AVIATION INSOLVENCY AFTER A DECADE OF THE IBC: STRUCTURAL CONTRADICTIONS, INCREMENTAL REFORM, AND THE ROAD AHEAD

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ABSTRACT

A decade since the Insolvency and Bankruptcy Code, 2016, Indian aviation has emerged as a revealing test of the limits of a sector-neutral rescue regime. This paper argues that the IBC's rescue-oriented architecture breaks down in airline insolvency because Sections 14 and 20 assume continued access to productive assets, while airlines depend on leased aircraft, regulatory approvals, and uninterrupted operations that cannot be preserved once distress begins[1]. Through doctrinal analysis, case studies of Kingfisher Airlines, Jet Airways, and Go First, and comparative reference to the United States, the UK, and Gulf models, the paper shows that Indian airline insolvencies have repeatedly ended in operational extinction rather than rescue[2]. Jet Airways demonstrates that formal resolution can fail to produce operational revival, while Go First reveals the self-defeating tension between moratorium and continuity[3]. The paper concludes that airline distress exposes a broader limitation within generic insolvency law and that India requires a sector-sensitive framework.

[1] *Insolvency and Bankruptcy Code, 2016*, No. 31 of 2016, §§ 14, 20 (India); Kumar Saurabh Singh, Ashwij Ramaiah & Rohitesh Tak, *Tweaking IBC to Resolve Airline Insolvencies*, IBBI QUARTERLY NEWSLETTER 139 (2024); Apoorv Bisht, *Insolvency in the Indian Aviation Sector: An Analysis of Legal Framework under the Cape Town Convention*, 1(4) CANONSPHERE L. REV. 1 (2024).

[2] *In the matter of Jet Airways (India) Ltd*, CP (IB) No. 1938, 1968 & 2205 (MB) 2019 (NCLT Mumbai Bench, order dated 20 June 2019); *Go Airlines (India) Ltd*, CP (IB) No. 264/PB/2023 (NCLT New Delhi Bench, order dated 10 May 2023); Department for Transport, *Airline Insolvency Review: Final Report* (March 2019).

[3] *In the matter of Jet Airways (India) Ltd*, *supra* note 2; *Jalan Kalrock Consortium v Monitoring Committee of Jet Airways (India) Ltd*, Civil Appeal Nos. 6822–6828 of 2024 (SC, November 2024); *Go Airlines (India) Ltd*, *supra* note 2.

I. Introduction

Over the last decade, India has emerged as the third-largest air transport market in the world in terms of departing passenger traffic, with around 174 million passengers travelling from and within India in 2024[4]. Domestic traffic accounts for over three-quarters of this volume and has grown at double-digit rates, supported by low-cost carriers, government connectivity schemes and rising disposable income[5]. Forecasts suggest that domestic trips by Indian residents could rise from roughly 188 million in 2024 to more than 750 million by 2044, underscoring the scale of demand that Indian airlines are expected to serve[6].

This expansion sits uneasily alongside a pattern of repeated airline failures. Over the past two decades, numerous Indian carriers have exited the market, including high-profile collapses such as Kingfisher Airlines, Jet Airways and Go First, despite the presence of a modern, creditor-friendly insolvency framework in the form of the IBC[7]. The recurring inability to restructure airlines raises a core question: whether the legal infrastructure designed for generic corporate distress is capable of handling aviation-specific insolvency.

The IBC's tenth year in force brought a significant legislative intervention the Insolvency and Bankruptcy Code (Amendment) Act, 2026, that tightened timelines, introduced a creditor-initiated process and enabled asset-wise resolution[8]. These are genuine improvements to the general framework. They do not, however, address the structural features that make airline insolvency categorically different: the dependence on leased aircraft, the fragility of operating certificates and slot rights, and the rapid value destruction that follows grounding[9]. That gap between a faster general framework and the absence of any aviation-specific architecture within it, is the subject of this paper.

The interaction of Section 14's moratorium with Section 20's going-concern mandate therefore

[4] Airbus, *Global Market Forecast 2025–2044* (Airbus SAS, 2025), India chapter/dataset; IATA Sustainability & Economics & Oxford Economics, *Aviation in India: Sustaining and Growing a Dynamic Air Transport Market* (June 2025).
[5] IATA Sustainability & Economics & Oxford Economics, *supra* note 4; Directorate General of Civil Aviation, *Handbook on Civil Aviation Statistics 2022–23* (2023); Ministry of Civil Aviation, *National Civil Aviation Policy, 2016*; Ministry of Civil Aviation, *UDAN – Regional Connectivity Scheme* (latest ed.).
[6] Airbus, *supra* note 4.
[7] Aditya Pratap Singh, *A Decade of Aviation Insolvency in India: Lessons from Kingfisher to Go First* (2026); *In the matter of Jet Airways (India) Ltd*, *supra* note 2; *Go Airlines (India) Ltd*, *supra* note 2.
[8] *Insolvency and Bankruptcy Code (Amendment) Act, 2026*, No. 6 of 2026, *The Gazette of India*, Extraordinary, Pt. II, s. 1, No. 11 (6 April 2026).
[9] Bisht, *supra* note 1; Singh, Ramaiah & Tak, *supra* note 1.

creates more than a practical inconvenience. It creates a doctrinal contradiction. The moratorium may hold aircraft within the debtor's estate at the very moment when the airline lacks the cash flow and operational continuity needed to use them productively, while any later shift towards lessor enforcement may strip the airline of the fleet needed to preserve going-concern value at all. In this sense, airline insolvency reveals a deeper problem within the IBC: a generic rescue framework cannot easily govern a business whose asset base is leased, mobile, and continuity sensitive.

The argument proceeds in five parts. After situating aviation within India's wider economic structure, the paper examines the doctrinal tension between Sections 14 and 20 and the financing logic of leasing and Cape Town implementation. It then turns to Jet Airways and Go First as the two most important post-IBC illustrations of the contradiction in practice. A comparative section considers how other jurisdictions calibrate the relationship between aircraft finance and rescue. The paper concludes by proposing an aviation insolvency framework designed not to exempt airlines from market discipline, but to make the legal test for rescue short, real, and institutionally credible.

This contradiction is not merely doctrinally unsatisfactory. It is economically costly in a country where aviation contributes USD 53.6 billion to GDP, underpins 7.7 million jobs and supports a tourism sector that itself adds over USD 27 billion to national output.

II. Research Problem and Objectives

A. Research Problem

The core problem examined here is the mismatch between the sector-neutral structure of the IBC and the specific needs of airlines in financial distress. The IBC's moratorium is conceptually designed to protect the debtor's estate, maximize value and provide a breathing space for formulating a resolution plan, but when applied to airlines it can freeze precisely the assets, namely leased aircraft, that are indispensable for generating revenue, maintaining regulatory approvals and sustaining slot and route rights[10]. At the same time creditors, including aircraft lessors, require predictable enforcement to price leases and provide financing, particularly in a market where more than 80 per cent of the fleet may be leased[11].

[10] *Insolvency and Bankruptcy Code, 2016*, No. 31 of 2016, § 14 (India); Singh, Ramaiah & Tak, *supra* note 1.
[11] *Id.*

This tension has been partly addressed through the 2023 notification that exempts certain aircraft objects from the moratorium where the Cape Town Convention and its Aircraft Protocol apply[12]. That shift raises its own concern: whether a regime that allows swift repossession leaves any meaningful space for airline rescue. The unresolved question is whether India can design a framework that treats airline insolvency as neither a pure liquidation event nor a context in which lessor rights are indefinitely subordinated to an essentially aspirational notion of going-concern value.

B. Objectives

This paper pursues three principal objectives.

1. To analyse whether the interaction between Sections 14 and 20 of the Insolvency and Bankruptcy Code, 2016 creates structural difficulties for the rescue of distressed airlines.

2. To determine the effect of aircraft leasing, the Cape Town Convention framework and recent legislative developments on the prospects of airline restructuring in India.

3. To gauge whether comparative experience and targeted sector-specific reforms can support a more credible framework for airline rescue under the IBC.

III. Methodology

This paper adopts a doctrinal analysis of the rescue framework under the Insolvency and Bankruptcy Code, 2016, with particular focus on the interaction between Sections 14 and 20 in the context of airline insolvency[13]. The argument is tested through the experiences of Kingfisher Airlines, Jet Airways and Go First, and is supplemented by comparative reference to the United States, the United Kingdom and selected Gulf jurisdictions[14]. Economic and industry materials are used to contextualize the wider commercial consequences of airline failure and to assess the policy justification for sector-specific reform[15].

[12] Ministry of Corporate Affairs, Notification S.O. 4321(E) under s. 14(3)(a) of the *Insolvency and Bankruptcy Code, 2016*, 3 October 2023, *The Gazette of India*, Extraordinary, Pt. II, s. 3(ii).
[13] *Insolvency and Bankruptcy Code, 2016*, No. 31 of 2016, §§ 14, 20 (India).
[14] 11 U.S.C. § 1110(a); Department for Transport, *Airline Insolvency Review: Final Report* (March 2019); Emirates Group, *Annual Report 2020–21* (June 2021); Qatar Airways, *Consolidated Financial Statements, Year Ended 31 March 2020* (September 2020).
[15] Airbus, *supra* note 4; IATA Sustainability & Economics & Oxford Economics, *supra* note 4.

The analysis also takes account of the Insolvency and Bankruptcy Code (Amendment) Act, 2026, which received Presidential assent on 6 April 2026 and represents the most significant legislative intervention in the Code's history.

IV. Aviation in India: Scale, Structure and Economic Stakes

India's aviation industry has undergone rapid transformation since liberalization, with low-cost carriers, new routes and regional connectivity schemes expanding access to air travel. Passenger traffic, domestic and international, has risen from around 105 million in 2011 to approximately 174 million departing origin-destination passengers in 2024, which makes India the third-largest air transport market globally[16]. Domestic traffic represents about 78 per cent of this total and reflects the centrality of aviation to intra-national connectivity[17].

The sector's macroeconomic role is substantial. Aviation generates an estimated USD 53.6 billion contribution to India's GDP and supports around 7.7 million jobs across airlines, airports, ground services and supply chains[18]. Tourism supported by air travel adds another USD 27.1 billion and roughly 5 million jobs, with air-borne international tourists contributing around USD 29.4 billion annually through consumption of local goods and services[19]. Government and industry forecasts suggest that India will require over 2,200 new aircraft by the mid-2040s, with domestic trips forecast to rise to more than 750 million by 2044[20].

These figures imply that when a major airline collapses, the impact extends beyond shareholders and lenders to employment, regional connectivity, tourism, airport viability and ancillary industries. Airline insolvency thus presents a structural policy problem and not merely a private commercial dispute.

V. Legal Framework: The IBC and Airline Insolvency

A. Structure of the Corporate Insolvency Resolution Process

The IBC provides a unified regime for corporate insolvency, with three main routes into the corporate insolvency resolution process (CIRP): applications by financial creditors under Section 7, operational creditors under Section 9 and the corporate debtor itself under Section

[16] Airbus, *supra* note 4; IATA Sustainability & Economics & Oxford Economics, *supra* note 4.
[17] IATA Sustainability & Economics & Oxford Economics, *supra* note 4.
[18] *Id.*
[19] *Id.*
[20] Airbus, *supra* note 4.

10[21]. Once the application is admitted by the National Company Law Tribunal, the Code mandates a time-bound resolution exercise. The initial period is 180 days, extendable by 90 days, and in certain cases up to a maximum of 330 days including litigation delay. During this period the existing management is displaced and an interim resolution professional takes control[22].

The IBC (Amendment) Act, 2026 has tightened this architecture: the Adjudicating Authority must now admit or reject applications within fourteen days and approve or reject resolution plans within thirty days of receipt. A new Creditor-Initiated Insolvency Resolution Process enables specified financial creditors to commence proceedings directly upon default, with a 150-day outer limit[23]. These are significant procedural improvements, but they operate at the level of process speed rather than sectoral design.

The CIRP involves public announcement and claim collation, constitution of a committee of creditors dominated by financial creditors, appointment or confirmation of a resolution professional and preparation and voting on a resolution plan, which requires at least 66 per cent creditor approval by value and subsequent NCLT sanction[24]. The Code's design is explicitly rescue-oriented. It privileges resolution over liquidation, seeks to maximize value and vests operational control in an independent professional.

B. Section 14 Moratorium and Grounded Aircraft

Section 14(1) imposes an automatic moratorium from the insolvency commencement date. It restricts, among other things, the institution or continuation of suits and proceedings, the transfer or encumbrance of the debtor's assets and the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor[25]. For airlines this clause has historically meant that aircraft lessors, even where they retained title and had default-based repossession rights, were barred from deregistering and physically repossessing aircraft during the moratorium period[26].

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[21] *Insolvency and Bankruptcy Code, 2016*, No. 31 of 2016, §§ 7, 9, 10 (India).
[22] *Id.*, §§ 12, 16–17; *Committee of Creditors of Essar Steel India Ltd v Satish Kumar Gupta*, (2020) 8 SCC 531 (SC), ¶¶ 68–75.
[23] *Insolvency and Bankruptcy Code (Amendment) Act, 2026*, *supra* note 8, §§ 4, 7–8.
[24] *Insolvency and Bankruptcy Code, 2016*, *supra* note 21, §§ 13–14, 21, 30–31; *Swiss Ribbons Pvt Ltd v Union of India*, (2019) 4 SCC 17 (SC), ¶¶ 28–36.
[25] *Insolvency and Bankruptcy Code, 2016*, *supra* note 21, § 14(1)(a)–(d).
[26] Singh, Ramaiah & Tak, *supra* note 1, 143–145; Bisht, *supra* note 1, 8–11; *Go Airlines (India) Ltd*, *supra* note 2.

In sectors where core operating assets are owned by the debtor, the moratorium preserves the estate and may enhance the prospects of a going-concern sale. For airlines, however, the **moratorium can immobilize leased aircraft** while the company lacks the cashflow to operate them, which leads to rapid value erosion through grounding, maintenance costs and loss of pilots and crew[27]. Delayed or blocked repossession also undermines lessors' ability to mitigate losses by re-leasing aircraft elsewhere and influences the cost and availability of leasing for Indian carriers[28].

The Ministry of Corporate Affairs' notification dated 3 October 2023 partially reversed this position by clarifying that the moratorium under Section 14 does not apply to transactions, arrangements or agreements relating to aircraft, aircraft engines, airframes and helicopters to which the Cape Town Convention and Aircraft Protocol apply[29]. This carve-out is intended to reassure international lessors by bringing India closer to its treaty commitments, but it also raises questions about how an airline can be kept as a going concern if aircraft can be swiftly withdrawn once distress is declared[30].

C. Section 20 and the Going-Concern Duty

Section 20 of the IBC requires the interim resolution professional or resolution professional to make every endeavor to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern[31]. In ordinary industries this may involve continuing production, maintaining customer contracts and preserving intangible assets such as goodwill. In aviation, it requires retaining Air Operator Certificates, safety approvals, route rights, slots and key staff, all of which are highly time-sensitive and cannot be reconstituted once lost during a prolonged operational suspension[32].

The practical tension is sharper in aviation than in most other sectors. Under the stated objective of preserving and protecting the value of the debtor’s assets, Section 14 may prevent repossession of aircraft and keep them within the corporate debtor’s estate. Yet in the airline context, those very assets derive much of their value from active commercial deployment. Once

[27] Singh, Ramaiah & Tak, *supra* note 1, 145–147; *Go Airlines (India) Ltd*, *supra* note 2.
[28] Bisht, *supra* note 1, 12–15; Singh, Ramaiah & Tak, *supra* note 1, 148.
[29] Ministry of Corporate Affairs, Notification S.O. 4321(E), *supra* note 12.
[30] Bisht, *supra* note 1, 18–20; Singh, Ramaiah & Tak, *supra* note 1, 149.
[31] *Insolvency and Bankruptcy Code, 2016*, *supra* note 21, § 20(1).
[32] Singh, Ramaiah & Tak, *supra* note 1, 150–152; Bisht, *supra* note 1, 20–22; *Go Airlines (India) Ltd*, *supra* note 2.

aircraft are grounded, the moratorium does not merely create a temporary bottleneck; it can impose a functional chokehold on the airline itself. If primary flight operations are interrupted, revenue collapses, employees and crew disperse, regulatory continuity becomes fragile and the possibility of meaningful financial restructuring recedes even further[33]. In that sense, Sections 14 and 20 operate in deep tension in airline insolvency: one provision may immobilize the assets that the other assumes will remain operationally available for preservation of the corporate debtor as a going concern[34].

The contradiction therefore lies in the attempt to transplant a generic moratorium-plus-going-concern model into a sector where operating assets are predominantly leased, highly mobile and heavily regulated. The Code does not, on its own terms, provide a tailored mechanism for reconciling these competing interests in the airline context[35].

VI. Aircraft Leasing, the Cape Town Convention and Indian Implementation

A. Leasing as the Dominant Financing Technique

Indian airlines, especially low-cost carriers, rely heavily on leasing to meet their fleet requirements, since outright purchase requires significant upfront capital and weakens balance sheets[36]. Sale-and-leaseback structures are common[37]. The airline orders aircraft from manufacturers, sells them to lessors near delivery and leases them back, thereby conserving working capital and benefiting from favorable financing terms[38]. Foreign lessors dominate this market; domestic airlines are dependent on international capital and acutely sensitive to perceptions about Indian legal risk.

B. Cape Town Convention and the 2023 Moratorium Carve-Out

The Cape Town Convention on International Interests in Mobile Equipment and the Aircraft

[33] *In the matter of Jet Airways (India) Ltd*, *supra* note 2; *Go Airlines (India) Ltd*, *supra* note 2; Singh, Ramaiah & Tak, *supra* note 1, 152–154.
[34] Bisht, *supra* note 1, 22–24; Singh, Ramaiah & Tak, *supra* note 1, 154–156.
[35] *Insolvency and Bankruptcy Code, 2016*, *supra* note 21; *Insolvency and Bankruptcy Code (Amendment) Act, 2026*, *supra* note 8.
[36] Apoorv Bisht, *Insolvency in the Indian Aviation Sector: An Analysis of Legal Framework under the Cape Town Convention*, 1(4) *Canonsphere L. Rev.* 1, 8–12 (2024); Kumar Saurabh Singh, Ashwij Ramaiah & Rohitesh Tak, *Tweaking IBC to Resolve Airline Insolvencies*, IBBI QUARTERLY NEWSLETTER 139, 143–148 (2024).
[37] Bisht, *supra* note 36, at 9–11.
[38] Bisht, *supra* note 36, at 9–10; Singh, Ramaiah & Tak, *supra* note 36, at 144–145.

Protocol created a regime for registering and enforcing international interests in aircraft objects, including repossession and deregistration rights upon debtor default[39]. India has acceded to the Convention and Protocol but, for many years, lacked full implementing legislation, which led to a perception among lessors that their rights could be delayed or frustrated in insolvency proceedings[40].

The 2023 notification of the Ministry of Corporate Affairs seeks to bridge this gap by excluding qualifying aircraft-related arrangements from Section 14's moratorium, thereby allowing lessors to exercise repossession and export rights even during CIRP, so far as the Convention and Protocol apply. The Protection of Interests in Aircraft Objects Act, 2025 provides a domestic framework for implementing India's obligations under the Cape Town Convention and Aircraft Protocol. The Act strengthens legal certainty for lessors and financiers by facilitating recognition and enforcement of registered international interests in aircraft objects, thereby addressing concerns that became particularly visible during the Go First insolvency proceedings.[41]

C. Implications for Airline Restructuring

From a financing perspective, these reforms are likely to reduce risk premia in lease rentals and improve India's standing in aircraft financing markets, because lessors obtain clearer enforcement pathways. From a restructuring perspective, however, conferring essentially unqualified repossession rights raises the concern that by the time the resolution professional and committee of creditors are in a position to formulate and vote on a resolution plan, the airline may have lost the bulk of its fleet and the practical possibility of a going-concern resolution[42].

The policy question therefore is not whether India should honour Cape Town commitments. It must[43]. The question is whether the domestic insolvency framework surrounding those

[39] Convention on International Interests in Mobile Equipment, 2307 U.N.T.S. 285 (opened for signature 16 November 2001, entered into force 1 March 2006); Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, 2307 U.N.T.S. 517 (opened for signature 16 November 2001, entered into force 1 March 2006).
[40] Ministry of Corporate Affairs, Notification S.O. 4321(E), supra note 12; Press Information Bureau, *AWG places India with positive compliance outlook in CTC* (2 October 2023).
[41] *Protection of Interests in Aircraft Objects Act, 2025*, No. 21 of 2025, *The Gazette of India*, Extraordinary, Pt. II, s. 1 (2025); Press Information Bureau, *Protection of Interest in Aircraft Objects Bill, 2025* (2 April 2025).
[42] Bisht, *supra* note 1, at 18–20; Singh, Ramaiah & Tak, *supra* note 1, at 148–149.
[43] Press Information Bureau, *AWG places India with positive compliance outlook in CTC* (2 October 2023).

commitments can be calibrated to preserve a realistic rescue window without undermining creditor confidence. That calibration is where the legal architecture remains underdeveloped even after the 2026 reform cycle - the Amendment Act improved process timelines and creditor tools but introduced no aviation-specific rescue window[44].

VII. A Decade of Airline Insolvency Under the IBC: The Stocktaking

A. Pre-IBC: Kingfisher Airlines

Kingfisher Airlines' collapse, which predated the IBC, illustrates how the absence of a coherent, time-bound insolvency mechanism can lead to prolonged distress, creditor fragmentation and value destruction[45]. The airline suffered from sustained losses, high fuel costs and aggressive expansion strategies funded by significant debt, culminating in grounded aircraft, regulatory suspension and eventual winding-up proceedings under the Companies Act[46]. Although the legal framework was different, the case set a pattern. A major airline in financial distress moved not towards structured reorganization but towards piecemeal collapse[47].

B. Jet Airways: Resolution without Rescue

Jet Airways is the most significant post-IBC illustration of the limits of airline rescue under the Code because it demonstrates that formal progress within the CIRP does not necessarily preserve an airline as an operating business[48]. When insolvency proceedings began in 2019, the airline had already suspended operations and entered CIRP in a condition of acute liquidity stress[49]. What followed was not a stable rescue process, but a gradual dissipation of the very elements that made the airline worth rescuing: fleet availability, staff retention, regulatory continuity, and network viability[50]. In this sense, Jet Airways does not merely show delay. It shows that time operates differently in airline insolvency than in ordinary corporate distress.

The case also exposed the limits of the IBC's domestic design in a business structured through

[44] *Insolvency and Bankruptcy Code (Amendment) Act, 2026, supra* note 8*;* Bisht*, supra* note 1, at 21–22.
[45] Aditya Pratap Singh, *A Decade of Aviation Insolvency in India: Lessons from Kingfisher to Go First* (2026).
[46] Companies Act, 1956, No. 1 of 1956, §§ 433, 439 (India); Singh, supra note 45.
[47] *Id.*
[48] *In the matter of Jet Airways (India) Ltd,* CP (IB) No. 1938, 1968 & 2205 (MB) 2019 (NCLT Mumbai Bench, order dated 20 June 2019); Singh, *supra* note 45.
[49] *Jet Airways*, *supra* note 48.
[50] Singh, *supra* note 45.

international finance and cross-border assets. Parallel proceedings in the Netherlands revealed the absence of a settled Indian mechanism for coordinating airline insolvency across jurisdictions[51]. That fragmentation mattered because the legal and commercial position of aircraft lessors, creditors, and foreign stakeholders could not be managed within a single, predictable framework. For an airline whose critical assets and financing relationships are transnational, the absence of effective cross-border coordination is not a side issue. It directly undermines the possibility of orderly rescue.

More significantly, Jet Airways demonstrates that approval of a resolution plan is not the same thing as preservation of going-concern value[52]. Even after a plan was approved, implementation disputes and prolonged litigation meant that the question of revival remained unresolved long after the airline had ceased to function as a meaningful carrier[53]. By then, the practical conditions necessary for rescue had eroded. Aircraft had been lost, market position had weakened, employees had dispersed, and regulatory permissions had become fragile[54]. The case therefore illustrates a central point of this paper: the IBC's rescue architecture may succeed formally while failing commercially and operationally.

The legal lesson of Jet Airways is therefore not simply that the CIRP took too long. It is that the Code contains no mechanism for preserving the operating conditions that make airline rescue plausible while insolvency proceedings unfold. Where enterprise value depends on continuity rather than merely ownership, a process that culminates in plan approval after prolonged asset erosion cannot be described as a meaningful rescue. Jet Airways thus stands as proof that, in the airline context, the IBC can generate resolution without revival.

C. Go First: Moratorium without Continuity

If Jet Airways illustrates the failure of rescue through delay and implementation breakdown, Go First presents the Section 14 and Section 20 contradiction in its clearest form[55]. The airline's insolvency filing brought the statutory moratorium into operation at the precise moment when

[51] *Jet Airways (India) Ltd (Offshore Regional Hub, through its Administrator Mr. Rocco Mulder) v State Bank of India & Anr, Company Appeal (AT) (Insolvency) No 707 of 2019 (NCLAT New Delhi, 26 September 2019).*
[52] *Jalan Kalrock Consortium v Monitoring Committee of Jet Airways (India) Ltd,* Civil Appeal Nos. 6822–6828 of 2024 (SC, November 2024).
[53] *Id.*
[54] Singh, supra note 45; Singh, Ramaiah & Tak, supra note 1, at 150–154.
[55] *Go Airlines (India) Ltd,* CP (IB) No. 264/PB/2023 (NCLT New Delhi Bench, order dated 10 May 2023).

its ability to continue business depended on retaining access to leased aircraft[56]. That is the doctrinal conflict at the heart of this paper. Section 14 seeks to preserve the debtor's estate by restraining recovery actions, while Section 20 expects the resolution professional to maintain the corporate debtor as a going concern. In an airline, however, that expectation is untenable if the fleet cannot be used, financed, or retained on commercially workable terms[57].

The lessor disputes in Go First exposed this contradiction in real time. Lessors sought repossession and deregistration of aircraft, while the moratorium initially operated to prevent immediate enforcement[58]. Yet the moratorium did not preserve a viable airline. It preserved possession in circumstances where operational continuity was already deteriorating[59]. The result was not productive breathing space but a form of legal standstill in which the airline could neither function normally nor be restructured credibly. In that setting, the moratorium did not protect going-concern value; it accelerated its erosion.

Go First is also significant because it triggered a broader legal and policy response. The 2023 notification excluding qualifying aircraft objects from Section 14 is best understood against the background of the controversy generated by this case[60]. That response, however, solved only one side of the problem. It strengthened the position of lessors and aligned India more closely with Cape Town expectations, but it did not create any structured rescue period during which an airline could retain aircraft subject to strict payment, maintenance, and compliance obligations[61]. The legal system thus moved from one imbalance to another: from an overbroad moratorium that immobilized enforcement to a framework that risks permitting repossession before any meaningful rescue test can occur.

Go First therefore confirms that the contradiction identified in this paper is not conceptual or speculative. An airline cannot be treated as a going concern merely because the law suspends creditor action[62]. Where continued operation depends on leased aircraft, regulatory continuity, and immediate commercial viability, a moratorium that freezes legal rights without sustaining operational capacity becomes self-defeating. Go First is the clearest Indian example of a rescue

[56] *Go Airlines*, *supra* note 55.
[57] *Insolvency and Bankruptcy Code, 2016, No. 31 of 2016,* §§ 14, 20 (India).
[58] *Go Airlines*, *supra* note 55.
[59] Bisht, *supra note* 1, at 18–21.
[60] Ministry of Corporate Affairs, Notification S.O. 4321(E), supra note 12; Press Information Bureau, *AWG places India with positive compliance outlook in CTC* (2 October 2023).
[61] Bisht, supra note 1, at 18–21.
[62] *Go Airlines, supra* note 55.

framework undermining the very continuity it purports to preserve.

VIII. Why Aviation is Exceptionally Different

A. Structural Distinctiveness of Airline Enterprises

A possible objection to the argument advanced here is that airlines are not the only businesses whose value depends on continuity, regulation, or leased assets. Shipping companies rely on mobile, finance-heavy fleets. Telecommunications operators depend on licences and spectrum. Infrastructure enterprises often require ongoing regulatory approval and uninterrupted service delivery. On this view, airline insolvency may appear to be only one instance of a broader problem in sectorally complex businesses rather than a category warranting distinct legal attention.

That objection is important, but it is ultimately unpersuasive. Airlines differ from these sectors not merely in degree, but in legal structure. First, the principal productive assets of an airline are predominantly leased, mobile, internationally financed, and frequently subject to foreign law and treaty-based enforcement expectations[63]. Secondly, the value of the business depends not only on asset ownership or possession, but on uninterrupted integration between aircraft, crew, slots, route permissions, maintenance compliance, and operating certificates[64]. Thirdly, the collapse of continuity in an airline produces immediate and often irreversible deterioration in enterprise value. Once aircraft are grounded and operations suspended, the regulatory and commercial ecosystem that sustains the airline may unravel far more quickly than in sectors where assets can remain idle without extinguishing the business itself[65].

The distinctive feature of airline insolvency, therefore, is not simply that airlines are important or capital intensive. It is that the legal assumptions underlying rescue-oriented insolvency law fit them poorly[66]. A generic moratorium presupposes that preserving possession helps preserve value. A generic going-concern duty presupposes that assets needed for rescue will remain functionally available during the process. In the airline context, both assumptions are unstable. That is why aviation should be treated not as a sympathetic exception, but as a category that

[63] Bisht, supra note 1, at 8–18.
[64] Bisht, supra note 1, at 20–22.
[65] Jet Airways, supra note 52; Go Airlines, supra note 55; Bisht, supra note 1, at 20–22.
[66] Bisht, supra note 1, at 20–22.

reveals a genuine structural limitation in the design of rescue law.

B. The Pattern and Its Meaning

Ten years of the IBC have produced, in the aviation sector, a consistent pattern: structural distress has moved towards extinction, not rescue[67]. The Indian experience does not justify the claim that every airline entering insolvency proceedings will necessarily end in extinction. The number of major airline insolvency cases remains relatively limited, and the outcome of any particular case will always depend on contingent variables such as the timing of intervention, the availability of interim finance, creditor coordination, regulatory flexibility and the existence of a commercially viable resolution applicant. It would therefore be analytically imprecise to argue that CIRP makes airline failure legally inevitable.

At the same time, the available record is sufficiently consistent to support a narrower but significant conclusion. Across the most prominent episodes of airline distress in India, whether in the pre-IBC collapse of Kingfisher Airlines or the post-IBC experiences of Jet Airways and Go First, the trajectory has tended toward grounding, fleet erosion, breakdown of operational continuity and eventual market exit rather than successful restructuring as a going concern[68]. What emerges, therefore, is not a rule of inevitability, but a recurring practical pattern.

That distinction is important to the present argument. The point of this paper is not that the IBC formally mandates airline extinction, but that its existing design has repeatedly failed to produce credible rescue outcomes in the aviation sector[69]. In this sense, the problem is structural rather than deterministic. A framework may fall short of making failure inevitable and yet still be systematically poorly suited to the kind of enterprise it is meant to rescue. The repeated inability of Indian airline insolvency proceedings to preserve substantial operations is therefore best understood as evidence of institutional mismatch rather than mere commercial coincidence[70].

Seen in this light, the Indian pattern has broader analytical significance. It suggests that the difficulties observed in airline CIRP are not reducible to the peculiarities of individual carriers alone, such as weak management, adverse fuel prices or market competition. Those factors

[67] Singh, supra note 45; Jet Airways, supra note 52; Go Airlines, supra note 55.
[68] *Id.*
[69] Singh, supra note 45.
[70] *Id.*

plainly matter, but they do not fully explain why the legal process has struggled to preserve going-concern value once insolvency begins. The recurring movement from distress to operational extinction indicates that the existing framework does not adequately account for the distinctive features of airlines as continuity-dependent, lease-heavy and regulation-sensitive businesses[71].

The absence of inevitability does not weaken the case for reform. On the contrary, it strengthens it. If airline extinction were truly unavoidable, legal reform would offer little promise. But if the present pattern reflects structural weakness rather than unavoidable fate, then different legal tools, better calibrated to the realities of aviation, may plausibly produce different outcomes. It is precisely because the pattern is recurring without being absolute that it warrants doctrinal and policy intervention.

IX. Comparative Approaches

A. United States: Chapter 11 and Section 1110

The United States offers the most relevant comparative example because it does not abandon either aircraft financier protection or the possibility of airline reorganization[72]. Under Chapter 11, the debtor remains in possession and continues operating while negotiating with creditors[73]. Within that general rescue framework, Section 1110 creates a specific regime for aircraft financiers[74]. Its importance lies in its recognition that airlines require a calibrated rule for aircraft assets rather than mere inclusion within the ordinary automatic stay[75].

Section 1110 is designed around a structured choice. Within a limited statutory period, the debtor must either cure defaults and agree to perform future obligations or surrender the aircraft to the financier. The provision therefore does not treat aircraft as ordinary assets that can simply remain frozen within the estate while the insolvency process unfolds. Nor does it give financiers an unqualified right of immediate disruption without any opportunity for rescue. Instead, it creates a short and disciplined window within which the debtor must demonstrate that continued retention of the aircraft is commercially supportable.

[71] Bisht, supra note 1, at 20–22.
[72] 11 U.S.C. § 1110(a); *In re Delta Air Lines, Inc.*, 370 B.R. 537 (Bankruptcy. S.D.N.Y. 2007).
[73] 11 U.S.C. §§ 1107–1108.
[74] 11 U.S.C. § 1110(a).
[75] 11 U.S.C. § 362(a); 11 U.S.C. § 1110(a).

The virtue of this model is institutional rather than doctrinal alone. It aligns incentives. Financiers obtain certainty that their enforcement rights will not be indefinitely suspended[76]. The debtor, if it wishes to retain the fleet, must make an early and credible showing of performance[77]. In airline insolvency, that matters because the value of the business depends on maintaining operations during the reorganization period. Section 1110 therefore works not because it is lenient to airlines, but because it replaces open-ended uncertainty with a time-bound bargain between rescue and enforcement[78].

The United States model is not a perfect template for India. Its debtor-in-possession structure, financing ecosystem, and bankruptcy culture differ materially from the Indian framework. The lesson to be drawn is narrower. India need not copy Chapter 11 wholesale. What it can borrow is the logic of a short, conditional aircraft-retention window tied to concrete obligations and a certain enforcement consequence[79]. That approach is superior to both extremes that have shaped Indian practice: a moratorium broad enough to immobilize rights without preserving operations, and a carve-out broad enough to permit repossession before any realistic rescue attempt has been tested[80].

In this respect, the significance of Section 1110 lies less in its foreign pedigree than in the design principle it embodies. Airline rescue is credible only when the law gives both debtor and financier a predictable framework within which operational continuity can be tested quickly. India, which lacks any equivalent mechanism, leaves the same tension between aircraft enforcement and going-concern preservation unresolved[81].

B. United Kingdom: Airline Insolvency Review and Passenger Protection

The United Kingdom's Airline Insolvency Review, which was initiated after the collapse of Monarch Airlines, recognized that airline failure raises distinct public-interest concerns, particularly stranded passengers and repatriation logistics[82]. The Review proposed the creation of a Special Administration Regime for airlines, under which an insolvent airline could continue limited operations under special supervision in order to facilitate orderly wind-down

[76] *In re Continental Airlines, Inc.*, 932 F.2d 282 (3d Cir. 1991).
[77] 11 U.S.C. § 1110(a); *In re Delta Air Lines, Inc.*, *supra* note 72.
[78] *In re Continental Airlines, Inc.*, 932 *F.2d 282 (3d Cir. 1991).*
[79] *In re Delta Air Lines, Inc.*, *supra* note 72; 11 U.S.C. § 1110(a).
[80] Bisht, supra note 1, at 20–22.
[81] *Id.*
[82] Department for Transport, *Airline Insolvency Review: Final Report* (March 2019).

and passenger protection, supported by a flight protection scheme[83].

Although full legislative implementation has been slow, the United Kingdom approach is instructive. It treats airline insolvency as a context where insolvency law, consumer protection and aviation regulation must be jointly calibrated, rather than relying exclusively on the generic corporate insolvency regime[84].

C. Gulf Model: State Support for National Carriers

In several Gulf jurisdictions, leading airlines such as Emirates and Qatar Airways are state-owned or closely state-linked and have received direct financial support from governments during periods of severe distress, particularly during the COVID-19 pandemic[85]. Dubai committed to providing full state backing for Emirates and injected funding when global travel collapsed, while the Qatari government recapitalized Qatar Airways after losses widened[86]. Earlier, Gulf Air also obtained state support to sustain restructuring.

This model does not rely primarily on insolvency law for airline survival. Instead, it treats the flag carrier as a strategic asset whose continuity justifies sovereign support, at least in crisis conditions. While such an approach raises questions of competition, subsidy and fiscal prudence, it illustrates a radically different baseline. Major carriers are not expected to be dealt with as ordinary insolvent companies.

For India, which has moved Air India into private ownership, a pure Gulf-style state-support model is neither realistic nor normatively desirable in ordinary times. However, the contrast highlights the need for Indian law to recognize that airline failure implicates public interests, including connectivity, employment, tourism and strategic capacity, in a way that generic corporate insolvency frameworks do not capture.

X. Economic Consequences of Airline Extinction

Economic data underscore that airline insolvency is not an isolated balance-sheet event. As noted above, aviation contributes about USD 53.6 billion to India's GDP and supports 7.7

[83] Department for Transport, *supra* note 82.
[84] Civil Aviation Act 1982 (UK); Department for Transport, *Airline Insolvency Review: Final Report* (2019).
[85] Emirates Group, *Annual Report 2020–21* (June 2021); Qatar Airways, *Consolidated Financial Statements, Year Ended 31 March 2020* (September 2020).
[86] Emirates Group, *supra* note 85; Qatar Airways, *supra* note 85.

million jobs, while air-related tourism adds another USD 27.1 billion and 5 million jobs[87]. Long-term demand forecasts suggest that domestic trips by Indian residents could more than quadruple between 2024 and 2044, which will require sustained expansion of fleet, infrastructure and human capital[88].

When a major airline fails, immediate consequences include job losses, stranded passengers, unpaid vendor dues and losses for financial creditors and lessors. Longer-term effects include reduced competition on key routes, potential fare increases, weakening of secondary airports and loss of network connectivity for tier-II and tier-III cities. Repeated failures can also elevate risk perceptions among aircraft lessors and financiers, raising the cost of capital for Indian airlines and reducing their ability to invest in newer, more efficient fleets[89].

In macroeconomic terms, an insolvency framework that systematically produces liquidation rather than restructuring in an expanding aviation market risks amplifying cyclical shocks and eroding the sector's contribution to growth and employment[90]. In other words, the stakes of getting aviation insolvency right are not confined to corporate creditors. They extend to India's growth trajectory and integration into global trade and tourism networks.

XI. A Proposed Aviation Insolvency Framework

If the first decade of the IBC has shown that a generic rescue model performs poorly in airline insolvency, the next step is not to exempt airlines from insolvency law but to redesign the rescue test for the conditions under which airlines operate[91]. The reforms proposed here are therefore narrow and structural. They seek to reconcile lessor rights, operational continuity, and public-interest considerations without displacing the creditor discipline that remains central to the Code.

The core reform should be a statutory aircraft-retention window available immediately upon commencement of airline insolvency proceedings[92]. During this period, qualifying aircraft would remain with the airline for a short and non-extendable duration, subject to strict statutory

[87] IATA Sustainability & Economics & Oxford Economics, *Aviation in India: Sustaining and Growing a Dynamic Air Transport Market* (June 2025).
[88] Airbus, *Global Market Forecast 2025–2044* (Airbus SAS, 2025).
[89] Bisht, supra note 1, at 12–18; Singh, Ramaiah & Tak, supra note 1, at 145–149.
[90] IATA Sustainability & Economics & Oxford Economics, *supra* note 87; Airbus, *supra* note 88.
[91] Singh, *supra* note 45; *Jet Airways*, *supra* note 52; *Go Airlines*, *supra* note 55.
[92] 11 U.S.C. § 1110(a).

conditions. The purpose of the window would not be to guarantee rescue, but to determine quickly whether rescue is commercially possible before the fleet is irretrievably lost. A period of approximately sixty days would be long enough to test viability but short enough to preserve creditor confidence and treaty compatibility[93].

Retention during this period should be conditional rather than automatic. The airline, acting through the resolution professional, should be required to maintain insurance, pay current usage and maintenance obligations, preserve airworthiness, cooperate with lessors, and demonstrate operational viability through a regulator-approved continuity plan[94]. Failure to comply with any of these conditions should terminate the retention period and revive immediate enforcement rights[95]. This structure would ensure that the fleet is retained only where retention serves a genuine rescue effort rather than a merely formal invocation of insolvency protection.

Any aviation-specific framework must remain consistent with India's Cape Town obligations and the legitimate expectations of aircraft financiers[96]. Lessor rights should therefore be protected through mandatory payment of post-commencement obligations, fast-track judicial confirmation of enforcement upon default, and clear priority treatment for liabilities arising during the retention period[97]. The point is not to subordinate lessors to an indefinite moratorium, but to replace uncertainty with a rule-bound framework in which delay is short, obligations are current, and enforcement is predictable.

Airline insolvency cannot be managed through creditor and tribunal processes alone. The framework should therefore impose a statutory coordination duty between the resolution professional and the Directorate General of Civil Aviation. That duty should include immediate reporting on the status of the Air Operator Certificate, slots, route permissions, maintenance compliance, and crew readiness[98]. A rescue process in which regulatory permissions silently lapse while financial negotiations continue is not a rescue process at all. Regulatory continuity

[93] 11 U.S.C. § 1110(a); Department for Transport, *Airline Insolvency Review: Final Report* (March 2019).
[94] Department for Transport, supra note 82; Bisht, supra note 1, at 20–22.
[95] 11 U.S.C. § 1110(a).
[96] Convention on International Interests in Mobile Equipment, 2307 U.N.T.S. 285 (opened for signature 16 November 2001, entered into force 1 March 2006); Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, 2307 U.N.T.S. 517 (opened for signature 16 November 2001, entered into force 1 March 2006); Ministry of Corporate Affairs, Notification S.O. 4321(E), *supra* note 12.
[97] 11 U.S.C. § 1110(a); Ministry of Corporate Affairs, Notification S.O. 4321(E), *supra* note 12.
[98] Bisht, supra note 1, at 20–22.

must be treated as part of insolvency design rather than an external complication.

Ordinary CIRP timelines are poorly suited to airlines because delay itself destroys the subject matter of rescue[99]. A specialised airline track should therefore require compressed timelines for admission, aircraft-retention determinations, interim finance decisions, and plan evaluation[100]. The tribunal should be empowered to appoint an aviation-experienced administrator or adviser to support the resolution professional where necessary, particularly on fleet, slot, and safety issues[101]. The object of this model is not to create a privilege for airlines, but to ensure that the legal system can test rescue before continuity disappears.

This proposed framework is intentionally modest. It does not guarantee survival, displace creditor control, or socialise private losses. It simply recognises that if airline rescue is to be tested meaningfully, the law must preserve the operating conditions on which rescue depends for a short and disciplined period. Without such a mechanism, Indian airline insolvency will continue to oscillate between overbroad moratorium and premature repossession, neither of which offers a credible pathway to rescue[102].

XII. Conclusion

This paper has sought to contribute to the stocktaking exercise that IBC's first decade invites. The stocktaking reveals a structural failure: across every major airline insolvency the Code has encountered, the outcome has been market exit rather than rescue[103]. The reform record is thin, the 2023 MCA notification carving aircraft objects out of the moratorium is the principal aviation-specific intervention, and while it honors India's Cape Town obligations, it compounds rather than resolves the going-concern problem by accelerating fleet attrition during CIRP[104]. The road ahead requires more deliberate design: a sectoral framework that reconciles lessor rights, rescue windows and public-interest protection.

Airline insolvency has been used in this paper not simply as a specialised subject, but as a lens through which to examine a deeper limitation in rescue-oriented insolvency law. The Indian

[99] Jet Airways, supra note 52; Go Airlines, supra note 55.
[100] *Insolvency and Bankruptcy Code (Amendment) Act, 2026*, *supra* note 8; Department for Transport, *supra* note 82.
[101] Department for Transport, *supra* note 82.
[102] Singh, *supra* note 45; Bisht, *supra* note 1, at 20-22.
[103] Singh, *supra* note 45; *Jet Airways*, *supra* note 52; *Go Airlines*, *supra* note 55.
[104] Ministry of Corporate Affairs, Notification S.O. 4321(E), *supra* note 12; Bisht, *supra* note 1, at 20-22.

experience shows that where enterprise value depends on continued access to leased, mobile, and regulation-sensitive productive assets, the ordinary moratorium-plus-going-concern model may fail to preserve the very conditions required for rescue[105]. Jet Airways and Go First demonstrate that this is not a theoretical concern[106]. One reveals the emptiness of rescue after prolonged erosion and implementation delay; the other reveals the self-defeating character of a moratorium that preserves possession without sustaining continuity[107].

The broader lesson is that insolvency design cannot be indifferent to the legal character of the assets on which an enterprise depends. Where those assets are internationally financed, quickly movable, and inseparable from continuity-sensitive regulation, a generic rescue framework may become structurally unstable. For India, the answer is not to abandon airline rescue or to privilege lessor enforcement absolutely. It is to create a short, conditional, and institutionally credible framework within which rescue can be tested before the commercial basis of rescue disappears[108].

The real contribution of airline insolvency to IBC scholarship, therefore, is not merely that airlines are special. It is that airlines expose the limits of a rescue architecture built on assumptions that do not hold for all businesses. Until the law accounts for that fact, the promise of rescue in Indian airline insolvency risks remaining stronger in form than in practice.

[105] Bisht, *supra note* 1, at 20–22.
[106] *Jet Airways*, *supra* note 52; *Go Airlines*, *supra* note 55.
[107] *Id.*
[108] 11 U.S.C. § 1110(a); Department for Transport, *supra* note 82.