
APPLICABILITY OF IBC PROCEEDINGS ON INDIAN AVIATION SECTOR

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INTRODUCTION

With an estimated 1 billion travels handled yearly by 2023, the Indian aviation industry has established themselves to be one of the best-performing and most rapidly developing industries in the world, suggesting a bright future. However, this stands in sharp contradiction to the present economic hardship that airline firms are under, as seen by the situations with Jet Airways and Kingfisher. The same is caused by a combination of variables related to regulatory action and the nature of the market. Increasing fuel prices and the decreasing worth of the Indian rupee have been accountable for the former, whereas the imposition of a price ceiling on localised domestic flights has created unfavourable impacts on the latter.¹

Indigo is considered to be the sole company contending in the industry of aviation, resulting in significant financial losses for the full-service airlines who did not embrace a cost-effective approach.

The subject of this paper explores the legal system's handling of insolvency procedures before the Insolvency and Bankruptcy Code ('IBC') 2016, including the case studies. The present paper investigates the impact of the IBC Code on insolvency cases in India's aviation sector, focussing on the recent Jet Airways bankruptcy case. The present research paper argues that the IBC Code is insufficient for the management of aviation bankruptcy proceedings, highlighting the necessity for an entirely separate structure for enacting the Cape Town Convention (CTC). Finally, the study offers recommendations for concluding bankruptcy processes in the aviation industry in keeping with current trends.

The transportable aspect of aviation items has created challenges among secured creditors, prospective sellers, and leasing companies (all of which are referred to as 'creditors'). The examples of the limits encompass measures that are accessible in one country but not in a different one, protection rights formed within the legislation of one territory but not officially recognised in another, and contending safety interests concerning an item that have conflicting priority. The Convention establishes the conditions for worldwide interest in transportable machinery that includes aircraft frames, engines for planes, and airliners (which are all referred to as 'aircraft objects'), railway locomotives, and space assets, as well as the establishment of a international registration process that will safeguard and maintain those international interests. The aviation industry is vitally essential regarding the Indian economy. India's internal and global passenger traffic has grown from 10.53 crore in FY 2021-22 to 19.06 crore in FY 2022-

¹ Vipra, T. (2022) 'State of the Civil Aviation Sector in India', *PRS Legislative Research*. PRS India, 21 March. Available at: <https://prsindia.org/theprsblog/state-of-the-civil-aviation-sector-in-india> (Accessed: 2024).

23, with more growth expected in the upcoming years. According to Airbus' current market prediction, India might need 2,210 new aeroplanes over the following 20 years. The total worth of all of these aircraft exceeds 20,40,000 crore. Investment of around 35,000 crore would be needed to take delivery of 100 marine aircraft every year.² Most of the funding towards the purchase of new aircraft in India is likely to come from lease agreements supported by international investors, since the worldwide aircraft rental industry is predicted to increase from \$172.9 billion in 2023 to \$317.5 billion by 2030. The expenditure for funding using lease-backed agreements depends on the legal recourse provided to aircraft lessors/financiers, particularly in event of an insolvency of the aviation company.³

Suffice to point out, aircraft leasing companies demand unlimited access to aircraft throughout the insolvent airline's bankruptcy resolution process. Nevertheless, conferring such an interest into their hands poses worries about the troubled airline's capacity to negotiate a new deal and keep running the aircraft in order to continue operating its company as an ongoing entity. In the lack of operational aircraft, the company has little chances of revival, which might be damaging to numerous stakeholders. This includes travellers, suppliers, banks, financial institutions, employees, and workers. This has the potential to have a broad economic impact. Therefore, from a legislative perspective, it is ideal to adopt an approach that strikes a delicate balance between protecting the legal rights and interests of the aircraft lessors during the insolvency resolution process of the airline on one hand, and the successful revival/turnaround of the airline company on the other.

A moratorium is established under the provisions of the IBC plan as mentioned in the IBC 2016, which takes into consideration the date the corporate insolvency resolution process (CIRP) begins in accordance with Chapter II of Part II of the IBC.⁴ Among other things, it prevents shareholders or creditors from taking back properties that belong to the corporate debtor (CD) who is going through the CIRP. The following was an aggregate prohibition that pertained to all CIRPs, regardless of the industry that the involved CD worked in.

The introduction of IBC, 2016 has proved to be a groundbreaking modification regarding the legislative and financial structure for handling insolvency and bankruptcy proceedings in India.

² Ministry of Civil Aviation, Government of India, Report of the Working Group on 'Project Rupee Raftar'- Development of Aircraft Financing and Leasing in India, 4 (2019).

³ (2024) *Aircraft Leasing Market Size & Growth Analysis Report [2032]*. Available at: <https://www.fortunebusinessinsights.com/aircraft-leasing-market-107476> (Accessed: 18 November 2024).

⁴ The Insolvency and Bankruptcy Code, 2016, Sec. 14 § (1)(d).

It has proven to be a vital tool for corporate restructuring because of its goals of maximising the worth of assets, helping in encouraging entrepreneurship, and further balancing the goals of all stakeholders. Due to its significant operational risks, heavily capital-intensive nature, and its susceptibility to outside influences like shifting prices for gasoline and recessions, the Indian aviation industry has frequently encountered itself in a precarious financial situation. The relevance of IBC processes to the Indian aviation sector has attracted a lot of interest in this regard.

The growing market of India's aviation has been rapidly developing with pace in the global market having experienced an accelerating growth in the past few years. This expansion hasn't been without difficulties, though. Airways have frequently experienced emergencies with liquidity and insolvency as a result of problems including excessive pricing patterns, legislative obstacles, and financial oversight. The industry's vulnerability to economic turmoil is best illustrated by the demise of well-known airlines like Jet Airways and Kingfisher Airlines. In these situations, the IBC offers a methodical way to end insolvency, either by liquidation or through corporate reorganisation, while guaranteeing fairness for creditors and other interested parties.

The particular features of the aviation industry's resources and activities could be considered of the main obstacles while implementing proceedings IBC to this sector. International conventions like the Cape Town Convention, and this give lessors' privileges precedence over regional insolvency laws, regulate aircraft leases, a substantial component of the activities of airlines. As a result, local IBC laws and international commitments interact in a complicated way. A sophisticated strategy to insolvency resolution that maintains uninterrupted operations while resolving lenders' complaints is also necessary since the aviation industry is essential to both economic development and national connection.

The historic Jet Airways bankruptcy case within the IBC brought to the forefront the Code's advantages and disadvantages when it came to the aviation industry. The procedure made it clear how crucial it is to draw in qualified resolution seekers and keep employee spirits high throughout the procedures. Additionally, it highlighted the requirement for harmonisation

among national insolvency legislation and international aviation norms by exposing gaps in cooperation with global players, including foreign creditors and lessors.⁵

There are much broader concerns regarding the functioning of authorities and legislators in preventing financial hardship in the airline business are also brought up by the IBC procedures for troubled operators. Although the Code offers a strong framework for resolution, preventative measures like improved corporate governance, accounting oversight, and particular to an industry initiatives are unable to be replaced by it. The IBC may create a path for renewal and sustainability in this vital industry, as seen by the recent resuscitation of Jet Airways.

The IBC's capacity for adapting to intricate and specialised businesses is demonstrated by its application to the Indian aviation industry. Nevertheless, a customised strategy to bankruptcy resolution is required due to the aviation industry's distinct technical and legislative complexities. Improving the interaction between IBC and the aviation sector will be essential as the sector grows in order to provide robustness against economic downturns and sustainable growth.

⁵ Standard, B. (2022) *No decision on reduction in tax on ATF to bring down prices: Report*, Business Standard. Available at: https://www.business-standard.com/article/current-affairs/no-decision-on-reduction-in-tax-on-atf-to-bring-down-prices-report-122052501443_1.html (Accessed: 18 November 2024).

INSOLVENCY AND BANKRUPTCY CODE (IBC) OVERVIEW

This industry has had a number of collapses such as bankruptcy and insolvency in the past ten years, including Kingfisher's 2012 closure, Spice Jet's 2014 financial difficulties, and Jet Airways' most recent suspension of service in 2019. Aviation bankruptcy cases were handled according to Section 433 r/w Section 434 of the Companies Act ('CA') 1956⁶ and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act ('SARFAESI') 2002⁷ prior to the enactment of the Insolvency and Bankruptcy Code, 2016.

Kingfisher started conducting business in 2005, but during the 2008 financial crisis, company was confronted with enormous amounts of unpaid debt, including service taxes, airfield fees, staff pay, and loans from banks. Regretfully, by 2012, the company's losses had reached an alarming 7,000 crores, which prompted it to apply for government support but was denied; instead, the Directorate General of Civil Aviation (DGCA) revoked its licence, forcing Kingfishers to shut down in December 2012.⁸

The court re-examined the ruling rendered by the single judge bench in Kingfisher Airlines Limited v. State Bank of India.⁹ While dealing with this case, issue came before the court that the insolvent lessee contended that it had title to the property as well since its agreement to lease contained an acquisition option. Prior to allowing the lessor to purchase the airliner, the DGCA additionally sought a No Objection Certificate from the lessee. The Delhi High Court determined that this DGCA made a mistake in demanding such a document and directed removing one's.

The rules and regulations of the International Convention on International Interests in Mobile Equipment (the "Convention") and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the "Protocol") were frequently invoked by Indian courts prior to establishment of the IBC code. Taking the instance of Ireland Ltd. Ors. v. Directorate General of Aviation, the complainant relied on the two of the provisions of the Convention and the Protocol in requesting the returning it of the plane's elements after Spicejet Limited (respondent) failed to reimburse the leasing as agreed upon in the lease.¹⁰

⁶ Companies Act, 1965. Sec. 433 & 434.

⁷ Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, No. 54 of 2002 (India).

⁸ Panigrahi, A. *et al.* (2019) 'A case study on the downfall of Kingfisher Airlines', *Journal of Management Research and Analysis*, 6(2), pp. 81–84. doi:10.18231/j.jmra.2019.014.

⁹ State Bank of India v. Kingfisher Airlines Ltd., 2016 SCC OnLine SC 1673.

¹⁰ Awas 39423 Ireland Ltd. v. Directorate General of Civil Aviation, 2015 SCC OnLine Del 8177.

The insolvency resolution proceedings for airlines are same as that for other entities under Insolvency and Bankruptcy Code, 2016 (IBC), and involves four stages namely initiation of the Corporate Insolvency Resolution Process (CIRP), moratorium and appointment of an IRP (interim resolution professional), constitution of the committee of creditors (CoC) and passing the control to IRP and CoC, and approval of the resolution plan that CoC reaches by the adjudicating authority. However, as discussed in the subsequent sections, resolution under IBC has certain shortcomings associated with it when it comes to airline insolvencies.

In order to facilitate aircraft financing and leasing, however, the Cape Town Convention, 2001 (also known as the Convention on International Interests in Mobile Equipment) and the Protocol on Matters Specific to Aircraft Equipment are crucial instruments within the worldwide aviation system. The agreement additionally contains clauses pertaining to airline insolvency. India has ratified this convention and protocol, and in order to fulfil its duties under the instrument and take advantage of its advantages after membership, the Civil Aviation Ministry proposed the Cape Town Convention Bill, 2018.¹¹ Nevertheless, the Parliament has not yet passed the law.

Because of its substantial capital needs and propensity for risk, the airline business regularly faces financial difficulties as a result of fluctuating fuel costs, exchange rate swings, and intense rivalry. Through offering a methodical way to settle insolvency while optimising the benefit of all parties involved—creditors, workers, and shareholders—India's Insolvency and Bankruptcy Code, 2016 (IBC) is essential in tackling these issues. Whenever the outstanding amount surpasses ₹1 crore, the IBC permits the start of the Corporate Insolvency Resolution Process (CIRP). Following the start of CIRP, a moratorium under Section 14¹² is put in place, which stops all legal processes, including the seizure of leased aircraft, and gives the debtor time to look into other options for settlement. Nonetheless, the aviation industry has particular difficulties, particularly when it comes to international leasing contracts that sometimes violate national regulations.

The bankruptcy of Jet Airways is a significant event that illustrates IBC's influence on the field of aviation. Formerly the biggest private airline in India, Jet Airways went bankrupt in 2019 after failing to make commitments to its creditors and aircraft lessors. For the purpose to recover their aircraft, lessors used the Cape Town Convention, which India accepted in 2008. Nonetheless, the NCLT maintained the fact that the IBC moratorium limited seizure inside the

¹¹ Cape Town Convention Bill, 2018, Bill No. 123 of 2018 (India).

¹² The Insolvency and Bankruptcy Code, 2016. Sec. 14

country, leaving overseas claims to be handled by foreign courts. The Jalan-Kalrock consortium's resolution plan was ultimately accepted by creditors, demonstrating how the IBC strikes a compromise between creditor rights and resolution goals. Corresponding to this, Go First Airlines declared voluntary insolvency in 2023, pointing to difficulties in engine suppliers as the reason for the interruptions. This action was disputed by the lessors, who said it was an effort to evade repossession.¹³

India has to implement the UNCITRAL Model Law on Cross-Border bankruptcy as soon as possible with the goal to close these loopholes and harmonise its domestic as well as global bankruptcy procedures. With the aim to protect lessors' interests while preserving resolution objectives, it has become equally important to coordinate the IBC with the Cape Town Convention. Within the aviation industry, encouraging pre-packaged bankruptcy plans may facilitate speedier settlements and reduce operating interruptions. In addition, in order to save employment, safeguard the needs of customers, and uphold market equilibrium, the emphasis should move from liquidation to the revival of troubled airlines.¹⁴

Given perceived by historic cases like Jet Airways and Go First, the IBC has played a significant role in tackling bankruptcy in the airline sector. Even while it offers an organised method for resolving disputes, there is still some crucial considerations to resolve problems including asset value, cross-border bankruptcy, and compliance with international agreements. The IBC can contribute more significantly to the aviation industry's stabilisation and fair consideration for all interested parties by filling in these deficiencies.

¹³ SBI v. Consortium of Murari Lal Jalan & Florian Fritsch, (2024) 249 Comp Cas 282.

¹⁴ UNCITRAL Model Law on Cross-Border Insolvency, U.N. Doc. A/51/17 (1996).

CHALLENGES FACED BY AVIATION SECTOR UNDER IBC

India's aviation industry works in a risky climate characterised by intense competition, significant investment extent, and vulnerability to changes in the world economy. The implementation of the Insolvency and Bankruptcy Code, 2016 (IBC), which provides an organised structure for addressing problems with finances, presents particular difficulties for the aviation industry. The sector's dependency on leased planes, transactions across borders, and operational complexity are the main causes of these problems. These difficulties are demonstrated by cases like Jet Airways and Go First, which highlight the interaction between national insolvency rules and international agreements.

1. INCONSISTENCY BETWEEN AIRCRAFT LEASING AGREEMENTS AND IBC'S MORATORIUM-

The disagreement among the entitlements of aircraft lessors and the stoppage of operations enforced under Section 14 constitutes one of the biggest issues underlying the IBC. Every court proceedings over the debtor, even the seizure of leased aircraft, are suspended when a corporation joins the Corporate Insolvency Resolution Process (CIRP). Nonetheless, the majority of Indian airlines rent their planes from foreign companies subject to the Cape Town Convention, allowing leasing companies the authority to seize property in the event of nonpayment.

The NCLT had to handle leasing companies' interests under the Cape Town Convention in the Jet Airways bankruptcy case.¹⁵ Although international courts permitted aircraft seizure, the nation's legislative moratorium under the IBC restricted these powers. Foreign companies' desire for renting facilities to Indian airlines was impacted by the lack of clarity that this legal dispute caused for leasing companies. These instances demonstrate the necessity of balancing national legislation with international commitments in order to avoid conflicts and promote trust between lessors.

2. CHALLENGES OF CROSS-BORDER INSOLVENCY-

Another significant obstacle facing the aviation industry remains the lack of a thorough cross-border insolvency structure underneath the IBC. International collaboration is crucial throughout insolvency proceedings since aircraft often enter into overseas leasing and finance arrangements. Yet, if creditors or lessors are located overseas, things get more complicated because the existing IBC legislation does not have tools to collaborate with other authorities.

¹⁵ *Supra*.

Foreign leasing firms, for example, encountered difficulties claiming their entitlement to reclaim aircraft that were detained in India in the Go First bankruptcy case.

The UNCITRAL Model Law on Cross-Border Insolvency, which offers procedures for acknowledging and assisting with international insolvency proceedings, must be adopted by India, as the present conflict has made clear. Within the absence of a framework of this kind, overseas investment in the aviation industry may decline as overseas lenders may view Indian insolvency processes as biased.

3. PROBLEMS ASSOCIATED WITH DEPRECIATION AND ASSET VALUATION-

Investments pertaining to aircraft and aviation are very specialised and quickly depreciate. The monetary worth associated with these properties may be diminished by protracted IBC insolvency processes, which may affect creditors' recovery. Delays in settlement in situations like Jet Airways caused stranded aircraft to deteriorate, lowering their value for renewal or resale. Furthermore, it might be difficult to appropriately value these kinds of assets during CIRP, particularly in times of volatility in the worldwide aviation sector.

4. OPERATIONAL DIFFICULTIES PERTAINING TO CIRP PROCESS THROUGH IBC-

In order airlines to sustain their profitability throughout insolvency proceedings, uninterrupted operations is essential. But because there aren't many solutions for temporary finance and administration, the IBC structure frequently finds it difficult to maintain continuing operations. Throughout the ongoing process of CIRP, airlines like Jet Airways and Go First had a difficult time keeping the faith of their customers and providing the necessary amenities. Their economic standing was made worse by being unable to make money during this time, which decreased the likelihood of an effective rebirth.

5. NARROWER SCOPE OF APPLICABILITY OF THE PRE-PACKAGED INSOLVENCY'S PROCEEDINGS-

Pre-packaged insolvency for small and medium-sized businesses was established by the IBC, but it hasn't been successfully applied to huge industries like aircraft. Pre-pack programs save time and cause disruptions by enabling both creditors and debtors to work on a resolution plan prior to the official commencement of insolvency proceedings. In the aviation industry, the lack of such measures results in extended CIRP, which raises the possibility of liquidation.

6. INSUFFICIENT KNOWLEDGE OF AVIATION-SPECIFIC INSOLVENCY-

Because of its high level of specialisation, the aviation sector demands proficiency in managing

functioning, economic, and legislative issues. The absence of specific to the sector expertise among resolution professionals (RPs) can cause inefficiencies and less-than-ideal decisions throughout the Corporate Insolvency Resolution Process (CIRP). Important choices like managing investments, uninterrupted operations, and the appraisal of aviation-specific resources like aeroplanes, combustion engines, and terminal slots are all impacted by this disparity.

7. ISSUES WITH COMPLIANCE AND REGULATORY OVERLAPS-

Organisations like the Ministry of Civil Aviation (MoCA) and the Directorate General of Civil Aviation (DGCA) have strict regulations on the aviation industry. IBC insolvency procedures sometimes conflict with legal constraints, such as preserving the safety of an aeroplane and meeting commitments for airport slots. For instance, aeroplanes that are delayed might no longer be certified as airworthy, which would result in more expenses and inconveniences. The difficulty is further increased by governmental permissions for the sale of aircraft spots or permits during resolution.

8. INSUFFICIENT TEMPORARY FUNDING SOURCES-

To be able to keep operating during CIRP, airlines need a significant amount of money. This is subsequently challenging for bankrupt airlines to retain uninterrupted operations, nonetheless, because the IBC provides strong procedures to guarantee the availability of temporary funding. Such an issue was demonstrated in the Jet Airways instance, when a shortage of funding resulted in a total shutdown of activities, further diminishing the company's worth.

9. EFFECT ON WORKERS AND CLIENTS-

Both clients and employees are frequently left in a vulnerable position during insolvency procedures. In addition to the IBC's prioritisation of financial creditors, workers could forfeit their jobs or have their wages pushed back, and consumers who have reserved passes or earned rewards may invalidate their rights as creditors. The difficulties the aviation industry faces pursuant to the IBC emphasise the necessity of specific changes to accommodate its particular features. It has become imperative to develop a globally compatible insolvency framework, promote pre-packaged bankruptcy processes, improve interim funding arrangements, and harmonise the IBC with other international agreements such as the Cape Town Convention.

CAPE TOWN CONVENTION AND ITS IMPLICATIONS

Standardising agreements concerning portable resources such as combustion engines, railway supplies, and aviation constitutes the goal of the Cape Town Convention on International Interests in Mobile Equipment and its Protocol on Issues Related to Aircraft Technology. The Agreement, which has been signed by more than 80 nations, including India in 2008, establishes universal guidelines concerning the authorisation, implementation, and retrieval of collateral interests, therefore offering an enforceable structure to safeguard the rights of leasing companies and creditors. The connection of it to the Insolvency and Bankruptcy Code, 2016 (IBC) in the country has generated a lot of discussion, particularly in the aviation industry, wherein borrowing is a common business model.¹⁶

AN OUTLINE OF THE CAPE TOWN CONVENTION-

With lowering the potential dangers involved in renting and lending mobile devices, the Cape Town Convention seeks to increase finance's affordability and accessibility. Regardless of international circumstances, it gives lenders the authority to seize or recover their property in the instance of failure. For the purpose of to provide openness and regularity in operations, the Convention requires the creation of a permanent Worldwide Registry wherein stakes in mobile machinery could be registered. Because it protects the entitlements of creditors control aircraft and other associated property and guarantees their prompt restitution in the event of by default, the convention is especially pertinent to the aviation sector.

THE CAPE TOWN CONVENTION'S EFFECTS ON INDIAN AVIATION

Improved Financing Access:- Indian legislative framework and judicial authorities has encouraged renting and finance to support its quickly growing aviation industry by implementing the Treaty of Cape Town Convention, which gave creditors more protection. Indian airlines' leasing costs might be reduced if lessors relied on globally acknowledged rights. But this advantage might be undermined by the lack of clarity brought on by disagreements associated with the IBC.

Effect on Leasing Practices: The majority of Indian airlines, such as IndiGo and Go First, mostly depend on hired aircraft for their operations. Lessors are reluctant to provide leased aircraft to Indian airlines due to their lack of ability to defend their legal entitlements during

¹⁶ Cape Town Convention on International Interests in Mobile Equipment, opened for signature Nov. 16, 2001, 2307 U.N.T.S. 285 (entered into force Mar. 1, 2006).

insolvency processes, evidenced in situations such as Jet Airways and Go First. This has an impact on the aviation industry's general development and profitability.

The continuity of operations during CIRP: The IBC's moratorium guarantees the insolvent airline's ability to keep going on with business as usual until a resolution is being investigated. Nevertheless, it frequently conflicts with certain clauses of the Cape Town Convention, that give lessors' claims to reclaim assets priority. The result of this stress was seen in the Jet Airways case, when the settlement negotiations was impacted by stranded aircraft that not merely diminished in value but additionally caused operational disruptions.

IMPLICATIONS IMPOSED ON THE STAKEHOLDERS IN AVIATION SECTOR-

Aircraft lessors-

According to the IBC, leasing companies are some of the parties who are hardest hit whenever an airline goes bankrupt. However, in the event of an unsecured airline's financial default, the halt to operations imposed by Section 14 limits the company's capacity to reclaim borrowed aircraft. The following puts leasing companies at serious danger, though it helps the borrower by permitting business as usual during the settlement process. Leasing companies, for example, voiced reservations regarding Go First's purported abuse of the IBC to evade recovery rights in the airline's bankruptcy case. Overseas lessors lose faith in the Indian aviation industry as a result of such moves, which might eventually result in more stringent leasing conditions or fewer leased aircraft available.

Financial Creditors:

Differences which arises between the Cape Town Convention and the IBC could additionally have a downstream impact on the lenders that lend money to airlines. The entire worth of an airline decreases throughout insolvency proceedings as leasing companies encounter difficulties regaining their property, which lowers recovery among all creditors.

Operational creditors and workers:

Throughout insolvency, producers, technical service firms, and workers rely on the airline's ability to continue operating. Those involved gain briefly from the moratorium's capability to maintain activity. Extended inefficiencies in settling lessor asserts, however, might negatively impact the airline's continued existence.

With safeguards essential for international transportation, the Cape Town Convention provides a pillar for building trust in leasing of aircraft and finance. But putting it into practice within

India's IBC has presented several difficulties, especially when it comes to striking a balance between bankruptcy goals and shareholder rights. Legislative and administrative changes are desperately needed to bring the IBC into compliance with international commitments, as demonstrated by cases like Jet Airways and Go First.

India has the ability to establish a more fair and dependable structure for eliminating insolvency in the airline business by settling disagreements, improving simplicity, and using international standards of excellence. This will guarantee the sustained growth and viability of the Indian aviation sector in addition to boosting the trust of lessors and foreign investors.



CASESTUDIES

KINGFISHER AIRLINES:¹⁷

Kingfisher Airlines, having started doing business in 2005 and continues to be incurring deficits after then, became a significant matter before the I.B.C. Because of financial problems, Vijay Mallya's showy enterprise, Kingfisher Airlines, was put on hold in 2012. Excessive indebtedness, price increases for gasoline, and an inability to remain competitive up with growing rivalry from cheaper airlines counted to be among the main causes of the airline's problems. Regulatory problems and postponements plagued Kingfisher Airlines' bankruptcy procedure, since the business became the target of many complaints and appeals from creditors. Vijay Mallya, the company's owner, left the nation in order to avoid being prosecuted for his involvement in the financial difficulties of the business when its creditors subsequently confiscated the company's assets.

Following the case in *M/s Aerotron Limited v. Kingfisher Airlines Limited*¹⁸, decided on November 18, 2016, the Karnataka High Court ordered that the Kingfisher Airline airline to be wound up as per provisions and in accordance with Section 433(e) and (f) read with Section 439 of the Companies Act, 1956.

The insolvency of Kingfisher Airlines was mainly unorganised and extremely erratic, resulting in no openness or uniformity in the resolution process, in contrast to Jet Airways' bankruptcy, which was settled through the provisions of the I.B.C. Workers, lenders, and stockholders of the airline experienced insecurity as a result of the lengthy delays and legal obstacles caused by the absence of a formal bankruptcy resolution procedure.

JET AIRWAYS:¹⁹

Established in 1992, Jet Airways became one of India's top full-service airlines, offering connectivity to more than 70 locations throughout the globe. Notwithstanding its beginnings of a successful outcome, the airline encountered financial challenges as a result of the financial crisis, affordable carrier rivalry, higher petroleum prices, and depreciating currencies. Its heavy debt load and incapacity to control operating costs, such as staff compensation, resulted in vendor and creditor service failures. The company filed for bankruptcy in April 2019 under the

¹⁷ *Supra*.

¹⁸ *IAE International Aero Engines AG v. United Breweries (Holdings) Limited*, 2017 SCC OnLine Kar 615.

¹⁹ *Supra*.

Insolvency and Bankruptcy Code (IBC) as a result of its financial difficulties, which by early 2019 had resulted in executive layoffs, stranded aircraft, and cancelled flights.

The Mumbai bench of the National Company Law Tribunal (NCLT) heard the State Bank of India's (SBI) bankruptcy application. Settlement plans, which needed the agreement of no less than 66% of the Committee of Creditors (COC), had only been filed by mid-2020, although several efforts in search of someone to purchase the company. According the resolution plan that had been reached upon, the winning bidder was to assume control of the dissolved airline. The instance demonstrated the IBC's methodical approach to bankruptcy settlement, although it also revealed some of its shortcomings, especially when it came to managing aviation-specific problems like rented aircraft and legal obligations.

Parallel bankruptcy procedures in the Netherlands, which were started one month prior to the Indian procedure, exacerbated Jet Airways' collapse. Due to the lack of an explicit structure for cross-border insolvency, the NCLT ruled that the Dutch proceedings were null and invalid. An important step in handling overseas insolvencies was taken when the National Company Law Appellate Tribunal (NCLAT) allowed a cooperative procedure among the Dutch administrator and the Indian resolution specialist after an appeal was filed. This accord guaranteed the worth of assets maximisation and permitted collaboration between countries.

The Jet Airways settlement emphasised the necessity for industry-specific changes and a globally integrated insolvency framework, even as it demonstrated the IBC's capacity to handle complicated cases. The resolution delays made clear how crucial it is for the IBC to include quicker procedures and aviation-specific clauses. For the purpose of to facilitate international cooperation, this instance also illustrated the need for implementing international precedents such as the UNCITRAL Model Law on Cross-Border Insolvency. In the end, Jet Airways' bankruptcy turned into a historic event that provided insightful information for handling major business bankruptcies in India.

GO FIRST²⁰

The most prominent of India's private airlines, Go First ('Corporate Applicant'), unilaterally declared its bankruptcy in May 2023 as a result of ongoing problems with Pratt & Whitney's aircraft power supply. In light of a self-reported delinquency of Rs. 11.03 crores in charge to

²⁰ SMBC Aviation Capital Ltd. v. Interim Resolution Professional of Go Airlines (India) Ltd., 2023 SCC OnLine NCLAT 230.

financial lenders and an aggregate obligation of Rs. 1202 crores to aircraft lessors and suppliers, the firm applied for bankruptcy on its own. The Hon'ble National Company Law Tribunal (NCLT) accepted the petition in midst of fierce objections from aircraft lessors and financial creditors. The Hon'ble National Company Law Appellate Tribunal (NCLAT) dismissed the argument that the insolvency filing was motivated by ill intent and affirmed the result in a later appeal. The leasing companies challenged the airline's holding of rented aircraft in the Go First bankruptcy issue before the NCLAT, claiming that their renting arrangements were actually dissolved owing to periodic failures prior to the start of the Corporate bankruptcy Resolution Process (CIRP). To be able to keep their planes during the insolvency process, plaintiffs argued that Go First required a constitutional basis to seek a freeze under Section 14(1)(d) of the Insolvency and Bankruptcy Code (IBC). Their leasing companies wanted their assets back, claiming that letting the airline keep them weakened their rights and put themselves at risk of losing money. Nonetheless, the IBC's Section 14(1)(d) aims to safeguard the property of the debtor in order to preserve its standing as a continuing issue, which may allow for debt recovery and repayment.

This dispute demonstrates the contrast amongst the Cape Town Convention's (CTC) commitment to safeguarding lessors' entitlement to reclaim possessions and the IBC's objective of maintaining a debtor's company. This balancing is made more difficult by the IBC's lack of an industry-specific regulation for aviation, as keeping planes is essential to an airline's survival and lessors have trouble getting their possessions back. The Go First case emphasises the necessity of revisions to bring local bankruptcy laws into compliance with international norms like as the CTC, guaranteeing a just resolution process that strikes a balance between the interests of lessors and debtors.

RECENT DEVELOPMENTS: MCA NOTIFICATION

For the purpose of to outline alternatives concerning the imposition of moratorium, the Ministry of Corporate Affairs (MCA) used Section 14(3)(a)[5] from the IBC through a notice dated 03.10.2023,[4]. This communication clarifies that operations contracts, or undertakings pertaining to aeroplanes, engines for aeroplanes, aeroplane frames, and rotors that are controlled by the Convention and the protocol are not covered by Section 14(1) of the IBC, which imposes a halt to them. India lodged its documents of adhesion with the International Organisation to facilitate the Standardisation of Private Law. India has been a participant to both the Convention and the Protocol since March 31, 2008.²¹

The MCA's moratorium announcement is intended to make it easier for lessors to quickly retrieve their planes from operators. The Indian government legally approves this global framework by coordinating its laws with the CTC, giving the CTC precedence over national insolvency rules. Section 14 of the IBC, requiring a halt to procedures and exchanges of assets when bankruptcy begins, is supplemented by this measure. It also aligns with the Cape Town Convention Bill, which was put forward by the Department of Civil Aviation in 2018 with the objective of harmonising the regulations of the CTC to Indian bankruptcy law.

By ensuring that the halt to operations is not detrimental to their liberties, the government's action seeks to rebuild trust between aircraft lessors in the Indian market. This move is expected to encourage greater foreign involvement in the aircraft leasing industry, supporting India's goal of becoming a major centre for aircraft leasing. Particularly for aeroplane leasing companies, the notice is seen as an important milestone in the creation of safe and trustworthy company possibilities in the aviation industry.

The MCA's announcement is consistent with the provisions of CTC in terms of its obligatory impact. Nevertheless, the notice doesn't impact the aviation sector retroactively because the Convention existed before the IBC. It's also important to remember that such a stating only applies to CIRP procedures. The MCA created a draft in 2018 that is now for feedback from the public with the aim to implement the CTC process in India and allow lenders to reclaim any leased aeroplane or technology from a company in default during a moratorium.

²¹ Ministry of Corporate Affairs, Notification S.O. 4321(E), Oct. 3, 2023 (India).

The CTC Bill is partially represented by the aforementioned notification. Although the MCA notice of 03.10.2023 suggests a potential drop in rental prices and a restoration to proper trust, its relevance to existing bankruptcy proceedings continues to be unclear. It may be challenging for insolvent airlines to continue operating efficiently since they are not protected during the CIRP because there is no moratorium time frame, which may have a negative impact on the remaining stakeholders.²²

The following are some of the notification's main implications:-

- **Safeguard for Lessors:** Despite the ongoing Corporate Insolvency Resolution Processes (CIRP), leasing companies and creditors have the right to seize and remove aeroplanes in the event of delinquency. This guarantees that foreign lenders and leasing firms have faith in the Indian aviation industry.
- **Conformity with International Standards:** India shows its dedication to globally recognised aviation norms by upholding the Cape Town Convention, that fosters easier transactions between nations and increases investor confidence.
- **Aviation Financing Improves:** It is anticipated that the notice would shorten the duration and expense of operations involving aircraft, increasing the effectiveness and accessibility of funding.
- **Restricted Scope:** Additional bankruptcy processes under the Companies Act of 2013 are not affected by the declaration; it solely pertains to operations covered by the Convention and Protocol during CIRP.

A significant step towards resolving aircraft lessor problems inside India's bankruptcy system was taken through MCA's announcement on October 3. It seeks to improve confidence among investors and expedite airline insolvency settlements by excluding some aviation-related operations from the IBC moratorium. But there are still urgent problems which have to be resolved moving ahead, such the necessity of official confirmation of international accords and the lack of clarification on its relevance to existing cases.

²² Chitravanshi, R. (2023) *Corporate Affairs Ministry Exempts Aviation from IBC's moratorium clause*, *Business Standard*. Available at: https://www.business-standard.com/economy/news/corporate-affairs-ministry-exempts-aviation-from-ibc-s-moratorium-clause-123100401176_1.html (Accessed: 18 November 2024).

RECOMMENDATIONS FOR REFORMS IN IBC PROCEEDINGS IN THE AVIATION SECTOR

Because of the capital-demanding nature of this business and the obstacles involved in funding and renting aircraft, the Indian aviation sector has particular difficulties according to the process involved in Insolvency and Bankruptcy Code (IBC). Major shortcomings in the IBC as utilised in aircraft have been demonstrated by recent instances such as Go First Airlines' bankruptcy. This calls for an exhaustive overhaul plan to improve the efficiency of bankruptcy processes in this industry. Here are a few suggestions to deal with these problems.

1. IMPLEMENTATION OF THE CAPE TOWN CONVENTION (CTC)

Background: International interests in movable devices, such as aeroplanes, are well-protected under the Cape Town Convention. Through lowering leasing companies' liabilities and strengthening their legal entitlements during insolvency processes, it seeks to make lending easier.

Recommendation: It is suggested that India hasten its approval and execution of the CTC. In order to better protect the best interests of lessors, this might entail bringing local legislation into compliance with worldwide standards. The Ministry of Corporate Affairs' (MCA) recent announcement represents an advancement in a positive direction, but more legal measures are required to guarantee adherence to CTC regulations, especially with relation to aircraft retrieval rights and removal procedures.

2. EXEMPTION FROM MORATORIUM FOR AIRCRAFT ASSETS

Background: The lessors may find it more difficult to recover their aeroplanes within the prevailing IBC structure, leading to a holding period on every one of the assets owned by the debtor throughout bankruptcy proceedings.

Recommendation: It is suggested that certain exclusions from the embargo be added for aeroplanes and associated assets. This will promote funding for the aviation industry and boost investor confidence by enabling leasing companies to recover their assets without excessive delay.

3. ESTABLISHMENT OF A SEPARATE FRAMEWORK FOR AVIATION INSOLVENCIES

Background: Because of its distinct features, the aviation industry requires customised laws and regulations that take into account its particular requirements as opposed to depending just on generic bankruptcy rules.

Recommendation: Create a unique structure for aviation bankruptcy that integrates worldwide standards of excellence. The structure must to have processes for effective resolution plans

customised for airline companies, prioritised entitlements for lessors, and accelerated processes regarding aircraft confiscation.

4. ENHANCED STAKEHOLDER ENGAGEMENT

Background: Important players, such as creditors and lessors, are frequently not sufficiently involved in contemporary bankruptcy processes.

Recommendation: It is advised that formal procedures be put in place for consulting stakeholders during the bankruptcy process. To guarantee that every one of the concerns are taken into account throughout resolution procedures, this may entail forming an interested committee with members from leasing companies, creditors, and the management of airlines.

5. CLARITY OF THE JUDICIARY ON INTERNATIONAL OBLIGATIONS-

Background: During insolvency procedures, there can be frequently misunderstanding about how local legislation and worldwide agreements like the CTC interact.

Recommendation: While deciding cases involving aviation assets, authorities ought to have been urged to give international commitments under the CTC first priority. Stakeholder concern ought to be decreased by establishing clear court rules to guarantee that international standards are upheld in local insolvency situations.

6. STRENGTHENING THE ROLE OF FINANCIAL INSTITUTIONS –

Background: Although financial organisations are essential in giving airlines finance, they frequently confront high risks as a result of drawn-out insolvency procedures.

Recommendation: It is suggested that commercial institutions' roles be strengthened by giving investors more precise entitlements and expedited methods for recovery during bankruptcy processes. This might entail creating specialised assistance networks or policies of insurance that reduce the risks involved in financing to airlines.

7. TRAINING AND CAPACITY BUILDING –

Background: Due to the intricacies of aviation finance, judges, resolution specialists, and attorneys need to possess specific understanding.

Recommendation: It is advised that anyone participating in these processes take part in training courses on bankruptcy law and aviation finance. Making better decisions in bankruptcy cases

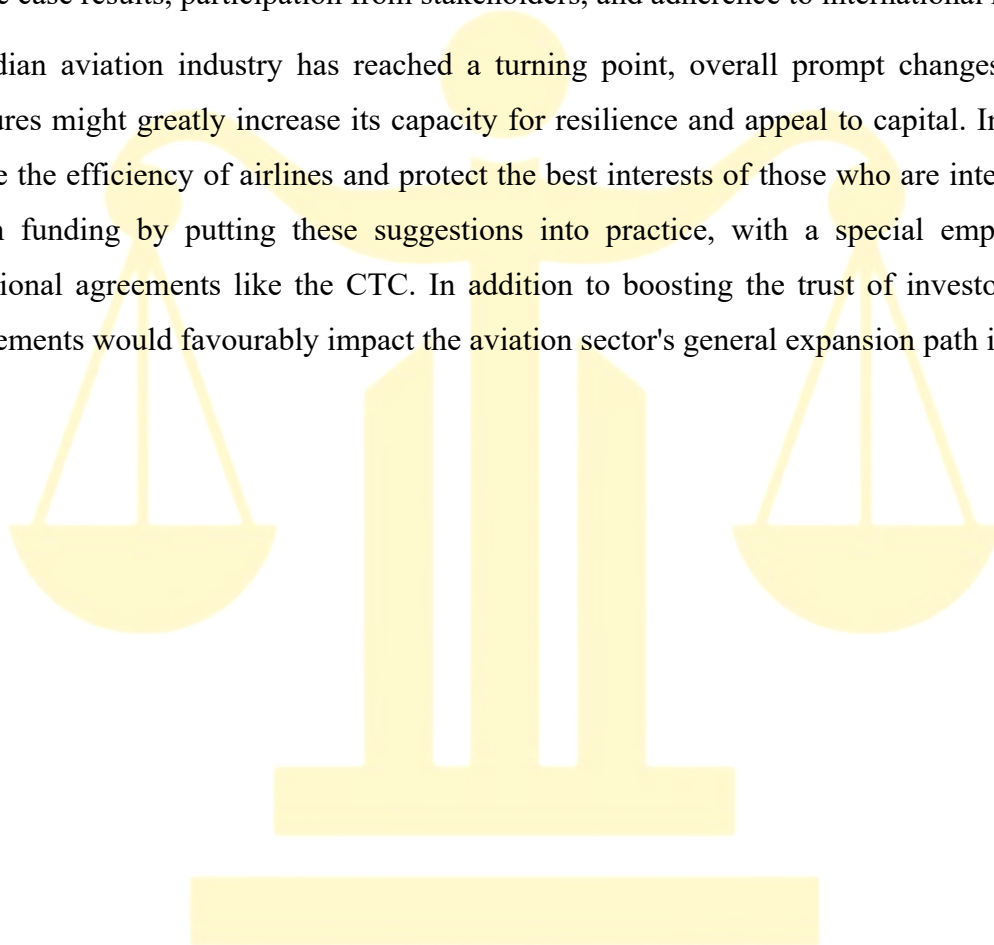
would result from a greater grasp of both national legislation and international agreements like the CTC.

8. MECHANISM FOR MONITORING AND EVALUATION –

Background: To make certain that these changes are successful and achieve their goals, ongoing evaluation is essential.

Recommendation: It is suggested that an observation organisation be established having the responsibility of routinely assessing how changes have affected aviation bankruptcy filings. For the purpose of to enable prompt policy changes when necessary, the committee ought to examine case results, participation from stakeholders, and adherence to international norms.

The Indian aviation industry has reached a turning point, overall prompt changes to IBC procedures might greatly increase its capacity for resilience and appeal to capital. India may improve the efficiency of airlines and protect the best interests of those who are interested in aviation funding by putting these suggestions into practice, with a special emphasis on international agreements like the CTC. In addition to boosting the trust of investors, these improvements would favourably impact the aviation sector's general expansion path in India.



CONCLUSION

There exists much discussion regarding if the Insolvency and Bankruptcy Code (IBC) applies within the aviation industry, especially in context of recent happenings that highlight the complexity of this particular industry. A major change in the way bankruptcy court proceedings would be conducted for airlines has been brought about by the Ministry of Corporate Affairs' (MCA) recent announcement on October 3, 2023, specifically eliminates transactions involving planes from being subject to IBC's moratorium requirements. The ramifications of this announcement, the current obstacles within the IBC structure, and prospective future directions for the Indian aviation industry will all be covered in this conclusion.

For the purpose to establish a systematic basis for dealing with insolvencies in a variety of industries, the IBC was passed. Its use in the aerospace industry has, however, shown a number of shortcomings. Insolvency procedures are made more difficult by the aviation industry's substantial capital extent, intricate finance structures, and global rules. The IBC's moratorium duration can significantly limit lessors' ability to recover their possessions during bankruptcy court proceedings, as demonstrated by situations such as Jet Airways and Go First. Since the grace period usually stops creditors from pursuing assets owned by the debtor, lessors who find themselves prevented to reclaim aircraft may suffer large losses.

An important step towards resolving these kinds of problems is the MCA's recent announcement. This announcement brings Indian legislation into compliance with the international standards established by the Cape Town Convention (CTC) by excluding planes, combustion engines, and associated components from being subject to moratorium under Section 14(1) of the IBC. Foreign financiers and leasing companies who were previously reluctant to participate in India's aviation sector because of worries about recuperating assets during insolvency processes are anticipated to regain trust as a result of this action. Because of this exception, lessors can retrieve their rented aircraft without having to wait for the drawn-out settlement procedure that the IBC usually requires. It is a big step in reducing the hazards of leasing an aircraft in India, and it may even draw in additional foreign capital for the aviation industry.

Notwithstanding this encouraging progress, there are still a number of issues regarding the current IBC system that require attention. A significant issue involves the fundamental inconsistency among the IBC's moratorium periods and those specified within global agreements such as the CTC. It permits lenders to recover their financed assets within a holding

period of just 60 days, whereas the IBC stipulates a moratorium of a maximum of 270 days throughout bankruptcy proceedings. This disparity may cause misunderstandings and make things more difficult for lessors who want to promptly reclaim their aircraft. Issues have also been raised about how well Indian courts would understand and apply these new clauses in conjunction with current legislation. The regulatory framework regarding aircraft bankruptcy filings is still unclear, especially when it comes to how authorities will strike an equilibrium between their duties under international conventions and local law. Clarification on the interactions between each of these structures is desperately needed in order to avoid more issues throughout the bankruptcy procedure. Parliament's confirmation of the CTC is a further crucial factor in guaranteeing its efficient implementation in India. Even though India joined the CTC in 2008, its own laws have not yet completely ratified it. Implementing clauses that would strengthen lessor safeguards and expedite aviation-specific bankruptcy procedures is hampered by this delay. The attempt to establish a more effective bankruptcy structure may be hampered by the remaining discrepancy between domestic law and international commitments in the absence of this confirmation.

After the Ministry of Civil Aviation recently announced that aircraft-related operations are immune from standstill restrictions, the relevance of IBC cases in India's aviation industry has reached a critical juncture. Significant hurdles continue to exist when it comes to current legislative structures and how they connect to international commitments, nevertheless this breakthrough provides critical relief for leasing companies and brings Indian law into compliance with worldwide standards. A successful bankruptcy framework that promotes expansion and sustainability in India's aviation industry would need tackling these problems through accelerated adoption of agreements like the CTC, judicial clarification, customised frameworks, participation from stakeholders, and facility creation. Through implementing these measures, India may establish its status as a desirable location for aviation investment while guaranteeing equitable treatment to earn all parties engaged in bankruptcy procedures.

