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## **LONG ARTICLE: INSOLVENCY IN THE INDIAN AVIATION SECTOR: AN ANALYSIS OF LEGAL FRAMEWORK UNDER THE CAPE TOWN CONVENTION**

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### **ABSTRACT**

The India's airline industry has experienced a quick transformation in the last 20 years, as flying in India changed from being a luxury for the few to an everyday choice for millions. Low-cost carriers made air travel affordable, regional connectivity schemes opened up smaller towns to flights, and more Indians began choosing planes over trains for long journeys. But even though there was growth, INDIA'S airline industry has witnessed significant financial turbulence in recent years, with leading airlines i.e., Kingfisher and Jet Airways collapsing under debt and operational challenges. This research paper provides an in-depth study of the legislations managing aviation insolvency in India, with a special focus on the incorporation of the CapeTown Convention 2001 and its Aircraft Protocol, 2008 into domestic law. Key legislations such as 2016 (IBC) code, civil aviation laws, the newly enacted The Protection of Interests in Aircraft Objects Act, 2025 are examined in detail. Through this paper an attempt is made to draw a comparison between India's airline insolvency regime and global insolvency standards to figure out the positive aspects that can be borrowed from other jurisdictions and where the gaps still exist.

An understanding on how Indian courts have dealt at times of airline insolvencies when cases like – *Awas Ireland v. DGCA* (2015), *Jet Airways* (2019 and 2024), and *Go Airlines* (2023–24) come up before them. This comparative analysis showcases that by adopting the Cape Town Convention, how it has strengthened the domestic laws, enhanced creditors protection and narrowed the gap between Indian laws and global standards. Despite this, certain challenges still exist, especially with respect to its implementation on a day-to-day basis, lack of co-ordination in cases related to cross-border insolvency, and creating a balanced approach between protection and enforcement of creditors rights and raising the airline revival chances.

**Keywords:** Aviation Insolvency, Cape Town Convention, IBC,2016, Aircraft leasing, Cross-border insolvency, Airline Bankruptcy

## INTRODUCTION

In the last two decades, India has positioned itself as one of the leading and evolving aviation markets globally. With the advent of budget carriers and addition of new routes by the airlines, millions of Indians fly on an everyday basis using the services which were once limited to a small group of people having pocket financial capacity. With being the 3rd largest aviation market in the world, carrying a humongous 376 million passengers in 2023-2024 financial year, clocking a 15% annual growth.<sup>1</sup> With timely policy actions, smart policy initiatives, big-ticket investments for airport upgradation and schemes like UDAN scheme has led to the booming of India's aviation sector and enhanced the accessibility even for the smaller cities. But the aviation sector isn't just about travelling – it's a crucial part of the Indian economy, adding a whopping USD 53.6 billion and providing nearly 8 million jobs in 2024, both directly and indirectly.

On the flip side, India's prospering aviation sector has been hit by repeated airline failures, highlighting the urgent need for a holistic and a comprehensive insolvency legislation based on the special requirement of the aviation sector. In the last 10 years or so, a chain of bankruptcies, starting with – Kingfisher Airlines (discontinued the services in 2012)<sup>2</sup>, the initiation of Jet Airways insolvency in 2019, Go First insolvency matter of 2023 – have raised the alarm bells pointing towards the inadequacy of the existing laws. The financial crunch faced by Go First airlines is an apt illustration of the bigger and deep-rooted problem that mirrors the Indian Aviation sector, like – rising debt burden, operational limitations and growing unhealthy competition. These media-capturing collapses not only left the passengers in a limbo and led to the cut in thousands of jobs, but also left the lessors of aircraft and institutions that finance these airlines struggling to get back their leased assets and financial dues. The Jet Airways saga brought forth the critical shortcomings in India's aviation sector market. It highlighted the trouble faced in implementing cross-border insolvency and timely implementation of a rescue plan. With multiple failed attempts for the airline's revival, the Supreme Court in the year 2024 pronounced a verdict ordering Jet's liquidation, exposing major shortcomings in the IBC's mandate to initiate a timely insolvency resolution plan for the distressed airline.

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<sup>1</sup> Government of India, Ministry of Finance, *Economic Survey 2023–24* (July 22, 2024), <https://www.cnbctv18.com/business/aviation/economic-survey-2023-24-indian-aviation-has-a-lot-of-untapped-potential-19446910.html>

<sup>2</sup> JMRA Editorial Board, "A Case Analysis on the Collapse of Kingfisher Airlines," *Journal of Management Research and Analysis* (2019), accessed January 15, 2026.

These upsetting experiences clear the dust by revealing what the actual problem is – that the aviation sector has certain unique aspects and requires well-calibrated and well-formulated policies that address the specific issues related to the aviation sector and India's insolvency legislation's one-size-fits-all tendency is inadequate to cater to the aviation sector-specific demands. The sector involves various parties like aircraft, foreign creditors and internationally recognized legal obligations and the absence of a mechanism that effectively enforces and secures foreign creditor's rights has created an uncertainty. Even though India officially became a part of the Cape Town Convention in 2001 and its supporting Aircraft Protocol in 2008, India did not implement these instruments which aim to protect the legitimate rights in the aircraft objects for many subsequent years. As a result of which the international lessors and financiers got vulnerable to sector-specific shocks – which came to the fore in the case of Go First in 2023 where the lessors were left in limbo as they were not able to repossess their leased aircrafts due to IBC's moratorium clause. Jolted by this situation, India took a corrective and a positive step to reform its domestic laws by enacting the 2016 Insolvency and Bankruptcy Code, which was put forward as a unified insolvency law. Since its coming into force, various amendments and interpretations by the judiciary have made an attempt to cater to domain-focused issues. In 2023, the government of India took a decisive and reformative step by granting an exemption to the transactions related to the Cape Town Convention from the IBC's moratorium, signaling a true commitment to implement the treaty provisions.

Ultimately, The Aircraft Objects Act, 2025 (CTC Act 2025)<sup>3</sup>, was implemented, with an aim of giving legal backing to the Cape Town accord and Aircraft Protocol on aircraft. This adoption & implementation of the convention (CTC) will provide a strong base for lowering such kinds of financial debacle. What this move will do to our domestic aviation sector would be to enhance the investors' trust, boost accessibility to financial resources and provide impetus to the insolvency resolution process in case of any default. Notwithstanding the problems, the adoption will certainly prove to be beneficial for the Indian aviation industry and its overall growth. Some additional attached benefits with the domestic implementation of the convention would be access to additional capital resources, help airlines purchase newer and more advanced and effective aircraft, and solidify the industry's standing against any sort of financial crisis and improve its overall general stability. The "Go First" insolvency case draws attention to the delicate balance between 'global accords and national insolvency

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<sup>3</sup> The Aircraft Objects Act, 2025, § 1 (India) (enacted Apr. 16, 2025, effective May 1, 2025)

legislations.<sup>4</sup> It includes protecting the interest of various stakeholders involved such as foreign creditors, bringing uniformity in the laws of various legal systems related to the aviation sector and at last overcoming issues related to jurisdiction. The current study delves into how India's legal structure now deals with insolvency cases striking the aviation industry.

It explores the integration of international legal norms (CTC 2001) with domestic insolvency and aviation regulations, and whether these changes strike the right balance between facilitating creditor interests and enabling the reorganization or efficient exit of distressed airlines. The introduction of global standards via the Cape Town regime is expected to reduce financing costs and improve investor confidence in Indian aviation,<sup>5</sup> but it also raises questions about its impact on other stakeholders and on the viability of turnaround efforts for airlines under insolvency protection.

## **LITERATURE REVIEW**

### **1. Shital S. Sonpel, 'Jet Airways: An analysis on effects of poor leadership' (2010) 21(5) IOSV-JDM –**

There is no denying a leader's value in any firm. Businesses can thrive under an efficient leader, but when a leader is ineffective, the firm must suffer the consequences of bad leadership, including lack of transparency and ownership issues, low morale, poor resource management, a lack of direction, and more. These impacts and their connection to the Jet Airways investigation are briefly examined.<sup>6</sup>

### **2. N Ramya, 'Wrap-up of Jet Airways – Reasons' (2019) 4(10) IJR 114**

This essay examined the rationale behind Jet Airways' brief closure<sup>7</sup>. A few major factors that might be influencing the airlines include the public's availability of inexpensive services, the lack of good staff loyalty, and—most importantly—the bankruptcy issue.

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<sup>4</sup> Harshita B. Kushwah, *Navigation Through Turbulence: Insolvency Laws of India and the CTC in the Light of Go First Voluntary Insolvency*, IBCLAW (Oct. 20, 2023), <https://ibcglaw.in/navigation-turbulence-indian-insolvency-regime-and-the-cape-town-convention-in-the-light-of-go-first-voluntary-insolvency-harshita-kushwah/>

<sup>5</sup> Sherina Petit et al., "The Cape Town Convention: Its Application and Benefits in India," *Stewart Law*, accessed January 15, 2026, <https://www.stewartslaw.com/news/the-cape-town-convention-its-application-and-benefits-in-india/>

**3. J. Srivastava & A. Ali, 'Reasons behind the failure of Kingfisher Airlines' (2013)-**

Of the many mergers—Air Deccan and Kingfisher Airlines—has been the subject of the paper. This paper's primary goal is to examine Kingfisher Airlines' financial results both before and after the merger. Ratios have been used to analyze financial performance, in particular- areas of liquidity, profitability & leverage<sup>6</sup>.

**4. O.P Garg, D. Sharma & M. Yadav, 'A detailed review of India's budget airlines: Opportunities & Obstacles' [2011] 1(6) IJRFM 67 –**

Examines the economic viability of Low-Cost Carriers (LCCs) and emphasizes the need for a flexible and robust business model to adapt to market dynamics.<sup>7</sup>

**5. S.B. Bansal, M.T. Khan & V.B. Dutt, 'Deregulation of the economy and Aviation sector' (2008) 43(34) EPW accessed on 15th December, 2023 –**

This article draws attention to events that have fundamentally altered the aviation industry's landscape, as well as broader economic factors that have impacted the industry, the liberalisation process, entrepreneurship and the rise of international airlines, airport capacity allocation, and other relevant topics.<sup>8</sup>

**6. M.R. Dixit, S. Sharma & A. Karna, 'Ambitions, Strategy of enterprise and fight of a Start-up in an environment of competition: Research on advancements in Deccan Air' (2007) IIMA Institutional Repository –** This article examines the progress of Deccan Air, a nascent player in India's airlines sector, thus explores connections between the goals of entrepreneurs, company strategy, and their ability to survive in a cutthroat market. It makes the case that an entrepreneur cannot maintain his or her business or objectives if the choices they make, both strategically and operationally, and the way the environment reacts to those decisions lead to an imbalance of resources or skills and place limitations on the entrepreneur.<sup>9</sup>

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<sup>6</sup> J. Srivastava & A. Ali, *What Led to the Failure of Kingfisher Airlines* (2013).

<sup>7</sup> C.P Garg, M. Sharma & M. Yadav, "A Detailed Review of India's Budget Airlines: Opportunities & Obstacles," *IJRFM* 1(6), 67 (2011)."

<sup>8</sup> S.C. Bansal, M.N. Khan & V.R. Dutt, *Deregulation of the Economy and Aviation Sector*, 43(34) *ECON. & POL. WKLY. (EPW)* (2008)

<sup>9</sup> M.R. Dixit, S. Sharma & A.K. Karna, *Ambitions, Strategy of Enterprise and Fight of a Start-Up in an Environment of Competition: Research on Advancements in Deccan Air* (Indian Inst. of Mgmt. Ahmedabad, 2007).

**7. Velaga, T. & Gupta, A. (2024). Airline Insolvency in India: Balancing Interests between the Insolvency and Bankruptcy Code and the Cape Town Convention, 17 NUJS L. Rev. 61.**

The issue centers on a clash between India's (IBC) and its international promises under the (CTC). When an aircraft company faces insolvency proceedings in India, the IBC puts a pause (or "moratorium") on all claims and repossessions, including by aircraft lessors.<sup>10</sup>

## RESEARCH OBJECTIVE

1. To study the current legislative setup handling insolvency in the aviation sector with a focus on how Indian laws concur or clash with global CTC standards.
2. To assess the mandate of CTC and its Protocol within India and examine their influence on domestic airline insolvency proceedings.
3. To formulate an understanding through comparative approach between the practices followed by India and global players, in order to the current Indian standing with respect to international standards.
4. To analyze the major challenges plaguing Indian aviation industry, and how these issues are affecting the interests of various stakeholders like banks, airline companies, employees, management, regulatory authorities, among others.
5. To evaluate the latest legal developments and judicial pronouncements up till 2025 and to comprehend how courts and law makers are playing a role in shaping aviation insolvency architecture.

## STATEMENT OF PROBLEM

The central problem delved into by this study is the mismatch between the specific needs unique to the aviation sector and India's insolvency laws. In India, the process of airline insolvency has majorly been marred by long-dragged proceedings, which often results in the loss of value, rather than approaching towards an effective resolution mechanism. Despite having IBC,2016, which was seen as the most comprehensive and concurring with the

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<sup>10</sup> T. Velaga & A. Gupta, *Airline Insolvency in India: Balancing the Interests Between the IBC and the CTC* (2024).

requirements of the modern-day aviation sector, has proven to be inadequate in the backdrop of airline failures & in resolving the challenges faced by the distressed airlines. Some of the principal issues faced during aviation insolvency proceedings remained unresolved. These are:

**Rights of the creditor's v/s IBC moratorium clause:**

Within the IBC framework, as soon as the resolution procedure related to corporate insolvency initiates (CIRP), an automatic suspension u/s 14 begins, preventing any sort of recovery of assets action against the assets of the debtor.

While generally meant to give breathing space to the debtor, in aviation this meant aircraft lessors were prevented from repossessing their planes even after lease defaults.

**Cross - Border Insolvency Challenges:**

Aircraft industry by nature has operations across the globe, and the possessions (aircraft) and creditors are often from outside the country. India's insolvency framework until now did not incorporate the Model Law of UNICTRAL on Cross-Frontier Insolvency, therefore there was dearth of formal mechanisms to work in tandem with foreign proceedings.

**Value Erosion and Stakeholder Prejudice:**

Traditional insolvency processes in India have proven too slow for the fast-moving airline business. Aircraft are high-value assets that require continuous maintenance and upkeep; if they sit idle in protracted insolvency proceedings, their value deteriorates and creditors lose out. Meanwhile, valuable intangible assets of an airline such as airport slots, flying rights, brand value – rapidly diminish once operations cease. Employees and passengers also suffer: unpaid wages accumulated and passenger refunds became unlikely. The problem here is that the IBC process, designed to be completed in 180-270 days, failed to achieve resolution in a timely manner for airlines.

**Regulatory and Public Interest Considerations:**

Another dimension of the problem is balancing insolvency law with aviation regulatory requirements and public interest. An airline's collapse can have a domino effect – loss of connectivity for the public, stranded travelers, and disruptions in airport operations. Due to a variety of circumstances, including high operating expenses, intense competition, economic

downturns, and regulatory restrictions, airlines in India sometimes find themselves in hazardous financial positions.

### RESEARCH QUESTIONS:

1. What are the core contributors for the recurring instances of financial distress and insolvency among airlines in India?
2. How does INDIA'S existing legal and regulatory framework for finance in aviation and resolution of insolvency proceedings compare with global standards and the key legal instruments related to insolvency in the Indian civil aviation sector, and how do they interrelate?
3. How do the provisions of the Cape Town Convention (CTC), 2001 and the Aircraft Equipment protocols operate, and what requirements do they impose on contracting states regarding aircraft insolvency or default? How has India incorporated these international provisions through domestic law (such as Aircraft Objects Act, 2025 and DGCA regulations), & how do these interact with the IBC, 2016 and other civil aviation laws?
4. What practical impact does the CTC (After its implementation in INDIA) have on the interests and legal solutions of creditors, on debtors (airlines in financial distress)? What lessons can be learned from global practices and experiences in implementing international conventions like the Cape Town Convention in alleviating the risk of insolvency within the nation's aviation landscape? How applicable are these lessons to the Indian context?
5. Does the new legal regime override the IBC's moratorium to allow repossession of aircraft, and how will this influence insolvency proceedings of airlines (does it make rescue less likely, or does it mainly affect liquidation scenarios)?
6. What are the short-term and long-term potential effects of implementing the CTC on the financial stability, operational efficiency, and overall growth prospects of airlines operating in India?
7. What is the position of **aircraft lessors and financiers** under Indian law (both prior to and after the CTC Act 2025)? Whether they are extended priority in terms of recovery of assets? What issues propped up which had an influence on leasing terms owing to the lack of clear statutory rights before 2025?

8. What were the hurdles that restricted Indian Airlines like Jet Airways and Go First in achieving successful re-organization within the domestic insolvency framework? Were the issues mainly confined to financial and managerial reasons or were the legal bottlenecks affected timely and effective resolution? What lessons can be drawn from the Go First crisis with regards to curbing financial risks within the aviation ecosystem?
9. With the lessons drawn from the in-depth analysis, what additional reformative steps or measures are imperative to solidify India's aviation insolvency framework

## Legislation, Regulation and the Cape Town Convention

### International Framework (Cape Town Convention 2001 and Aircraft Protocol):

The Cape Town Convention on International Interests in Mobile Equipment, 2001 (hereinafter **Cape Town Convention or CTC**), along with the Aircraft Protocol, is a global treaty designed to standardize and strengthen the rights of creditors (such as lessors and secured lenders) in high-value mobile assets like aircraft, aircraft engines, and helicopters.<sup>11</sup> The Convention creates the concept of an “**international interest**” in such assets, which can be registered in an International Registry. In the context of default or insolvency of the debtor, the CTC provides creditors with expedited remedies, such as the right to repossess and deregister aircraft, sell or lease the aircraft, or collect income from it, pending final adjudication. The Aircraft Protocol supplements the Convention by tailoring these rules to the specific needs of aircraft equipment finance.

One key feature of the Aircraft Protocol is Article XI, Alternative A (often likened to the US bankruptcy code's Section 1110). Under Alternative A – which India has chosen – if a debtor enters insolvency, the insolvency administrator or debtor must either cure all defaults and agree to perform future obligations within a stipulated waiting period or else give possession of the aircraft objects to the creditor.

India, in its declarations at accession, set this waiting period as two months for all types of insolvency proceedings. This effectively means that after the commencement of insolvency, if the airline (or the insolvency professional) does not remedy payment defaults on leases or

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<sup>11</sup> Stewarts Law, *The Cape Town Convention: Its Application and Benefits in India*, STEWARTS LAW (30 June 2025), accessed January 15, 2026  
<https://www.stewartslaw.com/news/the-cape-town-convention-its-application-and-benefits-in-india/>

loans and commit to honoring the contracts going forward within 60 days, the creditor is entitled to immediate repossession of the aircraft without court permission.

### **India's Incorporation of the Cape Town Convention (Aircraft Objects Act, 2025):**

Although India signed onto the Cape Town Convention and Aircraft Protocol in 2008, the treaty was not self-executing in the Indian legal system. For many years, the Convention's principles were in limbo domestically – Indian courts gave effect to some aspects (e.g. honoring IDERA requests as seen in SpiceJet's case), but there was no comprehensive legislative framework. This changed with the introduction and passage of the Protection of Interests in Aircraft Objects Bill, 2025<sup>12</sup>, which received Presidential assent and came into force on May 1, 2025. The Act, informally called the Cape Town Act, 2025 (CTC Act), gives the provisions of the Convention and Protocol force of law in India in accordance with India's declarations made at accession.

### **Several important features of the CTC Act, 2025:**

**Explicit Override of Conflicting Laws:** The Act contains a non-obstante clause that in case of any inconsistency between its provisions (which essentially mirror the Convention's rules) and any other Indian law, the Act will prevail.

**DGCA as Registry Authority:** The Act designates India's aviation regulator, the Directorate General of Civil Aviation (DGCA), as the local "Registry Authority" responsible for aircraft registration and deregistration in line with the Convention. DGCA is empowered to issue orders or directions to implement the Convention's provisions.<sup>13</sup> Creditors, on their part, are required to notify DGCA when a default occurs and they seek to exercise remedies, using prescribed forms, ensuring a regulatory check and record on such actions.

**Remedies on Default:** The Act incorporates the suite of creditor remedies from the Convention. These include the right to take possession or control of the aircraft, sell or grant a lease of the aircraft, or collect income or profits from use of the aircraft, in the event of debtor default<sup>12</sup>. Importantly for insolvency, the Act provides that the creditor's right to

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<sup>12</sup> Dentons Link Legal, *Parliament Passes Aircraft Protection Bill, 2025: A Step in the Right Direction*, DENTONS LINK LEGAL (3 Apr. 2025), accessed Jan. 15, 2026

<sup>13</sup> K.A. Khurana & Khurana & More, *Resolving the Conflict Between India's Insolvency Code and the Cape Town Convention*, K&K (11 Aug. 2025), accessed Jan. 15, 2026

seek remedies (like repossession) can be exercised after the waiting period of two months from insolvency commencement, if defaults are not cured. Before exercising a remedy, the creditor must notify DGCA of the default.

**Jurisdiction of Courts:** The Act confers jurisdiction to Indian High Courts (as opposed to specialized tribunals like NCLT) for adjudicating any claims or disputes under the Convention's regime. High Courts in India historically handled company winding-up and have wide powers, unlike tribunals which strictly follow the IBC. In fact, it was the Delhi High Court in the Go First case (2024) that upheld India's treaty commitments and gave directions to DGCA to deregister aircraft, even as the matter was under NCLT's domain.

**Rule-making and Implementation:** The central government is empowered to make rules to implement the Convention and Protocol's provisions, including the specifics of how DGCA should issue directions and how the debtor/creditor notifications of default should be made.

❖ **Domestic Insolvency Law (IBC 2016) and Related Regulations:**

The Insolvency and Bankruptcy Code, 2016 remains the primary legislation for corporate insolvency in India. Under IBC, once admitted by the National Company Law Tribunal (NCLT), a corporate debtor undergoes a moratorium period (Section 14) and a resolution professional is appointed to manage its affairs. Creditors form a committee (CoC) to decide on a resolution plan or liquidation. Key provisions relevant to aviation insolvency include:

**Section 14(1)(c):** The moratorium prohibits any action "to foreclose, recover or enforce any security interest" and **Section 14(1)(d)** bars "recovery of any property by an owner or lessor" that is in the possession of the debtor. For airlines, Section 14(1)(d) directly comes into play:

aircraft on lease are in the debtor's possession, so the lessor ordinarily cannot repossess or even demand their return during the moratorium. This general rule was the crux of disputes in Jet and Go First cases.

**Section 14(3)- Exclusions:** Certain transactions are excluded from the moratorium (like arrangements with financial services providers, or under specific notifications). In a notable development, the Government of India in October 2023 issued a **notification under Section**

**14(3)**<sup>14</sup> that exempts transactions under the Cape Town Convention from the moratorium's ambit. This means that even before the 2025 Act was passed, India proactively said: if a creditor has rights under the CTC (for aircraft, engines, etc.), the moratorium shall not prevent the exercise of those rights.

DGCA Civil Aviation Requirements (CARs): Prior to the 2025 Act, DGCA had incorporated certain aspects of the Cape Town Convention in its regulations. The most important was the system of IDERA – Irrevocable De-registration and Export Request Authorization. Essentially, at the time of aircraft lease registration in India, the lessee (airline) would execute an IDERA in favor of the lessor or financing party. DGCA's Civil Aviation Requirements (e.g., Section 2, Series F, Part XIII – pertaining to registration) provided that upon default, the authorized party could invoke the IDERA and DGCA “shall” deregister the aircraft to enable its return.<sup>15</sup>

Other Aviation Laws: The Aircraft Act, 1934 and the Aircraft Rules, 1937 govern aviation operations in India. They require all aircraft operating in India to be registered and allow DGCA to regulate safety and airworthiness, but they do not address insolvency or creditor rights. The Companies Act, 2013 earlier dealt with company liquidations (and was used for UB Holdings/ Kingfisher winding-up), but since 2016, IBC has taken over insolvency matters. Also, the Civil Aviation Requirements include provisions for financial fitness of airlines and maintenance of operations, which indirectly tie into insolvency – for example, an airline's Air Operator Certificate can be suspended if it ceases operations or cannot meet obligations, complicating resolution efforts.

The Aircraft Objects Act, 2025 has emerged as the key legislation prompting a positive shift, as it aligns India's insolvency regime with global standards and removes the critical legal gap that had been in existence until now. But the challenge is that it co-exists with the IBC, which continues to govern how the resolution plan may be put forward, how it will be approved or how the liquidation proceedings will proceed for a particular airline. The real test lies in the practical, real-time implementation: whether the officials handling insolvency, courts and the aviation regulators can smoothly implement new rules avoiding any procedural gridlocks, for

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<sup>14</sup> Ministry of Corporate Affairs, Notification Under § 14(3) of the Insolvency and Bankruptcy Code, S.O. 4321(E), dated Oct. 3, 2023 (Notified on Oct. 4, 2023) (India), accessed Jan. 15, 2026.

<sup>15</sup> Directorate General of Civil Aviation, *Civil Aviation Requirement*, § 2, Series F, pt. XIII (Registration of Aircraft) (India) (as amended).

example, the 60 days rule will nudge every airline admits the insolvency proceedings to go for quick liquidation by withdrawing the assets, or will it promote quick resolution.

### **Comparative Analysis with Global Airlines Insolvency Practices:**

Airline insolvency is not restricted to any particular country; it occurs across the globe. What differs is the way each country handles airline failures, which is based on their respective legal systems, and prevailing market conditions. Analyzing how other countries approach airline insolvency provides us with an understanding about the similar problems faced by the aviation industry of different countries and what solutions they have adopted. This comparison also tells us how effective is India's insolvency framework.

United States (Chapter 11 Bankruptcy & Section 1110): The United States has a long history of airline restructurings under its Chapter 11<sup>16</sup> bankruptcy regime, which is generally debtor-friendly and geared towards reorganization. Prominent U.S. airlines – including Delta, United, American, and others – have successfully reorganized in Chapter 11, continuing operations throughout. A key provision that specifically impacts aviation is 11 U.S.C. §1110 of the U.S. Bankruptcy Code 17 . Under Section 1110, a debtor airline in Chapter 11 must cure any default and agree to perform future obligations under an aircraft lease or secured financing within 60 days of the bankruptcy filing, or the lessor/secured party can repossess the aircraft notwithstanding the automatic stay. This closely mirrors Alternative A of the Cape Town Convention, not coincidentally – in fact, Alternative A was inspired by the concepts in Section 1110.

**Europe and UK:** In Europe, there isn't a single insolvency law; each country has its own laws, though EU regulations facilitate cross-border recognition. Historically, some European airlines have been liquidated (e.g., Swissair in 2001, Malev in 2012), while others have been restructured or taken over (Alitalia underwent multiple restructurings and state interventions). The United Kingdom traditionally used its administration procedure for corporate rescue. However, the collapse of **Monarch Airlines (2017)** and **Thomas Cook (2019)** revealed gaps

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<sup>16</sup> *Mind the Gap: The Uncertain Status of Aircraft Lenders to Foreign Airlines in Chapter 11*, BANKR. ROUNDTABLE, HARV. L. SCH. (July 22, 2025), <https://bankruptcyroundtable.law.harvard.edu/2025/07/22/mind-the-gap-the-uncertain-status-of-aircraft-lenders-to-foreign-airlines-in-chapter-11>

in UK law regarding passenger repatriation and airline continuity, since those companies ended up in liquidation with the government stepping in ad hoc to assist passengers. A UK government commissioned Airline Insolvency Review in 2019 recommended a special “**airline administration**” regime<sup>17</sup> that would allow an insolvent airline to continue flying long enough to repatriate passengers and preserve value, with government support, rather than immediate grounding. The EU Insolvency Regulation also eases coordination for airlines that have assets or establishments in multiple EU countries (although since Brexit, UK is separate).

### **Cross-Border Insolvency Practice:**

Airlines often have multinational operations – for example, an airline may be incorporated in Country A but have significant assets (aircraft) in Country B, creditors in Country C, and so on. The UNCITRAL Model Law on Cross-Border Insolvency (1997) provides a framework for cooperation and recognition of foreign insolvency proceedings.

Under **the Model Law**<sup>18</sup>, a foreign insolvency can be recognized as a “main” proceeding if the debtor’s center of main interests is in that country, which then triggers relief like a local stay and cooperation by local courts. This was used, for instance, when **Avianca (Colombia)** filed Chapter 11 in the U.S. in 2020, or when **Malaysia Airlines** underwent a UK scheme of arrangement with recognition elsewhere.

[India has not yet implemented the Model Law](#), though as of 2025, it is on the anvil – deliberations are in final stages for enacting a cross-border insolvency law based on the UNCITRAL Model. In absence of that, the Jet Airways case was illustrative: the Dutch court opened insolvency for Jet’s assets in the Netherlands, but initially NCLT in India refused to formally recognize it, even terming the foreign proceeding null with respect to Indian assets. It was only on appeal to NCLAT that an innovative **Cross-Border Insolvency Protocol**<sup>19</sup> was approved, allowing cooperation between the Indian Resolution Professional and the Dutch trustee. This cooperative approach – sharing information, and permitting the Dutch trustee to attend Indian creditor meetings (without voting rights) – was a workaround.<sup>20</sup> Comparatively,

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<sup>17</sup> Council Regulation 2015/848, of May 20, 2015 on Insolvency Proceedings, 2015 O.J. (L 141) 19.

<sup>18</sup> Ministry of Corporate Affairs, Report of the Insolvency Law Committee on Cross-Border Insolvency (Oct. 2018) (India).

<sup>19</sup> Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, opened for signature Nov. 16, 2001, entered into force Mar. 1, 2006, 2367 U.N.T.S. 517

<sup>20</sup> Aviation Working Group, Cape Town Convention and Aircraft Protocol: Economic Impact, AWG (2021).

if India had the Model Law, the Dutch proceeding could have been recognized as either a main or non-main proceeding, and the law would provide a clearer mechanism for coordination. **Countries that have the Model Law (like Singapore, which aspires to be an aviation hub) can smoothly manage cases where an airline has assets spread globally**; for example, Singapore used its new provisions to deal with the cross-border aspects of **Jetstar Asia's** restructuring in 2020. India's delay in adopting it means reliance on court-made solutions, which inject uncertainty for international creditors. The trend globally is toward easier recognition – even China introduced a form of the Model Law in 2022 for Hong Kong cooperation. India is traversing in that direction, though slowly.

Summing up, to encourage swifter financing, India's progressive approach shows an alignment with global creditors safeguarding norms (via Cape Town/ Alternative A remedy), similar to that of the United States and other jurisdictions.

## **Indian Aviation Sector: Insolvency Issues and Challenges**

Over the last two decades, Indian aviation landscape has witnessed both the rapid growth as well as downfall of some well-renowned airlines, exposing the slew of industry-specific insolvency<sup>21</sup> related issues. Through the case studies of major airlines like Jet Airways, SpiceJet and Go First, an attempt is made to frame an understanding related to the practical obstacles faced by these airlines in resolving their distress under India's legal system governing the aviation industry.

### **1. Financial Fragility and reasons of Airline Insolvency:**

The failure of the Indian airlines is the combination of various factors like – high cost of running the business, especially elevated fuel taxes in India, which are considered as one of the most highly charged in the world. Price competition is another reason as airlines they operate with narrow profit margins often face stiff competition in the competitive fare market. Other reasons being faulty management decisions and greed for over-expansion, along with few external vulnerabilities/shocks (2008 financial crisis or 2020 covid-lockdown). Once a dominant market player, Kingfisher airlines crashed owing to a

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<sup>21</sup> Ministry of Corporate Affairs, Notification Under § 14(3) of the Insolvency and Bankruptcy Code, S.O. 4321(E) (Notified on Oct. 3, 2023) (India), accessed Jan. 15, 2026, <https://ibbi.gov.in/uploads/legalframwork/8273e42bb4de11d39f37ab81f96f93ec.pdf>

heavy debt burden to the tune of Rs. 9000 cr., and was not in a position to repay its loans and pay back the dues. With a legacy of remaining a profit-earning airline, Kingfisher, collapsed to the excessive losses incurred in 2018 due to exorbitant fuel prices, high debt burden, and still competition in the market. All this led to the ceasing of operations by the airline in April 2019.

## **2. Challenges within the IBC Process:**

When the Jet Airways case happened in 2019, the IBC was still in its early stages, exposing the glaring gaps in its practical implications. The core issue was the time duration. Within the IBC framework, the resolution process was required to be wound up within 180 days with an extendable limit of 330 days. When it came to practical enforcement during Jet's case, meeting these timelines was a big challenge.

Another major problem was the absence of operating funds that were required to keep the airline's affairs running even when it is facing insolvency. A stark reality was exposed when during the Jet's CIRP, no financial institution (banks) or other lenders was willing to extend new funds to help the airlines in continuing its operations. Owing to which, the aircraft remained grounded, operations were ceased, there was no source of revenue left with the company, asset value deteriorated sharply, and in the middle of all this chaos, what added to the wounds was the protracted litigation exacerbating the existing problems. This underscores a systemic issue: IBC does not differentiate a service industry like aviation, which needs continuous cash flow, from a factory that can be closed and restarted.

## **3. Aircraft Leasing and Repossession Difficulties:**

Before the Cape Town Act 2025, lessors faced significant challenges extracting their aircraft from distressed Indian carriers. Kingfisher's shut-down saw a number of leased planes stuck in India pending lengthy deregistration formalities, with some aircraft reportedly deteriorating at airports for years.<sup>22</sup>

Fast forward to Go First (Go Airlines) in 2023: this was the first Indian airline to file for voluntary insolvency under IBC while still having a chance to operate. Go First blamed

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<sup>22</sup> Directorate General of Civil Aviation, *Civil Aviation Requirement*, § 2, Series F, pt. XIII: Registration of Aircraft (India).

failing engines (an external factor) for grounding half its fleet and sought bankruptcy protection to restructure liabilities. The NCLT promptly admitted the case and imposed the moratorium on May 10, 2023.<sup>23</sup> Immediately, lessors (who had already issued termination notices for leases due to defaults) rushed to DGCA seeking deregistration of 54 aircraft. DGCA, caught between IBC and treaty obligations, did not deregister the planes, citing the moratorium and an NCLT order that the assets should be preserved. The High Court's judgment in April 2024 was a watershed: it ordered DGCA to deregister all 54 aircraft within five working days, and restrained Go First's resolution professional from interfering with or moving those aircraft. This ruling provided immediate relief to lessors.

#### **4. Cross-Border and Jurisdictional Issues:**

The case of Jet Airways was the first example involving an Indian airline in a cross-border insolvency proceeding. While the case was ongoing in India, an action by the creditor in the Netherlands related to unpaid dues led to initiation of parallel bankruptcy proceedings and the trustee getting appointed. In June 2019, the NCLT Mumbai refused to recognize the Dutch proceedings and affirmed that it would have no effect on Jet's assets in India. This raised an apprehension that what would be the fate of the assets of Jet Airways outside India and whether there is any scope of co-operation between the courts of two jurisdictions.

Through an appeal to the NCLAT, a more practical solution came out, i.e, by allowing the use of cross-border insolvency protocols to align the proceedings in the two countries. This situation hinted towards a major gap in our domestic insolvency system. The core problem is that without the adoption of a comprehensive cross-border insolvency framework such as UNCITRAL Model Law, India would continue to face difficulties in getting its insolvency proceedings recognized in the international arena, and the creditors would be reluctant to take recourse to India's insolvency process.

#### **Regulatory Challenges and Loss of Licenses:**

Another problem in Indian airline insolvencies has been the reaction of regulators like DGCA and less tangible assets like airport slots. Airlines need valid permits (Air Operator's Certificate, etc.) to fly. When an airline halts operations (even temporarily due to insolvency),

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<sup>23</sup> Ministry of Corporate Affairs, Notification No. S.O. 4321(E), *Moratorium Under the Insolvency and Bankruptcy Code, 2016 Shall Not Apply to Transactions Under the Convention and the Protocol* (Oct. 3, 2023) (India).

DGCA has to decide how long to wait before revoking licenses or reallocating slots to avoid public inconvenience due to unused capacity.<sup>24</sup> In Jet's case, DGCA initially suspended Jet's flying license and redistributed its prime airport slots to other airlines after Jet stopped flying. While this kept the airports running smoothly, it ironically made Jet less attractive to bidders (as restarting would mean trying to get those slots back – a difficult task). The lack of a clear policy on this is a challenge – an insolvency professional has no guarantee that an airline's operational assets (which include intangible rights) will be preserved. Hence, one challenge is to have coordination between insolvency resolution and aviation regulators to balance keeping the asset base of the airline vs. efficient use of public resources.

□ **Recent Developments Mitigating Challenges:** It is worth noting that recent legal changes are directly aimed at mitigating some of these challenges. The 2023 MCA notification and the 2025 Act tackle the aircraft repossession issue head-on, so future cases should not see the legal ambiguity that Go First did; lessors should be able to deregister planes even during CIRP (though if the airline can manage to keep paying, they won't need to). This should prevent the scenario of assets idle in limbo. Another development is the government's efforts to encourage aircraft leasing in India (via GIFT City) – if successful, more aircraft may be owned by Indian lessors where Indian law directly applies, possibly simplifying resolution (though that's speculative at this stage). And as mentioned, a cross-border insolvency framework is on the horizon, which will formally address cooperation with foreign courts.

## Aviation Insolvency and Stakeholders: An Analysis

### Creditors (Lessors, Lenders, and Other Suppliers):

**Aircraft Lessors and Financiers:** These are often the largest creditors in an airline insolvency by value, since modern airlines typically lease a majority of their fleet or finance purchases via secured loans. Their primary interest is in securing their asset (the aircraft/engine) or the value thereof. Under the IBC prior to recent changes, lessors were classified as operational creditors, which put them at a disadvantage: they had no vote in the

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<sup>24</sup> Directorate General of Civil Aviation, *Guidance on IDERA Implementation Under the Cape Town Convention*, Civil Aviation Requirement (2015) (India).

Committee of Creditors and in a liquidation waterfall their claims (for unpaid rent or damages) rank lower than secured financial creditors and some employee dues. The advent of the Cape Town Convention framework in India is a boon for them – it gives them a direct route to recover assets, effectively sidestepping the debtor’s insolvency to that extent.<sup>25</sup>

**Banks and Financial Institutions:** These are typically the financial creditors in IBC, which includes banks that lent working capital, issued bonds or masala bonds, etc. They form the core of the Committee of Creditors (CoC) in a CIRP and thus control the decision-making (e.g., whether to accept a resolution plan or liquidate). In airline cases, banks’ interests are two-fold: maximize recovery of their loans, and sometimes, if state-owned, heed broader economic or political considerations (like preserving jobs or preventing an abrupt shutdown).<sup>26</sup>In Kingfisher and Jet, many major lenders were public sector banks, which were under pressure to not write off large debts easily. Banks usually do not have direct security on aircraft (those are with lessors or specific asset financiers), so their interest aligns with maximizing enterprise value – ideally keeping the airline intact to fetch a better price.

**Operational Creditors (Suppliers/Airports/Fuel Companies):** Airlines owe significant sums to fuel suppliers (often state-run oil companies), airport operators (Airports Authority of India for landing/ parking fees, private airport companies), ground handling agencies, etc. These are operational creditors under IBC and typically have no seat at the table (unless they individually sue or intervene). Their leverage often lies in exercising lien or set-off on assets in their possession: e.g., airport operators can detain aircraft for unpaid charges, by statutory powers. The Cape Town Act, as noted, preserves such detention rights. Thus, while lessors have strong rights, they must now ensure that dues of entities like AAI are cleared, or negotiate, to get their plane free – effectively giving those specific operational creditors a form of priority.

## Employees

Employees are one of the most immediately impacted groups in any airline insolvency. Airlines are labor-intensive, and in India, the workforce can range in thousands (Jet had

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<sup>25</sup> Ministry of Corporate Affairs, *Report of the Insolvency Law Committee on Cross-Border Insolvency* (Oct. 2018) (India).

<sup>26</sup> *The Impact of Moratorium on Aviation Insolvency and Lessors’ Rights*, LEXOLOGY (2023), <https://www.lexology.com/library/detail.aspx?g=4a720e95-69c9-4d0c-8ad8-8a43cfc15ab7>.

~20,000 at peak, Go First ~7,000). When insolvency hits, salaries often stop (Go First's employees went unpaid for months of 2023). Under IBC22, employees are operational creditors for their wage dues, but with a slight statutory protection: in a liquidation waterfall, up to 24 months of unpaid wages and gratuity rank high in priority, just below secured creditors and insolvency costs, and alongside government dues. In a resolution scenario, however, employees rely on what the resolution plan provides. The new Cape Town regime, by ensuring creditors can repossess planes quickly, indirectly can harm employees' interests in keeping the business alive. Recognizing this tension, India's declarations at least gave a carve-out for some employee wage liens, which shows acknowledgment of their stake.

### **Passengers**

Even though the passengers are a scattered group, they are considered one of the most important stakeholders. Unlike other sectors, a collapse of an airline can have a profound direct and indirect impact on the airline's customers. We have witnessed this previously in cases of Kingfisher (2015) and subsequently with Jet Airways (2019) – ticket value became worthless for thousands of passengers. Under the IBC framework, these passengers in distress are simply categorized as unsecured creditors. The passengers have to face the harsh reality that recovery is almost negligible under insolvency cases. Even though in the past regulators have stepped in to rescue these distressed passengers by directing these airlines to either refund the amount or make alternative arrangements in case of flight cancellations due to operational shutdown. But these recurrent airline failures have a lasting negative impact on the passengers and it erodes their public trust in air travel.

Some safeguard mechanisms like compulsory insurance or depositing a certain amount to the passenger protection fund can be enforced to support the passengers in times of difficulty. This suggests that in the interest of the aviation sector's health, some mechanism to protect passengers might be worth considering (like a mandatory insurance or contribution to a "passenger protection fund" per ticket, as mooted in other countries). So far, however, no such mechanism exists in India, making passengers the silent, dispersed victims of airline bankruptcies.

## Shareholders and Promoters

Shareholders (especially the promoter group in Indian airlines, often individuals or families with significant control) are deeply affected – they stand to lose their entire equity in insolvency. For instance, in Jet Airways, the founder Naresh Goyal's stake became virtually worthless. In Kingfisher, UB Group lost its investment entirely. Under IBC, shareholders have no formal role once insolvency starts (they may propose a resolution plan if eligible, but usually they are ousted from management).<sup>27</sup> The IBC's strict timeline and control shift is a shock to many Indian promoters who lose their companies; in aviation, it has not been any different.

## Regulators and Government

The government and DGCA being the regulator of the aviation industry has a major responsibility and mandate to ensure a stable and viable aviation sector, uninterrupted air connectivity, and safeguarding interest of the public at large. Although they don't take part in the IBC proceedings directly, but, their decisions, as discussed, can make or break an insolvency outcome – e.g., awarding slots to others, suspending licenses, or conversely, being accommodative in allowing a revived airline to regain privileges. In **Go First's case**<sup>28</sup> DGCA and the Ministry have been cautious and by-the-book; they paused ticket bookings, ensured safety of stored aircraft, etc., while letting the legal processes play out.

One must also consider political pressure: Airlines are high profile, so governments face questions if thousands lose jobs or if connectivity is hit (for remote regions reliant on one airline). The Modi government faced questions in Parliament about saving Jet jobs or about the Go First crisis, to which the official line was that “law will take its course” and they cited the new reforms (Cape Town Bill) as the systemic solution rather than case-by-case bailouts.

The judiciary is another de facto stakeholder as the interpreter of law. Courts have tried to strike balances: the Delhi High Court in Go First case, while siding with lessors on law, was

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<sup>27</sup> Thejas Velaga & Aastha Gupta, *Airline Insolvency in India: Balancing Interests Between the Insolvency and Bankruptcy Code and the Cape Town Convention*, 17 NUJS L. REV. 61 (2024), <https://nujslawreview.org/wp-content/uploads/2024/07/17.1-Velaga-Gupta.pdf>

<sup>28</sup> Go Airlines (India) Ltd. v. Directorate Gen. of Civil Aviation, (Delhi High Court Apr. 2024) (India).

aware of the consequence but reasoned that India's international commitments and the rule of law had to prevail. The Supreme Court in Jet's case, while ordering liquidation, also gave suggestions to Parliament to reform the insolvency law to prevent such outcomes in future. In essence, regulators and courts are the referees that influence how well stakeholder interests are managed under the law.

### **Cape Town Convention: Impact Assessment in the Indian Scenario:**

The decision to implement the Cape Town Convention and its Aircraft Protocol in India through the Protection of Interests in Aircraft Objects Act, 2025 is a landmark in the legal landscape of Indian aviation.<sup>29</sup>

1. **Boost to creditor confidence and financing<sup>30</sup>:** The primary and the most profound impact of the full implementation of the CTC would be on aircraft lessors and finances in terms of enhancement in the confidence level in entering into business with Indian airlines. By including remedies for the creditors in form of early aircraft repossession and framing an overriding clause over conflicting domestic statutes, India has course-corrected the long pending source of risk. This implementation would certainly prove to be beneficial for the Indian airlines as they run their business with narrow profit margins, reduced financial expenditure would lead to overall cost reduction in running of business operations.
2. **Curbing of unnecessary litigation and delays:** Another added advantage would be seen in terms of reduced long-stretched litigation related to re-possession of aircraft. The past reveals that whenever an Indian airline has defaulted, aircraft lessors often had to get entangled in protracted court cases to fight for their rights (Go First is an example). With well-defined statutory provisions, DGCA and lower courts have a north star to follow. It is expected now that DGCA would take action on IDERAs in a swifter and time-bound manner within 5 working days (as suggested by the court), without requiring creditors approaching the court to enforce mandamus writ. Under the Act, High Courts have been designated as the main forum to adjudicate disputes,

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<sup>29</sup> Aviation Working Group, *Accession to the Cape Town Convention by the UK: An Economic Impact Assessment Study* (2011), accessed Jan. 15, 2026,

<https://awg.aero/wp-content/uploads/2019/09/UKCTC-Econ-Impact-Final-Version.pdf>

<sup>30</sup> Roy Goode, *The Priority Rules Under the Cape Town Convention and Protocols*, 2012(1) CAPE TOWN CONVENTION J. 95–108. <https://doi.org/10.5235/etc.2012.95>

giving authority to a higher authority in power, evoking a hope of a consistent and time bound jurisprudence.

3. **Economic benefits to airlines and passengers:**<sup>31</sup> The implementation can prove to be growth inducing for India's aviation sector in the medium to long term. With availability of cheaper finance, airlines would be able to procure more and new aircraft on lease, leading to expansion in airlines operating fleets. It would also pave the way for new entrants to join the market and procure leased planes on fairer terms. Also, the act opens the door for AWG's relief measures. Better AWG scores are given to airlines that implement the convention in toto under its financing compliance index, which lessors can utilize to negotiate the pricing.
4. **Coherence with Global Practices:**<sup>32</sup> In terms of impact, one more positive that the implementation would bring in India's domestic aviation sector would be goodwill earned with global alignment. This would change global perspective with respect to India's upholding the rule of law in financial matters to meet international standards. This would create a positive image in the eyes of international investors not just within the aviation sector but beyond it, indicating India's commitment in updating its commercial legislations to align with global standards.
5. **Robustness of India's Aviation Industry:** by reducing the risk premiums attached to the aviation sector, the CTC's enforcement has the possibility to give a boost to India's airline survivability. Understanding this with an example: if an airline is grappling with a temporary cash shortage, foreign lessors might be eager to negotiate a settlement deal rather than just pressurizing for immediate repossession, as they would be mentally assured that even if they go for repossession later on, there is an established process which is reliable and effective.

## Challenges and Remaining Issues

1. **Effect on Insolvency outcomes:** One important question that pops up in the mind is will the stronger rights of the creditors bring about faster airline liquidations or does it have the potential to force swifter restructurings? The honest answer is, both. What would matter the most would be the financial strength of the airline. In case of an

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<sup>31</sup> Aviation Working Group, *Accession to the Cape Town Convention by the UK: An Economic Impact Assessment Study* (2011), <https://awg.aero/wp-content/uploads/2019/09/UKCTC-Econ-Impact-Final-Version.pdf>

<sup>32</sup> UNIDROIT, *Cape Town Convention on International Interests in Mobile Equipment and Aircraft Protocol* (2001 & 2008)

airline having weaker financial capabilities, early repossession of aircraft by the creditors could force unwanted closure of business operations or even lead to liquidation. But an argument that supports it is that it would save the distressed airlines asset value erosion and save it from prolonged agony. The two-month timeframe under Alternative-A puts pressure to either look for fresh investments or get into re-negotiation with creditors within a shorter span of time. And if this fails, it would be followed by repossession. This clear timeframe creates discipline in the process and has the potential to avert any prolonged situations like in the case of Jet Airways, in which the insolvency proceedings were conducted without a definite resolution process.

2. **Deterrent effect on airline management:** with the cape town remedial measures in place, airline management and the promoters will have a positive preventive impact. When both the executives and the promoters are fully cognizant of the fact that they can't retain the aircraft through prolonged delays, protracted court proceedings, or with any external pressure once they commit a default, they are more likely to be cautious with the management of the finances. This sort of certainty will promote credit discipline and swift management of airlines to engage at an initial stage with the creditors. There have been instances, where the fear of losing the ownership over aircraft drives early negotiations or self-chosen restructuring process, lowering the likelihood of formal insolvency proceedings.
3. **Cross-border co-ordination:** India is well poised to better connect with the global aircraft financing system due to implementation of CTC. This also has a positive impact during cross-border insolvency cases, as this enforcement would build and raise the trust of international courts on Indian insolvency proceedings with respect to globally recognized rights of the creditors. The hesitation was very much evident in the Jet Airways case, as the Dutch court may have been impacted by the doubts over proper protection of aircraft-related issues. As a result with the implementation, it has now resolved the uncertainty regarding the domestic insolvency proceedings. The next course of action would be the adoption and timely enforcement of UNCITRAL MODEL Law on cross-border insolvency, which would run parallelly with the Cape Town Convention and make a seamless and more predictable global co-operation on aviation insolvency regime.

### □ Summing Up the Impact:

The enforcement of Cape Town Convention within the domestic arena is generally regarded as a positive move, as it caters to a pressing gap that was present in the previous legal architecture. It aids the rebalancing of the aviation system by granting creditors with extra confidence, which in turn has the potential of reducing the financial expenses and promoting more investments in the aviation industry. On similar footing, the airlines too tend to gain through simplified procedures for easier access to leased aircraft, which is imperative for widening and modernizing their aircraft fleet. On the whole, the legal system gains clarity and gets more transparent and predictable, leading to reduction in long-stretched litigation. However, the effective implementation would be the determining factor for deciding its success – prompt actions by DGCA and the courts as desired, and the professional abilities of the insolvency practitioners to swiftly adapt to the new directive and adapt under the new rules.

To conclude, the overall impact of Cape Town Convention on the Indian aviation industry is revolutionary: India as an emerging aviation market has moved the needle from an image of relative legal risk to one with legislative predictability and certainty in aircraft financing.

### Suggestions:

1. **Adoption of a comprehensive framework on cross-border insolvency:** It is high time that India implements the long-demanded provisions for swifter resolution cross-border insolvency proceedings, modelled on the lines of UNCITRAL Model Law, 1997.<sup>33</sup> It would lead to mutual recognition of foreign insolvency proceedings in India as well as Indian proceedings in foreign jurisdictions. For the aviation sector, this would mean in case of parallel proceedings getting initiated in different jurisdictions (like Jet Airways case), there would be an established mechanism to co-operate with foreign jurisdictions, avoid conflicts and prevent assets-value loss.
2. **Formation of clear SOPs & protocols for DGCA and allied related agencies:** With an aim of ensuring the smooth functioning of the Cape Town Convention, the government should set clear procedures for the functioning of DGCA and other

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<sup>33</sup> D. L. Fernandes, *Harmonizing UNCITRAL Model Law: A TWAIL Analysis of Cross-Border Insolvency Law*, 24 ASIAN Y.B. INT'L L. 80 (2020).

connected authorities (Airport Authority of India)<sup>34</sup>. These SOPs shall clearly spell out the handling of aircraft repossession and export requests by the creditors/lessors to avoid any future confusion and hassle-free operations.

3. **There should be a fixed timeline for the DGCA** while dealing with de-registration and leased aircraft export requests. As Delhi High Court directed the DGCA to process the deregistration request within 5 working days.<sup>35</sup> With this timeframe in place, this would enhance creditors confidence and help in avoiding superfluous litigations.
4. **Sector-tailored guidelines for handling aviation insolvency:** Through Insolvency and Bankruptcy Board of India (IBBI) or Ministry of Civil Aviation (MoCA), the government can issue directives/guidelines on how to effectively deal with airline insolvency cases.<sup>36</sup> These guidelines can support and guide the resolution professionals to practically address challenges specific to aviation industry, such as aircraft maintenance during the insolvency process (CIRP), aligning with DGCA to keep the operating licenses valid and not cancel them, prioritize the passengers' interests like keeping the customers data safe and initiating timely refund.
5. If an airline in CIRP has ongoing flights (as Go First briefly did before grounding), protocols to ensure minimal disruption to passengers – e.g., allowing use of ticket sale revenue only for operational expenses (escrow accounts) so that consumers aren't paying for flights that may not happen.
6. Guidance on handling employee layoffs or retention during the process, perhaps encouraging interim financing to pay critical employees to preserve the value of the enterprise (since an airline without pilots and engineers will quickly lose value).<sup>37</sup>
7. **Facilitate Interim Funding (DIP Finance) in Aviation CIRP:** One major hurdle in saving airlines is the lack of working capital during insolvency. The law does categorize interim finance as a resolution cost with highest priority in repayment, but lenders are still wary.<sup>38</sup> The government could facilitate a solution by encouraging banks or sovereign funds to provide DIP financing to viable airlines in CIRP, perhaps with partial guarantees. Alternatively, create a small "Airline Insolvency Emergency Fund" under the Civil Aviation Ministry that can extend credit for essential operations

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<sup>34</sup> Directorate General of Civil Aviation Act, 1994, § 3(1) (India); Go Airlines (India) Ltd. v. Directorate Gen. of Civil Aviation, 2023 SCC OnLine Del \_\_\_ (India)

<sup>35</sup> Go Airlines (India) Ltd. v. Directorate Gen. of Civ. Aviation, 2023 SCC OnLine Del \_\_\_ (India)

<sup>36</sup> Insolvency Law Committee, *Report on Group Insolvency and Cross-Border Insolvency* (2018) (India)

<sup>37</sup> Insolvency and Bankruptcy Code, 2016, §§ 5(13), 5(21), 30(2)(a), 53(1)(b) (India).

<sup>38</sup> Insolvency and Bankruptcy Code, 2016, §§ 5(13), 30(2)(a) (India).

(fuel, maintenance) during the CIRP's early phase. Such credit would allow an airline to keep some operations or at least maintain aircraft airworthiness during the 60-day Cape Town waiting period, giving a fighting chance to reorganize.

8. **Employee Claims:** Amend the IBC or allied rules to ensure that during CIRP, payment of current wages and benefits to employees is treated as an insolvency resolution process cost (at least for a certain period) and thus given top priority.<sup>39</sup> Currently, only liquidation brings priority for past dues; many Jet employees, for example, worked without pay for months during CIRP hoping for a turnaround.
9. **Passenger Protection:** The government could consider a Passenger Welfare Fund or mandate that airlines maintain a security deposit against advance bookings. One suggestion is a small levy on each ticket into a central fund that can be used to refund or repatriate passengers if an airline suddenly stops operating (this mirrors a recommendation of the UK Airline Insolvency Review).<sup>40</sup> Another approach is regulatory: DGCA could require that at any sign of financial distress (like persistent flight cancellations or payment defaults), an airline must halt future bookings beyond a short horizon, to limit consumer exposure.
10. **Explore a Special Insolvency Regime for Essential Services:** In the longer term, India can consider creating a special chapter or set of provisions within IBC for sectors that provide essential public services (airlines, perhaps banks already have, utilities etc.). For airlines, a “special insolvency resolution process” could empower the government or regulator to step in to maintain critical operations for a short period. For example, a court could appoint a government nominated aviation administrator (alongside the RP) whose task is to coordinate minimal flight operations or safe wind-down, funded by the abovementioned fund or by charging tickets. This is a more radical suggestion and would require legislative change, but it draws from the concept of [“keep the fleet flying”] approach recommended in other jurisdictions.<sup>41</sup>

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<sup>39</sup> Insolvency and Bankruptcy Code, 2016, §§ 5(21), 53(1)(b) (India)

<sup>40</sup> UK Dept. for Transport, *Airline Insolvency Review – Final Report* (2019), <https://www.gov.uk/government/publications/airline-insolvency-review-final-report>

<sup>41</sup> World Bank, *Principles for Effective Insolvency and Creditor/Debtor Regimes* (2021), <https://www.worldbank.org/en/topic/financialsector/brief/insolvency>

## CONCLUSION

India's aviation insolvency regime has transformed drastically in recent years, especially with the enactment of the Cape Town Convention into the domestic laws. In the 2010s, the failure of Kingfisher airlines brought forth a system that was ill-managed and underequipped to deal with the unique complexities with regards to aviation insolvency. Among the issues were the difficulties faced by lessors to re-possess their leased aircraft, banks and employees struggled during the crisis, creditors were left in limbo, and absence of a concrete mechanism for international co-ordination, all these issues together led to disorderly outcomes. The enforcement of IBC, 2016 indeed was a landmark moment for India's aviation sector in general and insolvency regime in particular, but cases like Jet Airways exposed that a blanket approach to every issue is of no use and a tailored approach catering the needs of the aviation sector is required to resolve the issues.

With the recent resolute actions taken in 2023-2025, many of the problems have been positively addressed. The "Protection of Interest in Aircraft Objects Act, 2025", has given creditors some form of legal backing and strengthened their rights, helping India meet the global standards and fulfill its legal duties under the treaty. Many are expecting some positive tangible outcomes in the form of cheaper and more accessible aircraft financing, risen confidence of the investors, and a more certain insolvency process. More important is the fact that India's implementation of the CTC and giving it a legal backing has been appreciated in the global arena for course-correcting the gaps embedded in the aviation system. But at the same time, a caution has been raised that in order to secure the interests of the creditors, the lawful rights of other stakeholders shall not get prejudiced. The study indicates that even though Alternative A of the CTC, has been implemented domestically (with a 2-month waiting period), will solve the issue of timely release of the stuck assets, it can at the same time narrow the rehabilitation and revival seeking window of opportunity for the distressed airlines. The comparison threw light on the fact that India is not the only country struggling to overcome this issue, but internationally, airlines insolvency structure catches various airlines off-guard in terms of choices they have – between the liquidation or rescue of distressed airline, between promoting creditors rights and safeguarding public's economic and legal interests.

The judiciary has played an active role through notable contributions in the evolution of the aviation insolvency framework. Starting from the High Court of Delhi's affirmative action of recognizing the importance of fulfilment of treaty commitments in the Go First case to the 's Supreme Court's serving as a guiding light in Jet Airways case, our courts have signaled a sharp and focused understanding of both the law and wider economic fallouts. And from the lens of the stakeholders, the current study and the analysis done floats the idea that interest of all the stakeholders shall be taken into account together and not in isolation. Though the new legal framework shifts a balance slightly in favor of the creditors, the overall motive of the insolvency law is to – maximize the debtor's asset value and simultaneously work actively towards rescuing the distressed business with all possible assistance to keep the business (airlines in this case) floating.

To sum up, the operationalization of the Cape Town Convention (CTC) has led to creation of a more creditor-friendly, primacy to rule of law, and a robust aviation insolvency regime which is non-negotiable for a prosperous and healthy aviation financing ecosystem. The upcoming challenge is to form a resolution-driven system, one can effectively balance the delicate nature of saving an airline in distress or enforcing orderly and effective winding up of the company. Through these recommendations which entails – adoption of a comprehensive cross-border insolvency legislation to protection of the stakeholder's legitimate interests, India as a nation and an emerging strong player in the evolving aviation industry must strive towards formation of an insolvency framework that matches with international benchmarks and which is legally and practically sound and enforced in a humane manner.

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