THE LIMITS OF THE INSOLVENCY AND BANKRUPTCY CODE AS SEEN IN THE JET AIRWAYS INSOLVENCY PROCEEDINGS, AND ITS IMPLICATIONS ON THE AVIATION SECTOR

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ABSTRACT

The Insolvency and Bankruptcy Code, 2016, does not contain provisions that explicitly address the treatment of regulatory permissions, airport slots or operational rights during insolvency proceedings. The Code itself offers no statutory basis for their preservation as economic assets, which leaves courts to determine these matters on a case-by-case basis. The Insolvency Law Committee, in its report on Cross-Border Insolvency (2018), recommended the adoption of the UNCITRAL Model Law on Cross-Border Insolvency to address deficiencies in the IBC framework for multinational insolvency proceedings, and further recommended statutory amendments to improve cooperation between NCLT and sectoral regulators. No legislative action has been taken so far to implement the necessary changes.

1. INTRODUCTION

The insolvency of Jet Airways (India) Limited will be viewed as a defining moment in the nation's rapidly evolving jurisprudence, as it represents the first major airline insolvency under the Insolvency and Bankruptcy Code, 2016 (IBC). When Jet Airways, which was once India's premier private airline company, holding approximately 23% market share, collapsed in April of 2019 due to debts that exceeded Rs. 8000 crores, it presented unprecedented legal challenges in the intersection of insolvency law and international aviation regulation and treatises.[1]

Unlike conventional corporate insolvency cases that involve tangible assets, manufacturing facilities or real estate, the Jet Airways case confronted the National Company Law Tribunal (NCLT) with questions novel to Indian insolvency proceedings: Can airport slots (critical regulation that determines an airline's viability and operations) be protected under the moratorium provisions of Section 14 of the IBC? How should bilateral air service agreements be treated when the designated airline undergoes resolution and changes ownership? Can the IBC's moratorium provisions override India's obligations under the Cape Town Convention on International Interests in Mobile Equipment, which grants aircraft lessors repossession rights in insolvency processes?[2]

The constitutional and statutory framework that governed this case has multiple facets. At a base level, Article 21 of the Constitution of India, guaranteeing the right to life and livelihood, has implications for the treatment of claims from employees and rights of creditors.[3] The IBC provides the foundational legal schematic through several provisions: Section 7 enables financial creditors to initiate the Corporate Insolvency Resolution Process (CIRP); Section 14 places a comprehensive moratorium on legal proceedings and the transfer of assets during CIRP; Section 18 provides control of the company in debt to the Interim Resource Professional (IRP) and later to the Resolution Professional (RP); Section 30 governs the submission of plans for resolution, and Section 31 creates a mechanism for approval of these resolution plans by the Adjudicating Authority.[4] These IBC provisions work in tandem with aviation-specific regulations, including the Aircraft Act, 1934, regulations issued by the Directorate General of Civil Aviation (DGCA), and bilateral air service agreements (BASAs) that India has concluded with over 100 countries. Foremost, however, is India's ratification of the Cape Town Convention on International Interests in Mobile Equipment and its Aircraft Protocol, which adds another layer of international law obligation to an already complicated proceeding.

This article advances the thesis that while the IBC framework has successfully facilitated a resolution where pre-existing mechanisms would have completely failed, the Jet Airways proceedings exposed significant statutory gaps in the addressing of aviation-specific regulatory issues. Specifically, the case revealed inadequate focus on: (i) preserving operational assets, including airport slots and bilateral traffic, during insolvency proceedings, which become prolonged; (ii) the reconciliation of international law obligations with domestic insolvency provisions; (iii) the coordination of creditor claims in more than one country in the absence of an international insolvency framework to date. These deficiencies, if unaddressed, threaten to undermine the goal of the IBC in resolving future cases in the aviation sector and other sectors that are similarly regulated.

2. FACTS OF THE CASE

A. Background

Jet Airways started its commercial operations in 1993 and steadily emerged as India's largest airline for private consumption. By 2018, the airline utilised a fleet of over 120 aircraft. It served more than 60 international and domestic destinations and employed close to 20000 people.[6] However, financial issues began to arise around 2017-18 due to a range of factors, including volatility of fuel prices that represented over 40% of operational costs, intense competition from low-cost carriers, operational losses that had been accumulated to over Rs. 5000 crores, and steadily mounting debt to various creditors. However, by early 2019, the airline was facing a severe crisis in its liquidity, which resulted in the eventual grounding of a majority of its fleet due to the non-payment of rentals to aircraft lessors and dues to airport operators and fuel suppliers. On April 17th, 2019, the airline serviced its final commercial flight, which marked the unfortunate cessation of an airline that had proudly served Indian flyers for over 20 years.

B. Stakeholders

The complex nature of the Jet Airways insolvency case becomes clear in the context of how geographically diverse its stakeholder base was. The financial creditors were led by the State Bank of India consortium, which claimed close to Rs. 8000 crores in outstanding debt.[8] Other creditors included the Airports Authority of India (AAI) and private airport operators who were owed landing, parking and route navigation charges, oil companies who were owed payments

for their fuel supply, and aircraft maintenance and overhaul (MRO) service providers. This debt was accumulated over decades. Internationally, aircraft lessors were predominantly based in Ireland, and other jurisdictions held the legal titles to over 100 aircraft which had been leased to Jet Airways, and they asserted contractual rights to repossess their own aircraft.[9] Perhaps most significant, especially from a social perspective, the lion's share of employees faced unpaid salaries over many months, unpaid provident fund and the uncertainty of whether they would continue to be employed. Furthermore, Jet Airways held airport slots at crowded international and domestic airports, and they also maintained traffic rights under international agreements. These were intangible, but economically crucial assets whose legal status became a central issue as the insolvency proceedings stretched on and on.

C. Timeline and Events

On the 20th of June 2019, the NCLT Mumbai admitted Jet Airways into CIRP under Section 7 of the IBC as per an appeal filed by the consortium of (financial) creditors who were led by the State Bank of India (SBI).[11] Ashish Chhawchharia of the firm Grant Thornton was appointed as the Interim Resolution Professional (IRP) and was then confirmed as the Resolution Professional. The Committee of Creditors (CoC) was then created with the admitted claims eventually exceeding Rs. 30000 crores, including all creditor categories. The resolution process faced multiple challenges: several prospective bidders submitted initial expressions of interest but later withdrew these statements due to the unprecedented complexity of regulation issues specific to the aviation industry and the uncertainty regarding the transferability of the airport slots and bilateral rights owned by Jet Airways.

In October of 2020, after extensive deliberation, the CoC approved the resolution plan submitted by the consortium of Jalan-Kalrock with an overwhelming voting share of 96.5%.[12] The plan proposed a revival of the airline as a "going concern" with infusion of Rs. 1375 crores and commitment to clear the dues of creditors deemed as priorities. On the 22nd of June, 2021, the NCLT Mumbai approved the plan after judging its compliance with Section 30(2) requirements and ensuring that it optimised value compared to the airline's liquidation.[13] However, implementation of the approved plan then encountered delays due to clearance requirements arising from aviation regulation, disputes regarding the transfer of ownership and coordination with international lessors for the return of leased aircraft or re-lease arrangements. These post-approval challenges led to multiple applications before the

NCLAT, and they highlighted the gap between judicial approval of a resolution plan and its implementation in a sector considered to be highly regulated.

D. Challenges Identified

Several challenges emerged during the CIRP that distinguished this case from other, more conventional corporate insolvencies. First, there was an imminent risk of losing valuable airport slots due to the DGCA's 'use it or lose it' policy, which mandates that slots that are not utilised for a specified period may be reallocated. Secondly, aircraft lessors invoked their own rights under the Cape Town Convention to repossess aircraft, potentially stripping the corporation of the operational capacity it requires to survive. Thirdly, the efficacy of bilateral traffic rights under intergovernmental air service agreements presents novel questions about whether these entitlements could be transferred to an applicant who would constitute a new legal entity. Fourth, the international nature of the creditors' claims, particularly from international aircraft lessors and foreign airport operators, led to complications in the verification and coordination (due to the absence of a cross-border mechanism). Finally, balancing the welfare of Jet Airways' employees during the extended insolvency process while preserving the airline's interests.

4. LEGAL FRAMEWORK

A. Insolvency and Bankruptcy Code, 2016

The IBC provides the primary framework in statute that governs corporate insolvency in India. Section 5(7) defines 'corporate debtor' as a corporate person who owes a debt to any person. Section 7 enables financial creditors to initiate CIRP in case of a default on payments.[20] Section 14 creates a comprehensive moratorium which, inter alia, prohibits suits or continuation of pending proceedings against the corporate debtor and additionally the transfer of assets, action to foreclose, recover or enforce security interests, and the recovery of property by an owner or lessor only when such property is in possession or even occupied by the corporate debtor.[21] Section 18 provides the control and operational management of the corporate debtor in the IRP or RP, who have powers to preserve the corporation's assets for the duration of the CIRP. Sections 30 and 31 provide frameworks for the submission and approval of plans for resolution, while Section 53 establishes the priority list for the distribution of company assets in liquidation scenarios, giving priority to workmen's dues for 24 months

leading up to the insolvency commencement date and secured creditors from that point on.

B. Aviation (Regulatory) Framework

The Aircraft Act, 1934 and Aircraft Rules, 1937, provide the foundational regulation and framework for civil aviation in India, with the Directorate General of Civil Aviation (DCGA) serving as the primary authority with regulatory discretion.[23] DCGA regulations address various aspects such as safety certification, slot allocation in crowded airports and various operational permissions. Airport slots are governed by DCGA guidelines that generally follow the 'use it or lose it' principle, whereby slots that are not utilised by an airline for a specified period of time (which has historically been 80%) may be reallocated. The Airports Authority of India Act, 1994, controls the management of airports under AAI control and contains provisions for the management of slots and aeronautical charges. Bilateral air service agreements (BASAs) are also critical, as they are government to government treaties that designate traffic rights, carriers, and establish the framework for international air services between India and partner nations.

C. International Treaty Obligations

India ratified the Convention on International Interests in Mobile Equipment (Cape Town Convention) and its Aircraft Protocol in 2008. This Convention establishes an international mechanism for the registration and additionally the recognition of security-related interests in highvalue equipment, with a particular focus on aircraft. Article XI of the Convention is the one to address insolvency proceedings and offers states that are contracting. India chose to adopt Alternative A, which states that: (i) upon commencement of insolvency proceedings, the insolvency administrator or the debtor can retain possession of aircraft for a defined 'waiting period' (India in this case specified 60 days); (ii) during this period, the debtor is compelled to cure defaults or provide an adequate amount of protection to lessors; and (iii) any failure to cure these defaults or provide protection would entitle the lessor to take possession of the assets in question.[25] This would create tension with Section 14 of the IBC, which prohibits the lessors from the repossession of assets in the moratorium period.

D. Constitutional Provisions

Article 21 of the Constitution of India guarantees the right to life, which has previously been

interpreted by the Supreme Court of India to also include the right to livelihood. This provision thereby has implications for the treatment of the claims made by employees during insolvency proceedings.[26] Article 246 distributes legislative powers between the Union and the States, and insolvency law falls within the bracket of the Union List, while certain aspects of regulation in aviation could involve concurrent state jurisdiction, specifically regarding land use for airports. The validity of the IBC in reference to the Constitution was upheld in the case Swiss Ribbons Pvt. Ltd. v. Union of India, where the Supreme Court confirmed that the Code's provisions, including the primacy of financial creditors in the duration of the resolution process, are constitutionally sound.

V. CASE ANALYSIS & JUDICIAL REASONING

A. Treatment of Airport Slots

Airport slots constitute time-specific permissions that are granted only by regulatory authorities to airlines in order to take off and land at busy airports. Their economic value is substantial, especially when considering international slots at major transit hubs such as London Heathrow, New York JFK or Singapore Changi, where secondary markets for slot trading also exist under some jurisdictions. The (legal) characterisation of slots emerged as a key issue in the Jet Airways insolvency proceedings because their preservation under the company was essential in order to maintain the airline's going concern value. Without slots, particularly at major airports in busy time frames, even if the airline was revived, it would not have the operational capability to compete.

The NCLT Mumbai recognised this and, in orders issued during the CIRP, directed the DGCA and airport operators globally to maintain Jet Airways' existing slots and refrain from reallocating them until the resolution process was complete.[28] These directions treated slots as 'assets' of the corporate debtor subject to management, under Section 18, by the RP and were protected under the moratorium of Section 14. The tribunal's reasoning adopted the position (implicitly) that while slots may not constitute 'property' in the traditional common law sense, they are still economically valuable entitlements which played an integral role in the corporate debtor's business and therefore fall within the IBC's framework for the preservation of assets.

From a comparative perspective, this approach does find some support in international practice.

The European Union's regulations treat slots at airports as traceable assets that can be exchanged or sold, subject to regulatory oversight. The EU Slot Regulation (Council Regulation 95/93) recognise 'grandfather rights' whereby the airlines that have historically utilised certain slots maintain priority, and on a wider basis, slots are generally considered property rights in insolvency proceedings.[29] In contrast, United States law treats slots in a more restrictive manner, as regulatory authorisations rather than property rights, although under FAA regulations, slot trading is allowed at specific airports that face congestion. The position under Indian law, however, was ambiguous from a doctrine standpoint. The IBC does not address regulatory permissions, licenses or intangible entitlements explicitly, and the slot allocation guidelines of the DGCA do not account for insolvency scenarios.

The more pragmatic approach of the NCLT in preserving slots can be justified on more functional grounds: liquidation of an airline would completely destroy its going concern value if these slots were lost, potentially reducing the recoveries for all creditors. However, this approach then raises questions about the hierarchy of legal mechanisms. Does the NCLT possess the jurisdiction required to override the DGCA's sole regulatory discretion on the allocation of slots? The answer likely turns on viewing the directions of the tribunal not as overriding policy but as requesting the relevant regulatory authorities to exercise their discretion consistently to the IBC's objective of maximising the value of assets. The lack of explicit statutory coordination between the IBC framework and sectoral regulators led to legal uncertainty that could have been addressed more efficiently through inter-agency cooperation or statutory provisions.[30]

B. Bilateral Traffic Rights and International Treaties

Air service agreements, particularly bilateral ones, pose distinct challenges, as they are treaties between sovereign states, rather than routine commercial contracts. These traits designate specific airlines to utilise specific international routes, and allocate traffic rights accordingly, including frequencies, capacity and destinations. When Jet Airways entered CIRP, and then eventually when it emerged under the Jalan-Kalrock Consortium, which technically represented a new corporate entity that acquired the airline's assets and business, the question came up: Do bilateral traffic rights automatically transfer, or does the Government need to step in to acquire new designations?

The approach taken by the NCLT required coordination with the Indian Ministry of Civil

Aviation (MoCA) to ensure continuity in international operating rights. The tribunal went on to recognise that bilateral rights are the responsibility and the prerogative of the government, rather than assets belonging to corporations that can be assigned like a contractual right. However, the final mechanism for resolution treated the newly revived airline as a continuation of Jet Airways as a way to maintain these bilateral designations, thereby utilising a legal fiction. This approach was enabled by the fact that the resolution worked towards the acquisition of the airline as a going concern rather than complete liquidation, and the airline would continue under the Jet Airways name.

Comparative analysis shows that other jurisdictions have undergone similar challenges. When airlines must undergo reorganisation due to bankruptcy in the United States under Chapter 11, bilateral rights usually continue because the airline would emerge from bankruptcy as the same legal entity, sometimes with restructured liability. However, when changes in corporate identity are total, fresh governmental approvals may be required. The Jet Airways insolvency proceedings highlights a gap in the IBC: the Code does not contain provisions that specifically address how government-granted operational rights should be handled during insolvency resolution. This gap made it necessary for ad hoc coordination between the NCLT, MoCA, and the Ministry of External Affairs, a coordination which may, in future, be inefficient and unsustainable without institutionalised mechanisms.

C. Aircraft Leasing & Cape Town Convention Conflict

One of the most complex legal issues in the Jet Airways proceedings was the tension between the Cape Town Convention and the provisions available in the IBC's moratorium. Aircraft lessors, who were in this case predominantly international entities based in Ireland and other international jurisdictions with more favourable leasing frameworks, held the legal titles to more than 100 of the aircraft in Jet Airways' fleet. These lessors argued that under the provisions of the Cape Town Convention, specifically Article XI Alternative A (as adopted by India), they were entitled to repossess their aircraft after the 60-day waiting period had expired if defaults were not cured or protection had not been provided.

The IBC's Section 14(1)(d) moratorium, on the other hand, prohibits 'any action to foreclose, recover or enforce any security interest created by the corporate debtor.' The NCLT, therefore, faced the complex task of reconciling these intersecting legal frameworks. The tribunal adopted a balanced approach: it acknowledged the right of lessors under the Cape Town Convention

but emphasised that those rights must be exercised in consistency with the IBC's framework.[33] The tribunal also directed the RP to negotiate interim arrangements with the lessors, including the provision of adequate protection through payments for continuing the use of aircraft during CIRP or agreeing to return certain aircraft where they were not essential for maintaining minimal operations. Some of these aircraft were released to the lessors once it became clear to the resolution committee that they would not be required for Jet Airways' revival, while others were retained with interim arrangements.

From the perspective of doctrine, a fundamental question was raised here about the hierarchy of international treaties versus domestic legislation. The Vienna Convention on the Law of Treaties states that a state party cannot invoke its own internal law to justify a non-performance of its international treaty obligations.[34] This further suggests that India's Cape Town Convention commitments should be prioritised over conflicting domestic insolvency provisions. However, the Supreme Court upheld in Swiss Ribbons that the provisions of the IBC, including the moratorium, are necessary to serve public policy aims of enabling businesses to be rescued.[35] The NCLT's approach of seeking negotiated solutions between the RP and the lessors, rather than the rigid application of doctrine, reflected a sense of judicial practicality, but left the statute a grey area.

Legislative clarification on the interplay between the IBC and India's obligations would provide a greater sense of certainty for resolution professionals and lessors in future cases of airline insolvencies.

D. Cross-Border Insolvency Challenges

International aircraft lessors filed claims that totalled thousands of crores; foreign airports where Jet Airways operated were owed landing charges and parking fees; overseas fuel suppliers and maintenance providers also held claims; and the airline had assets and liabilities across multiple legal jurisdictions. Managing these aspects proved challenging due to India's limited legal framework for international insolvency cooperation.

The IBC in itself contains only two provisions which address cross-border issues: Section 234 gives Indian courts the authority to issue letters of request to foreign courts for assistance in insolvency proceedings, and Section 235 provides for a more limited scope of enforcement regarding orders from foreign insolvency proceedings in India. These provisions fall short of

comprehensive mechanisms adopted by other jurisdictions vis-à-vis the UNCITRAL Model Law on Cross-Border Insolvency. This law, enacted by over 50 countries, provides mechanisms for: the recognition of foreign insolvency proceedings, automatic or discretionary relief being provided upon recognition, coordination between courts across jurisdictions and the equitable treatment of foreign creditors.

The Insolvency Law Committee, in its reports, has recommended adoption of the UNCITRAL Model Law to address deficiencies[40]. The Jet Airways proceedings underscore the urgency of the recommendation. Without the aid of comprehensive cross-border provisions, any Indian courts lack mechanisms to coordinate with foreign courts, seek the recognition of orders from the NCLT abroad, or manage multi-jurisdictional asset recovery. This gap could deter foreign bidders in future international insolvencies and further complicate the resolution of globalised Indian firms.

E. Social Implications

Close to 20000 Jet Airways employees faced months of unpaid salaries, accumulated provident fund arrears and uncertain employment futures when the airline grounded its operations. Section 53 of the IBC gives priority to the dues of workmen for 24 months preceding the commencement of the insolvency, which ranks them above secured creditors to some extent.[41] The NCLT issued directions for regular interim payments to maintain only essential staff during CIRP, recognising that the attrition of the entire workforce would destroy any possibility of revival. These directions effectively balanced Section 53's statutory priorities with on-ground realities.

Article 21 of the Constitution's right to livelihood had an influence on the tribunal's approach towards the claims of employees. However, the prolonged nature of the resolution process meant that many employees sought alternative employment, which led to a significant loss in skilled airline-specific expertise, making revival more difficult. This presents a broader challenge to service industry insolvencies in particular, where specialised human capital depreciates rapidly when operations cease, unlike manufacturing assets that could retain value even in extended insolvency periods. The timeline provisions of the IBC (180 days extendable to 330 days) were designed to prevent such value destruction, but the complexity of cases like Jet Airways inevitably exceeds these timelines, raising questions about how these obligations should be balanced.

F. Resolution Plan

The Jalan-Kalrock Consortium's resolution plan, which was approved by the CoC with a voting share of 96.5% committed to infusing Rs. 1375 crores and reviving Jet Airways to a full-service airline. The plan ensured the settlement of financial creditors' claims at close to 5% of their admitted claims, operational creditors at varying percentages based on the relative size of their claims and most importantly, priority payment to employees. The NCLT approved the plan on June 22, 2021, applying the commercial wisdom doctrine, which had been articulated in K. Sashidhar v. Indian Overseas Bank, namely that the courts should not replace their judgment for the commercial decision made by the CoC, unless the plan violated Section 30(2)'s mandatory requirements.[44] However, the implementation encountered numerous obstacles. Regulatory clearances from the DGCA, confirmations of slots, bilateral traffic rights coordination, and negotiations with lessors for aircraft delivery or redelivery became more complex than initially anticipated. The gap is that while the IBC provides a structured process for the approval of plans, it does not follow through on the mechanisms to monitor or enforce implementation. This would suggest a need for more robust provision to empower tribunals to oversee implementation more actively.

5. COMPARATIVE ANALYSIS

A. Kingfisher Airlines (India, pre-IBC)

Kingfisher Airlines collapsed in the year 2012, before the IBC had been enacted. The airline faced a similar brand of financial distress as compared to Jet Airways, with debt, unpaid salaries and grounded aircraft. However, as there was no structured framework for insolvency, the attempts at resolution relied on informal negotiations between creditors, which ultimately failed.[46] Banks did initiate recovery proceedings under the SARFAESI Act and also Debt Recovery Tribunals, which led to 'piecemeal' asset liquidation. In the absence of a coordination mechanism to preserve the going concern value of the company or to facilitate a resolution, the airline was eventually liquidated with a very minimal recovery for creditors. The Kingfisher case demonstrates the clear advantage that the Insolvency and Bankruptcy code provides: a time-bound, coordinated framework that at the very least creates the possibility of a going concern resolution, rather than inevitable liquidation.

B. Air Berlin (Germany, 2017)

Air Berlin filed for insolvency in August 2017 under German insolvency law. Unlike the Jet

Airways case, however, Air Berlin proceeded directly to complete liquidation rather than a reorganisation. The insolvency administrator then negotiated the sale of various assets and airway routes to airlines, including Lufthansa and easyJet, in a 'piecemeal' manner.[49] While this did preserve some value and employment via the transferring of operations to viable carriers, it did result in the complete dissolution of Air Berlin as an airline. The authorities of Germany facilitated the process by temporarily preserving the airline's slots and bilateral rights in an attempt to make the sale of assets more attractive to potential acquiring airlines. This case demonstrates an alternative approach: rather than attempting a comprehensive revival of the going concern, the process of insolvency can focus on maximising the value of individual asset sales, accepting that while the original airline will not survive, the creditors will have recovery and employment can be preserved where possible via a transfer of operations.

In contrast, the Jet Airways proceedings pursued the revival of a going concern, which, albeit laudable, proved challenging given the complexities in regulation and the deterioration of assets during the prolonged CIRP. This raises a policy question: Should the IBC consider piecemeal sale of assets as a viable outcome for insolvencies where the revival of a going concern seems to be improbable?[50]

6. LEGAL & REGULATORY GAPS

A. IBC Statutory Gaps:

The IBC only defines 'assets' broadly, and it does not explicitly address how regulatory permissions, licenses and state-granted operational rights should be treated during insolvency proceedings. This creates an uncertainty regarding whether slots, bilateral rights or similar entitlements in regulation fall within the protective scope of the moratorium. Courts are therefore left to make these determinations on a case-by-case basis without clear statutory guidelines.[51]

The IBC also contains no provisions that reconcile international treaty obligations (such as the Cape Town Convention) with domestic insolvency moratorium provisions. This creates practical complications when international creditors choose to invoke treaty rights that directly override Section 14 of the IBC.[52]

Furthermore, the IBC was designed primarily with asset-rich manufacturing and infrastructure

sectors in mind. Therefore, it lacks specific provisions that address the unique challenges of insolvencies in the service industry, where the value of a going concern depends on human capital, the reputation of the brand, relationships with customers and continuous operations, all of which would depreciate rapidly when the business operations cease.[53]

Complex insolvency cases in highly regulated industries may benefit from specialised tribunals or mandatory appointments of experts. The judicial members of the NCLT typically have legal backgrounds, while technical members bring expertise in insolvency, but aviation-specific regulatory knowledge is not institutionally available. Consideration should therefore be given to specialised benches for aviation, telecommunications, and financial sector insolvency cases, similar to specialised courts in some foreign jurisdictions.[54]

B. Deficiencies in Cross-Border Insolvency Frameworks

The current cross-border insolvency provisions (Section 234-235 of the IBC) are inadequate for more complicated multinational insolvencies. They lack the mechanisms needed for: (i) the formal recognition of varied foreign insolvency proceedings in India and in Indian proceedings abroad, (ii) coordination between courts in different jurisdictions via protocol or alternative communication channels, (iii) the equitable distribution of assets across multiple jurisdictions, and (iv) efficient claim verification for foreign creditors.[55] The UNCITRAL Model Law would address these deficiencies through ‘main’ and ‘non-main’ proceedings and automatic regulation. A legislative adoption of the Model Law, as was recommended by the Insolvency Law Committee, would significantly enhance India’s ability to manage cross-border insolvency cases.[56]

C. Mechanisms for Regulatory Coordination

The Jet Airways case revealed the absence of mechanisms for formal coordination between the NCLT and sectoral regulators such as the DGCA. While ad hoc coordination did occur through judicial direction and with the aid of inter-ministerial discussions, no statutory framework mandates this type of coordination. Gaps include: (i) the lack of statutory provisions that require regulators to consider insolvency proceedings when making decisions on the allocation of assets, (ii) misalignment between regulatory timelines (e.g., requirements on the allocation of airport slots) and IBC timelines, (iii) an unclear hierarchy when the directions of the NCLT conflict with the discretion of regulatory bodies and the absence of inter-agency frameworks

for insolvencies in regulated sectors.[57] A statutory amendment, then, could require sectoral regulators to coordinate with proceedings on insolvency, potentially through designated liaisons or consultation before the reallocation of assets during CIRP. The DGCA could also develop specific guidelines for the treatment of slots during airline insolvency cases, as some international aviation authorities have done.

8. EVALUATION OF JUDICIAL APPROACH

A. Strengths of the Judicial Approach

Faced with a unique challenge and an unprecedented series of issues that lacked statutory answers, the tribunals were pragmatic for their time. They were inherently willing to issue directions and preserve the unique asset of an airport slot, facilitate coordination between sovereign ministries on bilateral aviation rights, and take on the responsibility to reconcile obligations from international treaties with the provisions of the IBC moratorium (Section 14), and the decisions taken reflected judicial flexibility and creativity in addressing gaps in the current framework.

The tribunals consistently prioritised the preservation of Jet Airways as a going concern rather than a piecemeal liquidation process. This aligns with the policy objectives of the IBC as per the Swiss Ribbons case and the legislative statement of objects and reasons, which emphasise the maximisation of asset value to enable the rescue of the business when feasible.[59]

The tribunals also attempted to balance competing legitimate interests: financial creditors who sought maximum recovery, operational creditors that required payments for their continued services, aircraft lessors who asserted treaty rights, employees who depended on wages and continued employment and the public interest in the continued maintenance of connectivity in aviation. While a perfect balance was impractical given the conflicting priorities, the tribunals' approach of seeking negotiated solutions and interim arrangements did demonstrate a legislative sensitivity to the concerns of multiple stakeholder groups.

B. Limitations of the Judicial Approach

While desired outcomes were finally achieved, the legal reasoning in some orders lacked clarity in terms of doctrine. For instance, orders that preserved slots at airports did not resolve whether these slots constituted 'property rights', 'assets' under the IBC, or sui generis regulatory

permissions. Similarly, the reconciliation needed in between conflicting obligations from the Cape Town Convention and the Section 14 moratorium of the IBC relied more on balancing specifically for those cases, rather than the articulation of a clear legal principle. This could create uncertainty for future cases.

The tribunals' focus on approval of the resolution plan did not extend to monitoring its implementation. Post-approval delays, complications in regulatory clearance, and disputes between the resolution applicants and creditors suggest that more stringent conditions or provisions to monitor implementation may be necessary. Courts may have approved the plan based on the commercial wisdom doctrine, but had limited tools to ensure its timely execution.[61]

8. RECOMMENDATIONS

A. Legislative Amendments to the IBC

Sector-Specific Provisions: The IBC should be amended to include a dedicated special chapter or schedule specifically addressing insolvencies in regulated sectors, particularly aviation, telecommunications and financial services. Such provisions could be useful in clarifying the treatment of regulatory permissions and licenses, establishing mechanisms for coordination with regulators specific to a sector, and providing for specialised expertise during resolution proceedings. The United States Bankruptcy Code's Chapter 11 does include sector-specific provisions for railroads, stockbrokers and commodity brokers, which offer a template that could be applied in the financial services sector.

Cross-Border Insolvency Mechanism: India should ideally adopt the UNCITRAL Model Law on Cross-Border Insolvency through a formal amendment to Part III of the IBC. This would then provide comprehensive mechanisms for the recognition of foreign proceedings, coordination between courts, the equitable treatment of foreign and domestic creditors, and the efficient management of insolvencies that translate across borders. Given India's rapidly increasing integration into the global market and the commonality of cross-border business operations, such provisions are certainly necessary.[63]

Regulatory Coordination: Statutory provisions must mandate coordination between the NCLT and regulators in individual sectors. This could include requirements for: (i) liaison

officers from regulatory bodies to participate in proceedings that involve regulated entities, (ii) mandatory consultations with regulators before approval of resolution plans that affect regulatory permissions, (iii) a regulatory forbearance on reallocation of assets during CIRP, unless justified by compelling public interest and (iv) timelines for regulatory approvals that are aligned with IBC timelines.

International Treaty Obligations: The Code must explicitly address reconciliation between international treaty obligations and domestic provisions for insolvency. This could follow approaches adopted in international jurisdictions, such as providing that treaty obligations are recognised by the government, but must be exercised in consistency with the objectives of insolvency trials or the establishment of clear priorities between competing regimes.

B. Reforms in Regulation

Slot Allocation Guidelines (DGCA): The DGCA should develop specific guidelines for the treatment of airport slots as assets during insolvency proceedings for airlines. These would ideally provide for: (i) the temporary reservations of slots during CIRP, (ii) established criteria for determining which slots are essential to preserve going concern, (iii) mechanisms for slot transfers in the interim to avoid complete loss/liquidation and (iv) protocols for coordination with the NCLT.

The European Union's regulations on slots, which address distressed carriers, provide precedents.[64]

Inter-Ministerial Coordination: It may be prompt for the Government to establish a permanent interministerial committee for insolvencies in highly regulated service industries, including aviation. This committee would comprise representatives from ministries, including but not limited to the Ministry of Corporate Affairs, the Ministry of Civil Aviation, the Ministry of External Affairs, DGCA and the Airport Authority of India. This body would be responsible for the coordination of policy responses, regulatory clearances within sectoral discretion and the addressing of bilateral rights issues and treaty obligations in airline insolvency cases.

C. Best Practice for RPs/IRPs

Resolution Professionals appointed to handle aviation sector insolvencies should: (i) engage early with relevant regulatory authorities to identify critical assets and clearance requirements,

(ii) develop asset preservation strategies encompassing both tangible and intangible assets, (iii) include sector industry experts on advisory teams to navigate specific complexities, (iv) the maintenance of transparent communication with international and domestic creditors and lessors in an effort to facilitate negotiations and (v) consider continuity mechanisms, including interim financing arrangements to preserve going concern value.

D. Treaty Consideration

India must review its own declarations under the Cape Town Convention to ensure that they align with the objectives of the IBC. This may include the renegotiation of the waiting period duration, the clarification of what constitutes 'adequate protection' or the amendment of Alternative A declarations to create a better balance of lessor rights with goals of insolvency. Additionally, bilateral investment treaties and air service agreements could incorporate provisions that address cross-border insolvency coordination.[65]

The Jet Airways insolvency proceedings constitute a defining moment in the evolution of India's framework for the resolution of corporate insolvencies. As the first major airline insolvency to be adjudicated under the IBC, this case made clear the Code's considerable strengths and its limitations when applied to complex insolvency cases in regulated sectors across national borders. Where preIBC mechanisms, such as those which were unsuccessfully utilised in Kingfisher Airlines' collapse, would have led to a piecemeal liquidation and a company being 'stripped for parts', the IBC framework created the possibility of resolution as a going concern, which allowed the approval of a resolution plan.

This case has provided valuable jurisprudence on critical issues: the treatment of regulatory permissions as economic assets that must be protected during insolvency proceedings, the balance between international treaty obligations and domestic moratorium provisions, the necessity of preserving operational assets to maintain a going concern and the practical challenges of coordinating creditors in the absence of an established legal framework. The precedents established here will guide future cases in similarly regulated sectors. However, the proceedings also showed statutory and regulatory gaps that now require legislative attention. The IBC lacks specific provisions for insolvencies in regulated sectors, international coordination mechanisms, and the reconciliation of international law obligations with domestic protection provisions. Coordination between the NCLT and authorities in particular sectors, such as the DGCA, occurred on an ad hoc basis rather than through institutional mechanisms,

and challenges in implementation following the approval of plans established a need for more robust provisions to monitor effective implementation. These deficiencies could seriously undermine the efficacy of the IBC.

The path forward will need coordination in reform across multiple factors. Legislative amendments are required here, including the adoption of sector-specific provisions, ratifying the UNCITRAL Model Law on Cross-Border Insolvency and choosing to mandate coordination would address gaps in statute. Regulatory authorities, particularly the DGCA, should develop guidelines specific to insolvency cases for the management of critical assets. Treaty considerations, including a review of the Cape Town Convention's declarations and the incorporation of insolvency provisions in existing and new bilateral agreements, would enhance international cooperation.

As India steps into its new role as a global hub for aviation with the goal of becoming the thirdlargest market for aviation in the world, its ability to restructure insolvent airlines while maintaining operational value and balancing international obligations will prove to be crucial. The Jet Airways Case, despite its implementation challenges, demonstrated that with the appropriate coordination, legislation and judicial growth, the IBC framework can indeed be adapted to meet the unique demands of insolvency cases in highly regulated sectors. The lessons learned from these proceedings should not only inform future airlines but also the broader changes required in India's insolvency system as it adapts to address increasingly complex cases in a globalising economy.

ENDNOTES

[1] State Bank of India v. Jet Airways (India) Ltd., C.P. No. (IB)-2205(MB)/2019 (NCLT Mumbai); See also, Ministry of Civil Aviation, Annual Report 2018-19.

[2] Insolvency and Bankruptcy Code, 2016, s. 14; Convention on International Interests in Mobile Equipment (Cape Town Convention), 2001, Arts. VIII-XI.

[3] Constitution of India, Art. 21; Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545.

[4] Insolvency and Bankruptcy Code, 2016, ss. 7, 14, 18, 30, 31.

[5] Aircraft Act, 1934; Cape Town Convention on International Interests in Mobile Equipment, 2001, ratified by India in 2008 with declarations under Alternative A.

[6] Jet Airways (India) Limited, Annual Report 2017-18.

[7] The Times of India, 'Jet Airways Suspends All Operations,' April 18, 2019.

[8] State Bank of India v. Jet Airways (India) Ltd., C.P. No. (IB)-2205(MB)/2019, Order dated June 20, 2019 (NCLT Mumbai).

[9] Resolution Professional's Report filed in Jet Airways insolvency proceedings, August 2019.

[10] DGCA, Slot Allocation Guidelines; Ministry of External Affairs, Bilateral Air Service Agreements Database.

[11] State Bank of India v. Jet Airways (India) Ltd., C.P. No. (IB)-2205(MB)/2019, Admission Order dated June 20, 2019 (NCLT Mumbai).

[12] Committee of Creditors Meeting Minutes, Jet Airways CIRP, October 2020.

[13] State Bank of India v. Jet Airways (India) Ltd., Order dated June 22, 2021 (NCLT Mumbai).

[14] Resolution Professional's Interim Reports, Jet Airways CIRP, 2019-2021.

[15] See generally, IATA Worldwide Slot Guidelines, 10th ed. (2020); cf. DGCA, Slot Allocation Circular No. 2 of 2015.

[16] Chicago Convention on International Civil Aviation, 1944, Art. 6; India's Bilateral Air Service Agreements.

[17] Cape Town Convention, 2001, Art. XI (Alternative A); Insolvency and Bankruptcy Code, 2016, s. 14.

[18] Insolvency and Bankruptcy Code, 2016, ss. 234-235; UNCITRAL Model Law on Cross-Border Insolvency, 1997.

[19] Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407 (discussing going concern maximization under IBC).

[20] Insolvency and Bankruptcy Code, 2016, ss. 5(7), 7.

[21] Insolvency and Bankruptcy Code, 2016, s. 14(1).

[22] Insolvency and Bankruptcy Code, 2016, ss. 18, 30, 31, 53.

[23] Aircraft Act, 1934; Aircraft Rules, 1937.

[24] Airports Authority of India Act, 1994; DGCA Circulars on Slot Allocation.

[25] Convention on International Interests in Mobile Equipment, 2001, Art. XI; India's Declaration adopting Alternative A with 60-day waiting period.

[26] Constitution of India, Art. 21; Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

[27] Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17.

[28] State Bank of India v. Jet Airways (India) Ltd., Interim Orders dated August-December 2019 (NCLT Mumbai) (directing preservation of slots).

[29] Council Regulation (EEC) No. 95/93 on Common Rules for Allocation of Slots at Community Airports, as amended.

[30] See M. Luttmer, 'Airport Slot Allocation,' J. Air Transport Management, 2007.

[31] State Bank of India v. Jet Airways (India) Ltd., Orders dated 2020-2021 regarding bilateral coordination (NCLT Mumbai).

[32] 49 U.S.C. ss. 41101-41113 (foreign air carrier permit requirements); European Commission, Aviation: Bilateral Air Service Agreements.

[33] State Bank of India v. Jet Airways (India) Ltd., Orders dated July-October 2019 regarding aircraft lessors (NCLT Mumbai).

[34] Vienna Convention on the Law of Treaties, 1969, Art. 27.

[35] Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17 at paras. 35-45.

[36] See R. Goode, Principles of Corporate Insolvency Law (5th ed. 2018), discussing international treaty conflicts. [37] Insolvency and Bankruptcy Code, 2016, ss. 234-235.

[38] UNCITRAL Model Law on Cross-Border Insolvency, 1997, Arts. 1-32; UNCITRAL, Practice Guide on CrossBorder Insolvency Cooperation (2009).

[39] Resolution Professional's Reports on International Creditor Claims, Jet Airways CIRP, 2019-2021.

[40] Insolvency Law Committee, Report on Cross-Border Insolvency (February 2018).

[41] Insolvency and Bankruptcy Code, 2016, s. 53.

[42] State Bank of India v. Jet Airways (India) Ltd., Interim Orders on Employee Payments (NCLT Mumbai, 2019-2020).

[43] Jalan-Kalrock Consortium Resolution Plan, approved October 2020.

[44] K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150 (commercial wisdom doctrine).

[45] State Bank of India v. Jet Airways (India) Ltd., Post-Approval Implementation Orders (NCLT Mumbai, 2021-2022).

[46] The Economic Times, 'Kingfisher Airlines: The Rise and Fall,' October 2012.

[47] In re AMR Corporation, Case No. 11-15463 (Bankr. S.D.N.Y. 2011-2013).

[48] 11 U.S.C. s. 1110 (aircraft equipment and vessels); s. 364 (DIP financing).

[49] In re Air Berlin PLC & Co. Luftverkehrs KG, Insolvency File No. 2130 IN 85/17 (Local Court BerlinCharlottenburg, 2017).

[50] See V. Finch & D. Milman, Corporate Insolvency Law: Perspectives and Principles (3rd ed. 2017).

[51] Insolvency and Bankruptcy Code, 2016, s. 3(5) (definition of 'assets').

[52] See B.S. Chimni, International Law and World Order (2nd ed. 2017), discussing treaty-domestic law conflicts.

[53] R. Mokal, Corporate Insolvency Law: Theory and Application (2005).

[54] International Insolvency Institute, Guidelines for Court-to-Court Communications in Cross-Border Cases (2012).

[55] Insolvency and Bankruptcy Code, 2016, ss. 234-235.

[56] Insolvency Law Committee, Report on Cross-Border Insolvency (February 2018), at pp. 45-67.

[57] Ministry of Corporate Affairs, Consultation Paper on Regulatory Coordination in Insolvency (2020).

[58] IATA, Airport Slots: Economic Efficiency and Transparency in Allocation (2018).

[59] Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17; Insolvency and Bankruptcy Code, 2016, Statement of Objects and Reasons.

[60] See Committee on Reforms of Commercial Laws, Draft Report on Slot Allocation (2021).

[61] Insolvency and Bankruptcy Code (Amendment) Act, 2019 (addressing timeline extensions but not implementation monitoring).

[62] 11 U.S.C. ss. 1161-1174 (railroad reorganization); ss. 741-753 (stockbroker liquidation).

[63] UNCITRAL Model Law on Cross-Border Insolvency, 1997; Insolvency Law Committee, Report on Cross-Border Insolvency (2018).

[64] European Commission, Regulation (EC) No. 95/93 on Slot Allocation, Art. 10(4) (distressed airline provisions).

[65] Cape Town Convention, Art. XXX (Declarations and Reservations); India's 2008 Declarations.