbai, Maharashtra -400 093 … **Respondent**

In the matter of

State Bank of India … **Financial Creditor**

VERSUS

Jet Airways (India) Ltd. … **Corporate Debtor**

Order delivered on 11.09.2026

CORAM:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances:

For the Applicant (IA 2737)	:	Mr. Malhar Zatakia, Advocate a/w Mr. Nishant Upadhyay, Ms. Vasudha Jain and Mr. Mayank Jain i/b AZB & Partners
For the Applicant (IA 3221)	:	Mr. J.P. Sen, Sr. Advocate a/w Ms.

Misha a/w Mr. Abhilash Chaudhary and Ms. Moulshree Shukla, Ld. Counsel i/b Shardul Amarchand Mangaldas & Co.

For the Respondent (IA 2737) : Mr. J.P. Sen, Sr. Advocate a/w Ms. Misha a/w Mr. Abhilash Chaudhary and Ms. Moulshree Shukla, Ld. Counsel i/b Shardul Amarchand Mangaldas & Co.

For the Respondent (IA 3221) : Mr. Malhar Zatakia, Advocate a/w Mr. Nishant Upadhyay, Ms. Vasudha Jain and Mr. Mayank Jain i/b AZB & Partners

O R D E R

Per : CORAM

I.A. 2737 of 2026 IN C.P. (IB) No. 2205 of 2019

1) This is an Interlocutory Application by the Liquidator of Jet Airways (India) Limited (hereinafter referred to as Corporate Debtor) *inter alia* seeking directions to refund the advance payments aggregating to $ 92,129,387 made by the Corporate Debtor to the Boeing Company towards procurement of Aircrafts by the Corporate Debtor. It is submitted by the Applicant that the Advance Payments constitute a part of the Liquidation Estate of the Corporate Debtor within the meaning of Section 36 of the Insolvency and Bankruptcy Code, 2016 ("Code") and the Respondent is obligated to refund the same.

2) The brief facts leading to the filing of this Application are as under:

i. In 2013, the Corporate Debtor and the Respondent entered into Purchase Agreement No. PA-03781 and Purchase Agreement No. PA-3000 for purchase/ sale of Boeing Model 737-8 Aircrafts and Boeing 787-9 Aircraft, respectively (hereinafter referred as Purchase Agreements).

ii. These Agreements have not been annexed to this Application owing to the Respondent's concern in relation to the confidentiality of certain proprietary data of the Respondent contained therein.

iii. Pursuant to the Purchase Agreements, the Corporate Debtor deposited sum of $ 92,129,387 with the Respondent as Advance Payment / pre-delivery payments which was acknowledged by the Respondent.

iv. The Corporate Debtor was unable to pay certain amounts due to the Respondent under Purchase Agreements because of certain difficulties. On account of said delay in payments, the Respondent issued a Notice of suspension dt. 22.05.2019 purporting to suspend performance of all the obligations of the Respondent under Purchase Agreements. The Purchase Agreements do not provide the Respondent with explicit rights or ability to suspend the performance of their obligations under the Purchase Agreements unless the Agreement is terminated.

v. Later, in June 2019, the Corporate Debtor was admitted into Corporate Insolvency Resolution Process (CIRP).

vi. The Resolution Professional, upon verification of the claim made by the Respondents, admitted an amount of Rs. 721,19,24,370/- which increased to 873,78,79,632/- in liquidation process on account of currency fluctuation, and this claim amount represented the unpaid instalments of Advance Amount of pre-delivery payment obligation due under the Purchase Agreements and for certain Software and services. The Respondent had made a claim of **$ 275,333,451.69**.

vii. The Respondents are alleged to have not responded to the query of the Resolution Professional about Mutual Credits, Mutual Debts or other Mutual Deals between the Corporate Debtor and the Liquidator for the purpose of set off.

viii. The erstwhile Resolution Professional, on 27.01.2020, addressed a letter to the Respondent inter alia informing the Respondent about the initiation of CIRP against the Corporate Debtor and requested for return of Advances lying with the Respondent. The Respondent responded to the request inter alia disputing the claim and seeking further particulars despite knowledge in the receipt of the Advance Payment vide Exchange of E-mails between them. Thereafter, there were exchange of E-mails between the Resolution Professional and the Respondent. The Respondent has raised contest to the Corporate Debtor's interpretation of the Contractual Provisions.

ix. The Respondent in December 2020, issued a Notice of termination purporting to terminate the Purchase Agreements, citing the Corporate Debtor's alleged material breach arising from non-performance and pursuant to Article 10.i of the Aircrafts General Terms Agreement No. AGTA-JPL.

x. In the meantime, the Hon'ble Supreme Court directed that the Corporate Debtor be taken into Liquidation as the implementation of the approved Resolution Plan failed.

xi. The Respondent terminated the Purchase Agreements after the Corporate Debtor has already entered into the Liquidation without having delivered any Aircraft. The Liquidator invited all the Stakeholders of the Corporate Debtor to submit their claims as on 26.11.2024. No updated claim or intimation was submitted by the Respondent. The subject amount was admitted based on exchange rate as on Liquidation Commencement Date and included in the List of Creditors.

xii. On 03.01.2025, after the expiry of Timelines to submit the claims, the Respondent addressed an E-mail to the Liquidator inter alia requesting that the Respondent's claim as filed with the erstwhile Resolution Professional be treated as the claim in the Liquidation.

xiii. The Liquidator addressed a Letter on 11.08.2025, to the Respondent, requesting the prompt refund of all Advance Payments aggregating to $92,129,387 and in subsequent years an amount of INR 500,11,38,737/- (the equivalence of USD payment as recorded as Capital Advance Payment towards purchase of Aircrafts made to the Respondent in respect of undelivered Aircrafts under the Purchase Agreements in the Books of the Corporate Debtor) and the Respondent denied their Liability to refund the purported Advance Payment and asserted its Right of Set Off.

3) Hence the present application.

I.A. 3221 of 2026 IN C.P. (IB) No. 2205 of 2019

4) The Respondent appeared and filed the Interlocutory Application bearing IA No 3221 of 2026 raising the point of maintainability of the IA 2737 of 2026, challenging the jurisdiction & tenability of the claim, so also raised the contention of set off under Regulation 29 of Insolvency and Bankruptcy Board of India (Liquidation Process)

Regulations, 2016 contending that it stood fully extinguished as the claim admitted in CIRP was net of such advance amount and ultimately sought rejection of I.A. No. 2737 of 2026 filed by the Liquidator of the Corporate Debtor. It is also contended that the RP having admitted its claim during CIRP after netting of such advance amount which was also accepted by the Liquidator after commencement of liquidation proceedings, the liquidator now cannot claim the refund of the amount.

5) Considering the rival contentions of both the Parties, the scope and ambit of this Tribunal for exercising powers under Section 60(5) of the IBC, is required to be accessed in the facts and circumstances of the present case.

6) The Liquidator has filed this Application on the ground that pursuant to the Agreements of the Corporate Debtor with the Respondent/Boeing Company certain payments were made as an advance towards purchase of Boeing Aircrafts, under a contract. The Corporate Debtor went into CIRP and ultimately into the Liquidation and therefore, the Respondent/Boeing Company terminated the

Contract. It is on the basis of this Contract the Liquidator is claiming the refund of advance amount paid to Boeing towards purchase of Aircrafts which were not delivered pursuant to the Agreement and the Agreements stood terminated ultimately. Therefore, the Purchase Agreements are in question; as to in what manner these Agreements contemplate the Payments and the Liabilities in case these Agreements are not fulfilled or terminated by either of the Parties.

7) It is submitted by the Ld. Counsel for the Liquidator that the Respondent/Boeing Company has taken different stands in relation to the receipts of Advance Payments from the Corporate Debtor. The statements made by Boeing are in complete contrast to the Boeing's Claim from 16.09.2019 filed with the erstwhile Resolution Professional, wherein the Boeing has stated that under the Purchase Agreements, Jet has made an Advance Payment of USD 9,16,36,174 out of USD 357,878,936.75 as of the Insolvency Commencement Date (i.e. 20.06.2019), towards the advance amount payable under the aforesaid Purchase Agreements and amount of $ 266,252,795.75 is outstanding under the Purchase Agreements.

8) It is submitted that by filing an Interlocutory Application, the Boeing is trying to avoid the Application filed by the Liquidator and has put forth a moon-shine Defence and has given no explanation whatsoever in Equity or Law for retention of the admitted Advance Payments made by the Corporate Debtor.

9) It is further submitted that the Respondent/Boeing Company has contended that the Liquidator's claim for refund of Advance Payments is tenable because, the Boeing has already netted off the Advance Payments made by the Corporate Debtor while filing its claim form and Boeing's admitted claim against Corporate Debtor exceeds the refund of Advance Payments sought by the Liquidator. Boeing's Claim did not require any adjusting or netting of and it could only have been in respect of alleged balance under the Purchase Agreements.

10) It is further submitted that the Boeing while having retained the Advance Payments has not referred to any provisions of Contract or Law justifying the same and adverse inference against Boeing can therefore be drawn that Boeing has no rights to retain the Advance Payments, admittedly received by it from the Corporate Debtor.

11) It is further submitted that the Purchase Agreements & Aircrafts General Terms Agreements (AGTA) are required to be interpreted and governed by Laws of State of Washington, U.S.A. however, Article 12.3 of AGTA specifies Washington Laws to be the Governing Law and it does not exclude and oust the jurisdiction of the Indian Courts. This is especially relevant in the present case where Boeing itself has ceded to the Jurisdiction of this Tribunal by filing its claim Form and also attempting to take aid of Regulation 29 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. It is therefore, submitted that this Tribunal has jurisdiction to adjudicate the present dispute as the dispute is arising out of the Insolvency and Bankruptcy Process and therefore the inherent powers can be exercised to meet the ends of justice.

12) It is further submitted that it was Boeing's case that there lies no cause of action by virtue of Application of Regulation 29 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. This is because Boeing's admitted claim against the Corporate Debtor exceeds the refund of Advance Payments sought by the

Liquidator. Boeing has admitted during the course of arguments that the present is not the case of set off under Regulation 29 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. It is undisputed and Boeing's own case that it filed its claim against the Corporate Debtor to the extent of balance advance payments allegedly due to it under the Purchase Agreements and therefore, any averments by Boeing in relation to set off ought not to be considered.

13) The Ld. Counsel for the Liquidator relied upon the decision in the case of ***Bharti Airtel Ltd. versus. Vijaykumar V. Iyer & Ors. (2024) 4 SCC 668*** (para 48 to be quoted).

> ***"48. The second exception will be in the case of 'equitable set-off' when the claim and counter claim in the form of set-off are linked and connected on account of one or more transactions that can be treated as one. The set-off should be genuine and clearly established on facts and in law, so as to make it inequitable and unfair that the debtor be asked to pay money, without adjustment sought that is***

fully justified and legal. The amount to be adjusted should be a quantifiable and unquestionable monetary claim, as the Corporate Insolvency Resolution Process is a time-bound summary procedure. It is not a civil suit where disputed questions of law and facts are adjudicated after recording evidence. Set-off of this nature does not require legal proceedings. Further, set-off of money is to be given against money alone. It will not apply to assets. Lastly, being an equitable right, it can be denied when grant of relief will defeat equity and justice".

14) Ld. Counsel for the Liquidator relied upon the judgment in the Case of ***Arkay Logistics Limited. versus. Mr. Abhijit Guhathakurta, (2024) SCC OnLine NCLAT 1378***, wherein it is stated as under:

"17. The learned Counsel for the Appellant has submitted that the recovery of debt by means of Application under Section 60, sub-section (5) is not permissible, even if the debt is not disputed. The present is not a case where Liquidator was trying to recover any debt, which was

owed by the Appellant to the CD. Rather, the Liquidator was only asking for the refund of the amount, which was given by the CD towards margin money for securing a PBG through the Appellant from its credit line of the Axis Bank. The payment of Rs.18.10 crores was towards the margin money, which is captured in the letter written at the relevant time by the CD to the Appellant, the letter dated 18.01.2018, which we have already extracted above. When the PBG was surrendered and lien was cancelled, which was marked on the FDs given by the Appellant for securing PBG was cancelled, the CD was entitled for the margin money, which was paid by the CD towards the PBG. The present was not a case of recovery of any debt by the Liquidator from the Appellant. …

18. The Adjudicating Authority has considered the nature of transactions and has given its reason in paragraph 22 of the order, which is to the following effect:

"22. In the present case, the Respondent has not disputed its liability to pay back the cash deposit of Rs.18.10 crore made by the Corporate Debtor nor has denied its obligation under the arrangement between the companies to return the said amount to the Corporate Debtor. Hence, we do not see any issue which needs adjudication by a civil court after recording the evidence in detail. The framework of liquidation process envisaged under the Code empowered the Tribunal to deal with all issues relating to insolvency, specifically with the aim of avoiding a multiplicity of fora. If the liquidator is required to approach civil court or other jurisdictions in all scenarios when the asset of the Corporate Debtor is in the possession of third party, the object of avoiding multiplicity of fora will be defeated. It is also relevant to mention that once an application is admitted by Tribunal, it is conferred

with the jurisdiction to deal with all assets of the Corporate Debtor unless an exclusive jurisdiction is created under another statute or involves issues which cannot be decided in summary proceedings. The application for seeking direction to return the undisputed amount, more so by the related party, to the Corporate Debtor cannot be refused merely on the pretext that the Liquidator is required to file a recovery suit despite the fact that the respondent has not even disputed or denied its liability".

15) Ld. Counsel for the Respondent/Boeing Company has raised a ground of maintainability of the Interlocutory Application bearing IA No. 2737 of 2025, contending that the amount claimed in the subject Application is seriously disputed and the Application cannot be adjudicated under Section 60(5) of the Code and relied on the judgment in the case of ***Gujarat Urja Vikas Nigam Limited. versus. Amit Gupta (2021) 7 SCC 209,***

"91. The residuary jurisdiction of the NCLT under Section 60(5)(c) of the IBC provides it a wide discretion to adjudicate questions of law or fact arising from or in relation to the insolvency resolution proceedings. If the jurisdiction of the NCLT were to be confined to actions prohibited by Section 14 of the IBC, there would have been no requirement for the legislature to enact Section 60(5)(c) of the IBC. Section 60(5)(c) would be rendered otiose if Section 14 is held to be the exhaustive of the grounds of judicial intervention contemplated under the IBC in matters of preserving the value of the corporate debtor and its status as a ‗going concern'. We hasten to add that our finding on the validity of the exercise of residuary power by the NCLT is premised on the facts of this case. We are not laying down a general principle on the contours of the exercise of residuary power by the NCLT. However, it is pertinent to mention that the NCLT cannot exercise its jurisdiction over matters dehors the insolvency proceedings since such matters would fall outside the realm of IBC. Any other interpretation of Section 60(5)(c) would

be in contradiction of the holding of this Court in Satish Kumar Gupta (supra)".

16) It is submitted that the Tribunal's jurisdiction under Section 60(5) of the Code, is summary in nature and limited to question of Law or Facts arising out of or in relation to Insolvency Resolution or Liquidation Process. Such jurisdiction does not extend to adjudication of general, civil, contractual disputes relating to the recovery of disputed claims in Liquidation Process.

17) Further, reliance is placed on the judgment in the case of ***Ramchandra D. Chaudhary. versus. Bansal Trading Company and Ors. (2022) SCC OnLine NCLAT 360***, wherein it is held:

> ***"14. The only point which is to be examined is whether the Adjudicating Authority was justified in dismissing the Applications preferred by the Liquidator as not maintainable. The Resolution Professional is required under Section 18 of the Code to take control and custody of the assets of the 'Corporate Debtor'. The amounts stated to be 'due and payable to the 'Corporate Debtor' by other***

Sundry Debtors are required to be included in the Information Memorandum and when included, the person/entity purchasing the assets of the 'Corporate Debtor would have knowledge of the value of the assets/Liquidation Value as stated in the Information Memorandum. The Hon'ble Supreme Court in 'Gujarat Urja Vikas Nigam Limited v. Mr. Amit Gupta', Civil Appeal No. 9241 of 2019, in paras 67 & 68 noted as follows:

> ***"67. The institutional framework under the IBC contemplated the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora. In the absence of a court exercising exclusive jurisdiction over matters relating to insolvency, the corporate debtor would have to file and/or defend multiple proceedings in different fora. These proceedings may cause undue delay in the insolvency resolution process due to multiple proceedings in trial courts***

and courts of appeal. A delay in completion of the insolvency proceedings would diminish the value of the debtor's assets and hamper the prospects of a successful, reorganization or liquidation. For the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in a timely, effective and efficient manner. Pursuing this theme in Innoventive (supra) this court observed that "one of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of "speeding up of the insolvency process". The principle was reiterated in Arcelor Mittal (supra) where this court held that "the non-obstante Clause in Section 60(5) is designed for a different purpose: to ensure that the NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other *forum has jurisdiction to entertain or dispose of such applications or proceedings". Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor. However, in doing do, we issue a note of caution to the NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor. The nexus with the Insolvency of the Corporate Debtor must exist.*

68. It is appropriate to refer to the observations in the Report of the BLRC, wherein it noted the role of the NCLT, as the Adjudicating Authority for the CIRP, in the following terms:

"An adjudicating authority ensures adherence to the process. At all points, the adherence to the process and compliance with all applicable laws is controlled by the adjudicating authority. The adjudicating authority gives powers to the insolvency professional to take appropriate action against the directors and management the entity, recommendations from the creditors committee. All material actions and events during the process are recorded at the adjudicating authority. The adjudicating authority can assess and penalize frivolous applications. The adjudicator hears allegations of violations and fraud while the process is on. The adjudicating authority will adjudicate on fraud, particularly during the process resolving bankruptcy. Appeals/actions

against the behaviour of the insolvency professional are directed to the Regulator/Adjudicator." As such, it is important to remember that the NCLT's jurisdiction shall always be circumscribed by the supervisory role envisaged for it under the IBC, which sought to make the process driven by trained resolution professionals".

15. Keeping in view the aforenoted ratio in Gujarat Urja Vikas Nigam Limited' (Supra), we hold that the remedy for recovery of debts, disputed or not, cannot be determined in summary proceedings and the Code does not contemplate adjudication of any such nature. Any such steps taken under Section 60(5) of the Code before the Adjudicating Authority, would tantamount to bypassing/short-circuiting the Judicial Proceedings. Keeping in view the submissions of the Respondents, to adjudicate whether the amount is due and payable by the 'sundry debtors' who

have raised disputes, would require calling for evidence and cannot be proceeded under the Code. The Appellant is well within its powers to take appropriate steps to file legal proceedings, if the circumstances so warrant. The Code expressly provides for the Liquidator to institute or defend any Suit, Prosecution or other Legal Proceedings, Civil or Criminal, in the name or on behalf of the 'Corporate Debtor".

18) Similar law was laid down in the case of ***Pooja Bahry. versus. Uttar Pradesh Rajkiya Nirman Nigam Limited Company Appeal (AT) (INS) No. 1561 of 2023,*** wherein it is quoted as under:

23. In summary, the jurisprudence laid down by this judgement is clear that the Hon'ble Apex Court after examining in details the use of expressions "arising out of" and "in relation to" in Section 60(5) of the IBC has held that NCLT cannot exercise its jurisdiction over matters dehors the insolvency proceedings since such matters would fall outside the realm of IBC. While the duty of the

Resolution Professional and the jurisdiction of the NCLT cannot be conflated, it was clarified that the Resolution Professional can approach the NCLT for adjudication of disputes which relate to the insolvency resolution process but when the dispute arises dehors the insolvency of the Corporate Debtor, the Resolution Professional must approach the relevant competent authority.

25. In the absence of a legally adjudicated or admitted claim, as in the facts of the present case, we are guided by the judicial precedent laid down in Gujarat Urja judgment and are of the considered view that the Adjudicating Authority Company Appeal (AT) (Insolvency) No. 1561 of 2023 stood precluded from ordering recovery of claim amount as sought by the Appellant-Liquidator in exercise of Section 60(5) of the IBC. The Liquidator has clearly endeavoured to sidestep and short-circuit the jurisdiction of other authorities and has approached the Adjudicating Authority for the enforcement of the uncrystallised dues of

the Corporate Debtor. The trajectory of events makes it clear that insolvency of the Corporate Debtor was not being employed as a ground by the Respondents for not making the payment but the payment was denied on account of contractual disputes surrounding uncrystallised debt which had arisen dehors the insolvency of the Corporate Debtor. In the absence of jurisdiction over the dispute, the Adjudicating Authority has rightly not allowed the prayers of the Liquidator".

19) It is further submitted by Respondent that the reliefs sought in the subject Application is nothing but a monetary claim for refund of Advance Payments made pursuant to the Contractual relationship between the Parties. Boeing's consistent position has been that no such amounts are due and payable. Further, the disputed nature of demand is apparent from the fact that the relief sought in the Application hinges solely on Jet's Balance Sheet for the Financial Year 2018-19 recording the amount as purported Advance classified as Short Term Loan. The Balance Sheet does not form part of the subject Application and has only been produced by Boeing itself as an Annexure to the Maintainability Application.

20) Relying ***Pooja Bahry. versus. Uttar Pradesh Rajkiya Nirman Nigam Limited*** *cited (supra)*, it is submitted that the unilateral declaration in accounting entries does not create legally enforceable debt in the absence of necessary proof and evidence. Jet's own Audited statement of Account for the Financial Year 2018-19 records the Auditor's qualification that the realisation of Advance Amount cannot be commented on considering inter alia Jet's breach of Payment allegations. Boeing has contested the Liquidator's attempt to seek undue recovery of advanced payments well before the filing of the subject Application. Section 33(5) of the Code permits Liquidator to seek Tribunal's permission to institute a Suit or Legal Proceedings on behalf of the Corporate Debtor. It follows that the Tribunal's summary jurisdiction cannot be enlarged for adjudication of every dispute, claim, asserted by the Liquidator and therefore the Application is not permissible.

21) It is further submitted that the underlying contractual agreements between the Parties is governed by Foreign Law. Reliance is placed on ***Aarif Aazim Co. Ltd. versus. Micromax Informatics FZE (2025) 9 SCC 750,*** wherein it is stated as under:

> ***"76. Thus, even if it is assumed that Clause 27 of the aforesaid Distributorship Agreement conferred concurrent jurisdiction to both the courts in UAE and the other courts and thus, the petitioner herein was well-within its right to approach this Court in terms of the non-exclusive jurisdiction clause for the purpose of appointment of arbitrator, this Court can decline to exercise its jurisdiction if there exists a more appropriate forum. As discussed in the foregoing paragraphs, the seat of arbitration in terms of the aforesaid Distributorship Agreement is Dubai, UAE, both the law governing the contract and the curial law are the laws of UAE, the respondent no. 1 herein with whom the petitioner's credit account lies is also situated in Dubai, even the venue of***

arbitration is Dubai, thus by all reasons of logic the more appropriate forum suitable for appointment of arbitrator is Dubai, UAE and not the courts of India.

77.10. Where two or more possible places that have been designated in the arbitration agreement either expressly or impliedly, equally appear to be the seat of arbitration, then in such cases the conflict may be resolved through recourse to the Doctrine of Forum Non Conveniens, and the seat be then determined based on which one of the possible places may be the most appropriate forum keeping in mind the nature of the agreement, the dispute at hand, the parties themselves and their intentions. The place most suited for the interests of all the parties and the ends of justice may be determined as the 'seat' of arbitration".

22) It is further contended by Respondent that the doctrine of ***Forum non conveniens*** applies in the present case. It is submitted that if the Tribunal were to decide the subject application, the parties would necessarily have to advance expert evidence on question of Foreign

Law. On the other hand, the competent court in the United States is better suited to decide the issue raised in the subject Application. The Boeing filed its claim towards the dues under the Purchase Agreements with the erstwhile Resolution Professional of Jet Airways. After giving Credit for the Advance received amounting to USD 91.62 Million and the said amount was netted of from Boeing's claim to the extent of Rs. 721.19 Crores was admitted by the Resolution Professional and subsequently by the Liquidator which admitted sum increased to 873.79 Crores as on 26.11.2024 due to currency rate fluctuation arising from conversion from US Dollars to Indian Rupee. It is therefore submitted that there is nothing due and payable by Boeing to the Corporate Debtor given that the Boeing has already netted of the Advance paid by Jet as on ICD and the Liquidator cannot claim the said Amount which has already been adjusted and Credited by Boeing after admission of Boeing's Higher Claim by the Liquidator. Set off under Regulation 29 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 fully extinguish the demand raised in the subject Application.

23) Undoubtedly, the claim of the Liquidator in the present Application arises out of the Purchase Agreements between the Corporate Debtor and the Respondent/Boeing Company. As contended by the Liquidator, there were certain advance payments paid by the Corporate Debtor towards purchase of Aircrafts from the Respondent. It is pertinent to note that the said Agreements are not produced on record on the ground of Confidentiality neither by the Liquidator nor by the Respondent. However, the fact emerges that the claim as laid by the Liquidator in the present Application arises out of the said contract. It is not in dispute that the certain advance payments were made by the Corporate Debtor to the Respondent/Boeing Company and that the Agreement was not fulfilled because of the Insolvency Proceedings against the Corporate Debtor and subsequently, going into the Liquidation. The Boeing terminated the Contract by issuing Notice. Therefore, the terms of the Contracts between the Parties about the treatment of Advance money in the event of non-fulfilment of Purchase Agreements or termination of the Purchase Agreements is the crucial factor which the Respondent has strongly disputed. Both the parties have raised counter claims. The facts remain that the Boeing Company during the CIRP has made a claim towards Advance Payments under the Agreement which was admitted by the erstwhile Resolution Professional. It is only when the Corporate Debtor has gone into Liquidation, the Liquidator has sought refund of Advanced Payments made by the Corporate Debtor towards unfulfilled Agreement.

24) The fact remains that the Respondent Boeing Company has not supplied any of the Aircrafts under the Agreements. Therefore, whether the Respondent Boeing Company was justified in suspending the Agreement, forfeiting the Advance Payments and setting of or adjusting it or filing of its claim before the Resolution Professional are the questions which are required to be adjudicated by the Competent Court of jurisdiction. These questions require evaluation of Agreements between the Parties, leading of evidence by the Parties and a full-fledged Trial. The Resolution Professional having admitted the claim of the Respondent Company and later, changing its stand and claiming the Amount from the Respondent would be required to be tested on the interpretation of the Agreements between the Parties, which is not produced by either of Parties.

25) Even otherwise, the disputed question of facts and law are required to be tested and determined by a full-fledged Trial. The claim of the Liquidator or that of the Boeing is not crystallised in any proceedings and therefore the jurisdiction of this Court under Section 60(5) of the Code would be circumscribed and restricted to the issues arising out of Insolvency Process which has been held by number of Judgments time and again and the leading Authority on this Point is Gujarat Urja Nigam Limited. (cited above)

26) A question of set off is also required to be decided by the Competent Court to crystallise the amount as claimed by both the Parties. It is the contention of the Liquidator that the Boeing Company cannot claim the set off as it is Boeing's own case that there lies no cause of action against it by virtue of Application of Regulation 29 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

27) In Rejoinder, the Respondent submitted that this Tribunal lacks jurisdiction to decide the dispute of refund of claim by the Liquidator, however, without prejudice to that, even otherwise no amount is due and payable by Boeing to the Corporate Debtor as the advance paid by the Corporate Debtor in respect of Purchase Agreements have already been netted of from Boeing's outstanding claim to arrive at a final claim of 266.252 Million USD as on ICD, which is manifest and self-evident from the claim Form filed with the Resolution Professional. The said claim has been partially admitted first by the Resolution Professional for a sum greater than the present demand and subsequently by the Liquidator to the tune of INR 873.79 Crores. Therefore, there is nothing due and payable to the Corporate Debtor. The Liquidator cannot in law or in equity seek recovery of the same amount which stands adjusted and credited by the Boeing particularly after having itself admitted Boeing's substantial large claim.

28) It is further submitted that the Liquidation being the terminal stage attract statutory rights of the Insolvency set off under Regulation 29 of Insolvency and Bankruptcy Board of India (Liquidation Process)

Regulations, 2016 which enables determination of net off payable between the Parties. The judgment of the Hon'ble Supreme Court in Bharti Airtel Limited cited (supra) conclusively establish that the set of under Regulation 29 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 is a creature of statute specifically operative during Liquidation and the Liquidator is bound by law to give effect to it by stating that Regulation 29 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 is manifestation of statutory / Insolvency set off during Liquidation and that set off on account of mutual dealings is permitted in terms of Regulation 29 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

29) The question of set off of the claims between the Parties is required to be evaluated from the testing of the Purchase Agreements between the Parties and therefore, in the summary jurisdiction as observed above, this Tribunal cannot go into the question of legality or otherwise of the contract between the Parties in the summary jurisdiction and therefore, the rival contention of the parties that the set off is applicable or not in the present case cannot be adjudicated by this Tribunal in the present Proceedings. ***Ramchandra D. Chaudhary. versus. Bansal Trading Company and Ors. (2022) SCC OnLine NCLAT 360***, and ***Pooja Bahry. versus. Uttar Pradesh Rajkiya Nirman Nigam Limited Company Appeal (AT) (INS) No. 1561 of 2023. -***Fortify the same.

30) The question of jurisdiction to entertain the dispute concerning the agreement between the Parties in the present case is also required to be decided by the Competent Court of the jurisdiction as to by what terms the parties are governed. The rival contentions of the Parties are that the Court under the US Jurisdiction would be competent to decide the dispute as per the terms of the Agreement and the interpretation that the Law governing the Contracts under the US Court would be applicable to the present contract are required to be decided by the Competent Court who would evaluate the Contract between the Parties.

31) The submission of the Ld. Counsel for the Liquidator that since, the Respondent/Boeing Company has filed its claim in the Insolvency

Proceedings in this Court and has relied upon the provisions of Regulation 29 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, therefore, has subjected to the jurisdiction of this Court, has no substantial merits as the jurisdiction of the Court would be governed by the Terms of the Contract between the Parties.

32) The dispute between the Parties in the present case certainly revolves around the Purchase Agreements between the Parties unless those Agreements are tested and the claims are crystallised upon the adjudication of dispute between the Parties under the Contract, the proceedings cannot be said to be emerging out of the Insolvency Process, they are independent of the Insolvency Process and the Liquidator has attempted to enforce the Contract without producing that Contract or terms of the Contract and get the refund of the advance paid by filing this Application, which this Tribunal would not be competent to exercise power under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of National Company Law Tribunal Rules, 2016.

33) In that view of the matter, the Interlocutory Application bearing IA No. 2737 of 2026 filed by the Liquidator lacks merits, therefore, the same is dismissed and disposed of. Resultantly, the Interlocutory Application bearing IA No. 3221 of 2026, is also disposed of.

34) There will, however, be no order as to costs. Ordered Accordingly.

Sd/-	**Sd/-**
PRABHAT KUMAR **MEMBER (TECHNICAL)**	**SUSHIL MAHADEORAO KOCHEY** **MEMBER (JUDICIAL)**

Vedant Kedare
(Stenographer)