# STOPPING MISUSE AT INCEPTION: INSERTING A PRE-ADMISSION OBJECTION FRAMEWORK UNDER SECTION 10 OF THE IBC TO ENHANCE CIRP TRANSPARENCY AND TREATY COMPLIANCE

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## ABSTRACT

The insolvency filing by Go First grounded 56 planes overnight. The moratorium meant that creditors couldn't take back their aircraft, thus breaching India's treaty commitments. While the MCA Notification and Aircraft Objects Bill, 2025, tried to correct this after Go First's admission, the reputational damage was done. Moreover, neither addressed the procedural gap that allowed the moratorium to be triggered in the first place, as Section 10 allows debtors to file without any pre-admission objection mechanism.

This Article argues for the legislative insertion of Clause (3-A) into Section 10, drafted by the author, as a pre-admission filter that codifies the operational creditors' right to raise limited objections against abuse. It complements recent IBBI reforms that enhance transparency post-admission, by probing into the scathing point of entry in insolvency. It develops a triple analogy of Swiss Ribbons v. Union of India, wherein, its holding, justifies filters on operational creditors (as Single Analogy); applied again, allows creditor objections against debtor misuse (as Double Analogy); reversed, it protects debtors from frivolous objections (as Triple Analogy). This hypothesis is buttressed through Hohfeldian correlatives and closes the Go First loophole. High-value assets even covered under future treaties are safeguarded due to its universal applicability.

## I. Introduction

*"Lessors and international aircraft owners see India as a risky jurisdiction for aircraft leasing."[1] — SMBC Aviation Capital*

The international aviation community labelled India in response to the insolvency of *Go Airlines (India) Ltd.* ('*Go First'*), wherein a Section 10 filing was admitted under the Insolvency and Bankruptcy Code, 2016 ('**the IBC**'). It led to the grounding of 56 aircraft overnight and blocking international creditors from enforcing their rights under the Cape Town Convention ('**Convention**').[2] Their strategy was allegedly aimed at exploiting the automatic moratorium, post-admission, to prevent repossession and protect the airline from the financial consequences of its defaults.[3]

### *A. How does section 10 allow the grounding of aircraft?*

The Ministry of Corporate Affairs issued a reactive Notification in October 2023 ('**Notification**'), owing to India's reputation damage and carves out aircraft from the moratorium's ambit.[4] Later on, in *Accipiter Investments Aircraft 2 Ltd. v. Union of India* ('**Accipiter'**), the Delhi High Court ('**DHC**') held that insolvency proceedings cannot overrule treaty obligations.[5] Still, both interventions were post-admission, after *Go First* had triggered the moratorium. The entire fallout could've been avoided if there were a mechanism to object to the strategic invocation of Section 10 before it was admitted.

In *Go First*, the corporate debtor was able to utilise Section 10 strategically as it:

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[1] *Aircraft Lessors Call India a Risky Jurisdiction Following Go First NCLT Ruling*, BUS. WORLD (May 16, 2023), https://www.businessworld.in/article/aircraft-lessors-call-india-a-risky-jurisdiction-following-go-first-nclt-ruling-476355/ (last visited July 22, 2025).

[2] *In re* Go Airlines (India) Ltd., (2023) 241 Comp Cas 196 ("Go First"); Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, Nov. 16, 2001, 2367 U.N.T.S. 521.

[3] Himesh Thakur, Fazl Askari & Vaibhav Mishra, *Go Air Insolvency in India: A Comprehensive Examination*, LEXOLOGY (Feb. 24, 2025), https://www.lexology.com/library/detail.aspx?g=35a6c48d-4aed-449f-a4fc-c62d116115f8 (last visited July 20, 2025).

[4] Ministry of Corporate Affairs, Notification Regarding Non-Applicability of IBC § 14(1) to Aircraft and Related Equipment, S.O. 4321(E) (Notified on Oct. 3, 2023), at 2, https://ca2013.com/notifications/mca-notification-dated-03-10-2023-regarding-applicability-section-141-ib-code-2016/ (last visited July 7, 2025) ("MCA Notification"); *see* Aparna Ravi & Neeti Shikha, *The Go First Insolvency Conundrum: A Set-Up for Failure*, S'PORE GLOBAL RESTRUCTURING INITIATIVE BLOG (June 9, 2023), https://ccla.smu.edu.sg/sgri/blog/2023/06/09/go-first-insolvency-conundrum-set-failure (last visited July 20, 2025).

[5] Accipiter Investments Aircraft 2 Ltd. v. Union of India, 2024 SCC OnLine Del 3125 ("Accipiter Investments").

1. Allows a debtor to start its own Corporate Insolvency Resolution Process (‘**CIRP**’);[6]

2. Does not require a notice to the creditors, unlike Sections 7 and 9;[7]

3. Objections are only allowed on limited grounds by the operational creditor. These include: no debt in law or fact, and ineligibility under Section 11.[8]

Once the application is admitted by the tribunal, an automatic moratorium stops all suits and recoveries.[9] Section 10 can also lead to similar misuse, despite its aim to preserve the companies valuations and promote quick resolution processes.[10] The law recognises the above risk and penalises malicious or fraudulent initiation under Section 65 of the IBC, both pre- and post-admission.[11] Even if the Protection of Interests in Aircraft Objects Bill, 2025 (‘**Aircraft Bill’**), were binding, it couldn’t have prevented *Go First* from filing first and then triggering the moratorium. As a result, the creditors would’ve been left with only post-admission remedies.[12]

### *B. What makes a pre-admission filter so important?*

By March 2025, 74.6% of Section 10 CIRPs have been liquidated, with creditors getting back only 18.1%.[13] These took, on average, 577, which is one of the longest processes in the IBC.[14]

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[6] Insolvency and Bankruptcy Code, 2016, §10.
[7] Go First, ¶ 30; *see* Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, r. 7.
[8] Unigreen Global (P) Ltd. v. Punjab National Bank, (2018) 1 Comp Cas-OL 284, ¶¶ 21-22 (“Unigreen Global”); *accord* Go First, ¶ 24; Pondicherry Extraction Industries P. Ltd. v. Bank of Baroda, (2021) 13 Comp Cas-OL 410, ¶ 11; *In re* Homigo Realty Pvt. Ltd., 2023 SCC OnLine NCLT 12291, ¶ 9; *see also* Ritu, *NCLT Admits Go Air Insolvency Plea*, SCC ONLINE BLOG (May 10, 2023), https://www.scconline.com/blog/post/2023/05/10/nclt-admits-crip-application-§-10-ibc-scc-blog-legal-news-research/ (last visited June 27, 2025).
[9] Insolvency and Bankruptcy Code, 2016, §14.
[10] Gemini Innovations (P) Ltd. vs SBI, 2018 SCC OnLine NCLAT 920; *accord* Abhinav Mishra, *The Blanket of Barring Suits: Moratorium Under Section 14 of IBC*, IBC LAWS BLOG (May 23, 2024), https://ibclaw.blog/the-blanket-of-barring-suits-moratorium-under-section-14-of-ibc-by-abhinav-mishra/ (last visited June 27, 2025); Sanjana Suresh & Pranit Nangia, *The Limits to a Moratorium: The Interplay Between the Indian Insolvency and Bankruptcy Code and Arbitration Law*, OXFORD BUS. L. BLOG (Feb. 17, 2023), https://blogs.law.ox.ac.uk/oblb/blog-post/2023/02/limits-moratorium-interplay-between-indian-insolvency-and-bankruptcy-code (last visited June 27, 2025).
[11] Go First, ¶ 43; *See* Ridhima Verma, *The Road Often Taken—An In-Depth Analysis of Section 65 of Insolvency and Bankruptcy Code, 2016*, SCC ONLINE (Mar. 20, 2023), https://www.scconline.com/blog/post/2023/03/20/the-road-often-taken-an-in-depth-analysis-of-section-65-of-insolvency-and-bankruptcy-code-2016/ (last visited July 19, 2025); *see also* Insolvency and Bankruptcy Code, 2016, §65.
[12] The Protection of Interests in Aircraft Objects Bill, 2025, Bill No. IX of 2025, §§ 3, 9(1) (Feb. 10, 2025) (“Aircraft Bill”).
[13] Insolvency & Bankruptcy Board of India, *Insolvency and Bankruptcy News*, Vol. 34 (Jan.–Mar. 2025), at 11 tbl. 2, https://ibbi.gov.in/uploads/whatsnew/912e97d4d9f96651386541fb7059203b.pdf (last visited July 3, 2025).
[14] *Id.*

These filings have dropped to only 4.9% in early 2025.[15] Yet, 30,310 petitions worth ₹13.78 lakh crore have been quietly settled pre-admission, to escape Section 65.[16] This points not to disuse, but to cautious misuse. A structured pre-admission filter will bring lawful clarity to what is now informal hesitation.

*Go First* affects both: a) **Operational Creditors,** as they suffer due to a lack of a codified pre-admission forum and a delayed Section 65 relief; b) **Corporate Debtors** face increasing scrutiny by the court, leading to erosion of market confidence in Section 10.

The apex court in *Swiss Ribbons (P) Ltd. v. Union of India*[17] (‘*Swiss Ribbons’)* relied upon Article 14, holding that when there exist analogous risks, they require equivalent safeguards.[18] Moreover, debtors are also vulnerable to operational claims as they are recurring and more prone to factual disputes.[19] In both situations, the Court justified adding additional safeguards to prevent such abuse. Thus, by parity of reasoning, where Section 10 allows unilateral filings, a risk of bad-faith filings arises.

This article argues for the insertion of Clause (3-A) into Section 10 of the IBC, which would reclaim the lost transparency of the CIRP at the scathing entry point. This would allow the operational creditor to object to Section 10 filings and prevent bad-faith filings. In case the law decides to provide such a right to object to the operational creditors. It must also shield the debtors with equivalent safeguards against vexatious objections.

## II. The Requirement for a Pre-Admission Objection Framework

Before delving into Clause (3-A), it’s important to understand why the need for reform becomes unquestionable as Section 65’s invocation is post-admission, and how the apex court’s logic in *Swiss Ribbons* was never fully incorporated.

### *A. Why section 65 only helps after the case is admitted:*

*Go First* highlighted that Section 65 can be invoked both pre- and post-admission.[20] This

[15] *Id*. at 12 tbl.3 (noting that corporate debtors filed only 10 CIRPs in Jan.–Mar. 2025, comprising just 4.9% of the total filings that year).
[16] *Id.* at 2 (Behavioural change and credit discipline).
[17] Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17 (“Swiss Ribbons”).
[18] INDIA CONST. art. 14.
[19] Swiss Ribbons, ¶ 50; *See* C. Scott Pryor & Risham Garg, Differential Treatment Among Creditors Under India’s Insolvency and Bankruptcy Code, 45 CAMPB. L. REV. 123, 140 (2023).
[20] Go First, ¶ 43.

reasoning has been explained by the Supreme Court,[21] where it has upheld that "*initiation*" of CIRP is not a formal admission. Thereby, justifying that it can be invoked before admission.[22]

It's also important to note that easy admission criterion makes Section 10 extremely accessible for voluntary filings.[23] So, tribunals almost always admit applications without much scrutiny. However, sometimes, despite this simple admission criterion, some creditors have objected before admission as well. A collective reading of *Monotrone Leasing (P) Ltd. v. P.M. Cold Storage*[24] and *Go Airlines*[25] shows that even if creditors appear pre-admission, the tribunal will not deny admission unless they identify clear documentary proof of fraud. Three consequences follow. First, the moratorium is imposed instantly upon admission. Second, creditors in a summary forum must still provide strong proof. Third, tribunals prefer admission first for procedural speed, and then consider Section 65 later.

Recently, the IBBI has shown a post-admission commitment to transparency and not pre-admission due diligence. The IBBI (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2025, now require resolution professionals to update the information memorandum throughout CIRP,[26] including fraudulent instances.[27]

***B. Why swiss ribbons requires creditor and debtor equity***

While Section 65 applies mostly after admission (as discussed above), it doesn't prevent strategic misuse as identified earlier. The apex court in *Swiss Ribbons* anticipates exactly this problem. It upheld the constitutional validity of the different admission criteria under Sections 7, 8, and 9 of the IBC.[28] It adduced Article 14's twin tests: (i) 'intelligible differentia' between operational and financial creditors and (ii) 'rational nexus' to the object of the law.[29] The court allows a stricter process for operational creditors as certain claims require stronger safeguards than others. Why? Because operational claims are more factual, easier to misuse and can be

[21] Ramesh Kymal v. Siemens Gamesa Renewable Power Pvt. Ltd., (2021) 3 SCC 224, ¶¶ 13, 33; *see* Ashmeet Singh Bhatia v. Sundrm Consultants Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 557 of 2021, ¶ 17 (NCLAT Mar. 13, 2023), https://ibbi.gov.in/uploads/order/8e8c2e8292b68333a52873bec2711c50.pdf (last visited July 19, 2025).
[22] Ashmeet Singh Bhatia, ¶ 14.
[23] *See* Unigreen Global, ¶¶ 21-22; *accord* Go First, ¶ 24.
[24] Monotrone Leasing (P) Ltd. v. P.M. Cold, (2021) 13 Comp Cas-OL 578, ¶ 28.
[25] Go First, ¶ 43.
[26] Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2025, Reg. 36(1).
[27] *Id*. Reg. 36(2)(ha).
[28] Swiss Ribbons, ¶ 37.
[29] Swiss Ribbons, ¶ 51

invoked to prematurely initiate CIRP.[30] Moreover, the IBC is an economic legislation and the Parliament can fix gaps if abuse or inequity exists, justifying the proposal in this article.[31]

***1. Why Swiss Ribbons requires a creditor protection***

So while the judgment doesn't lay down a general rule, it's fair to understand that it implies that when there is a higher risk of misuse, the law has to step in early to prevent abuse. This logic forms the 'Single Analogy,' and now, the following argument shall apply it for the second time, as per operational creditors:

*Where the risk of misuse is higher, the law thereby erects protections at the threshold to prevent such misuse:* This is an evolutionary application of *Swiss Ribbons'* doctrinal principle that pre-admission safeguards are constitutionally justifiable when they prevent 'premature or extraneous' invocation of insolvency.[32] This is inferred as there is no mechanism in Section 10 where the financial creditor's economic self-interest acts as a natural check under Section 7.[33] Therefore, shouldn't the 'Single Analogy' of *Swiss Ribbons* apply here, that: when there exist analogous risks (misuse by debtor), they require equivalent safeguards (protect the operational creditor)? This application of erecting safeguards for the operational creditors would therefore form the 'Double Analogy'.

***2. What about the debtor's side of the story:***

*Swiss Ribbons* focuses on equity, and it notes that debtors are also vulnerable to operational claims.[34] Hence, this 'Double Analogy' that proposes safeguards for the creditor must also apply proportionately to debtors:

1. **Erection of Safeguards Requires Counter-Erection**: If a pre-admission safeguard is allowed for creditors, the same must also include protections for debtors from any frivolous

[30] Swiss Ribbons, ¶¶ 45, 50.
[31] Swiss Ribbons, ¶¶ 19–20 (citing *New State Ice Co. v. Liebman*, 285 U.S. 262 (1932); *Ferguson v. Skrupa*, 372 U.S. 726 (1962)), ¶¶ 21, 120 (upholding the IBC as a valid economic legislation despite imperfections, noting Parliament may amend flaws); *see also* Jasper Vikas, *Judicial Pragmatism by the Supreme Court of India in Adjudicating Economic Legislation: A Study of the Insolvency and Bankruptcy Code*, 2016, 9 J. NAT'L L.U. DELHI 110, 115–16 (2022–23) (noting that Swiss Ribbons allows some unfairness or flaws in economic laws, trusting that Parliament can fix such issues later through amendments if abuse or inequity arises).
[32] Swiss Ribbons, ¶ 45 (quoting the Insolvency Bill's notes to explain that the notice and 10-day response mechanism for operational creditors prevents them from pushing the debtor into insolvency over small or extraneous claims).
[33] Swiss Ribbons, ¶¶ 52, 75.
[34] Swiss Ribbons, ¶ 50.

objections. Thus, this would now apply the 'Second Analogy' of *Swiss Ribbons* to form the 'Third Analogy', leveraging the constitutional twin tests.

2. **The Triple Analogy Logic**:

   2.1. **First Analogy:** The Operational creditors are made to go through an extra step under Sections 8 and 9 because their claims are seen as more prone to misuse than those of financial creditors.

   2.2. **Second Analogy:** Since Section 10 allows the debtor to file unilaterally, a similar pre-admission protection is needed to prevent bad-faith filings.

   2.3. **Third Analogy:** But creditor objections also need to be filtered so that the process isn't delayed due to vexatious objections. <u>Hence, counter-protections for the debtor are also essential</u>.

***C. Why does inserting clause (3-A) into section 10 of the IBC solve the predicament?***

The IBBI's recent amendments show India's commitment towards transparency, but this is only in post-admission contexts. Currently, there is no framework to test the *bona fides* of a Section application before moratoria.[35] Figure 1 shows that under the current framework, upon filing the NCLT only does a cursory look, admits the case and initiates moratorium. Creditors can only object after that under Section 65.

[35] *See* Figure 1.

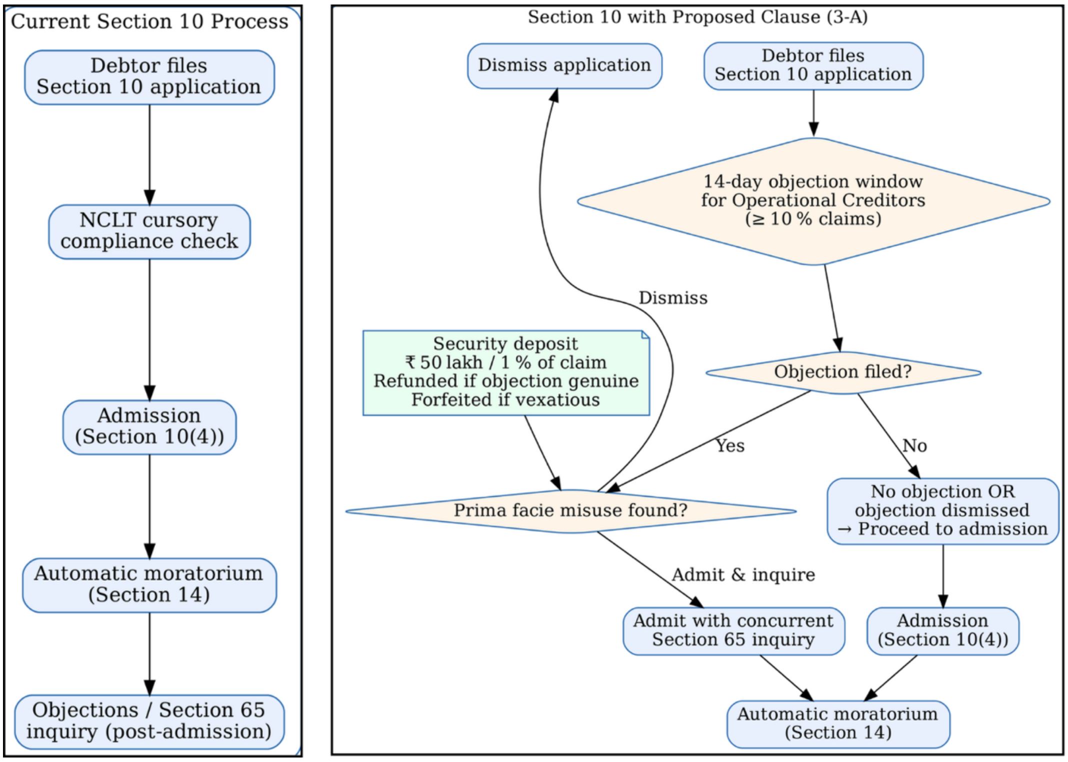


***Figure 1. The Section 10 Process vs. Clause (3-A)***

Therefore, the article proposes the insertion of Clause (3-A), drafted by the author, into Section 10 to flip that order.[36] It codifies the existing position of the law to allow pre-admission scrutiny, with creditor-debtor equity. It allows a collective group of operational creditors who hold 10% or more of the claim to file an objection. Moreover, to prevent malicious filings, objectors have to deposit a refundable security amount. The refund of the security remains, contingent on the merit of their objection. The application can either be dismissed or allowed.

### *1. Hohfeldian analysis:*

The clause goes further by analysing each right or power in a reciprocal restraint or liability.[37] Clause (3-A) extends the triple analogy logic by a Hohfeldian analysis where its provisions align with a precise Hohfeldian correlate. This revolutionises *Swiss Ribbons*' analogy from a single protection principle into a mutually

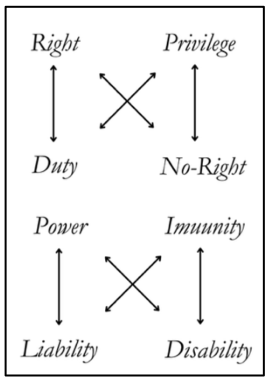


*Figure 2. Hohfeld's Correlatives*

[36] *See* Figure 1 (Section 10 with proposed Clause (3-A)).
[37] Walter Wheeler Cook, *Hohfeld's Contributions to the Science of Law*, 28 YALE L.J. 721, 727–29 (1919); *see* Figure 2.

enforced mechanism.

| Analogy | Hohfeldian Pair | Creditor's Correlative | Debtor's Correlative |
|---|---|---|---|
| **Double** | *Right* ↔ *Duty* | *Right* to object to prevent misuse of moratorium. | *Duty* to act in good faith. |
| | *Power* ↔ *Liability* | *Power* to halt misuse of self-initiated debtor filings. | *Liability* if a debtor files with dishonest intent. |
| | *Right* ↔ *Duty* | *Right* to get their security refund, if their objection is genuine. | *Duty* to act in good faith. |
| **Triple** | *No-Right* ↔ *Privilege* | *No right* to demand a notice from the debtor. | *Privilege* to file CIRP application without giving a prior notice. |
| | *No-Right* ↔ *Privilege* | *No right* to object without meeting the threshold or security deposit | *Privilege* to file Section 10, without being hurdled by vexatious objections. |

Having shown that the Clause stands on a jurisprudential footing through *Swiss Ribbons'* twin-test and Hohfeld's correlatives, what follows is a tabulated clause-by-clause breakdown of the proposed amendment. It explains what it's supposed to do and how CIRP transparency is restored. It transposes the IBBI's recent transparency into pre-admission. The exact wording for the Clause is given in the footnotes, so it can be easily added without much change.

### *2. Explaining clause (3-A):*

| (3-A) | Purpose | Rationale |
|---|---|---|
| (1)[38] | It puts a check in place before the case even begins to allow objections if there's a clear misuse of the moratorium. | Based on the 'Single Analogy' and codifies pre-admission objections, marking this as the 'Double Analogy' as discussed above. It prevents misuse, *mala fide* actions, and abuse of process of law at pre-admission.[39] The Singapore High Court while observing Section 221B(4) stated that the provision was introduced as a protection from moratoria abuse.[40] |

[38] (Proposed sub-clause (3-A)(1), drafted by the author:)

(1) *In order to prevent manifest abuse of the moratorium, the Adjudicating Authority may, prior to admitting an application under this section, entertain one consolidated objection petition (hereafter "Objection") filed by operational creditors, as defined under section 3(10), strictly in accordance with the conditions set out below.*

[39] Unigreen Global, ¶ 17.

[40] *Cf.* Companies Act (Cap. 50, 2006 Rev. Ed.) § 221B (Sing.); Re IM Skaugen SE and other matters [2018] SGHC 259 ("Re IM Skaugen"); Stephenson Harwood, *Clarity on the s. 211B Scheme Moratorium Regime*, GOING CONCERNS (Dec. 2018), at 3–5, https://www.stephensonharwood.com/docs/default-source/news-

| | | |
|---|---|---|
| (2)[41] | Debtor doesn't have to give notice and the creditors can voluntarily choose if they want to object or not. | No compulsory notice to creditors due to no violation of principles of natural justice.[42] This voluntary participation of debtors is precedented as debtors have notified creditors about the filing, even though not mandated.[43] |
| (3)[44] | a) Creditors get 14 days to file Objections online, so it doesn't drag.<br>b) Helps moves things faster by making sure cases are listed within 14 days.[45]<br>c) Objections can be raised by creditors who hold 10% of the debt. | Reckons upon the preambulatory aspirations of the IBC that "*Time is of the essence of the Code*," as upheld by the Supreme Court and the Bankruptcy Law Reforms Committee, 2015.[46] Furthermore, the 14 day period has been kept as directory under Sections 7(4), 9(5) and 10(4), as delays undermine quick resolution.[47] It prevents multiplicity proceedings and transforms 'multiple relationships' into a 'unified whole,'[48] to prevent delay.[49] The Supreme Court of India in *Manish Kumar v. Union of India*, upheld that a minimum threshold adds authenticity to a class action claim and not an obstruction for the debtor.[50] It relies on Singapore's expectation of companies to show support from significant creditors as a sign of *bona fides*.[51] |
| (4)[52] | Puts a high bar to ensure only *prima facie* instances of fraud, intent to defeat, | Insolvency courts can deny relief to those who approach the court with 'unclean hands,'[53] and debtors concealing assets cannot demand the protection of a moratorium as |

insights-documents/2018/going-concerns---december-2018.pdf (last visited July 22, 2025).

[41] (Proposed sub-clause (3-A)(2), drafted by the author:)

(2) *Nothing in this sub-section shall oblige the Adjudicating Authority or corporate applicant to serve notice on any creditor before admission. However, the filing shall be reflected on the Tribunal's daily e-cause list and e-filing portal in the ordinary course of business, and creditor may avail themselves of the Objection mechanism voluntarily, relying on information published online.*

[42] Go First, ¶¶ 32-33.

[43] Unigreen Global, ¶ 9.

[44] (Proposed sub-clause (3-A)(3), drafted by the author:)

(3) *Timeline and Maintainability–*

*(a) The Objection shall be e-filed within fourteen days of the corporate debtor's Form 6 and annexures becoming publicly available on the Adjudicating Authority's Registry or website;*

*(b) It shall be listed for summary hearing within fourteen days of its filing;*

*(c) It shall be signed jointly by creditors whose aggregate, undisputed claims equal or exceed 10% of the total debt.*

[45] Shreya Singh Parihar, *From Periphery to Recognition: Operational Creditors in Light of the Swiss Ribbons Ruling*, 7 IJLLR 9322, 9323–24 (2025).

[46] Bankruptcy Law Reforms Committee, *The Report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design* 14 (Nov. 2015), https://ibbi.gov.in/BLRCReportVol1_04112015.pdf (last visited July 20, 2025); Surendra Trading Company (S) v. Juggilal Kamlapat Jute Mills Company Limited, 2017 SCC Online SC 1208, ¶ 18.

[47] Surendra Trading Company, ¶¶ 25-26.

[48] IAN F. FLETCHER, INSOLVENCY IN PRIVATE INTERNATIONAL LAW (Oxford University Press, 2nd Ed, 2005), ¶1.08.

[49] Go First, ¶¶ 32, 34.

[50] Manish Kumar v. Union of India, (2021) 5 SCC 1, ¶ 50.

[51] Re IM Skaugen, ¶ 63.

[52] (Proposed sub-clause (3-A)(4), drafted by the author:)

(4) *The Objection shall annex a sworn affidavit and such documents as, prima facie, disclose material irregularities and raise a credible inference of fraud, intent to defeat, delay, or frustrate an existing enforcement, or regulatory proceeding.*

[53] Insolvency and Bankruptcy Code, 2016, §§ 65, 75.

| | | |
|---|---|---|
| | delay an existing proceeding, go ahead. | 'those seeking equity must do equity.'[54] Moreover, Chapter 11 of the U.S. Bankruptcy Code allows dismissal, when false financial data is used, for 'cause' (lack of good faith).[55] |
| (5)**[56]** | Allows only genuine objections to protect the debtors. Additionally, creditors have to deposit 1% or ₹50 lakhs (whichever lower). | Amount is refunded if the Objection is genuine and if contrary it will not be returned. It mirrors the 'Third Analogy' and protects the debtor. As credible creditors will not be deterred by the deposit in cases of genuine concern, while those with malicious intentions will think twice. |
| (6)[57] | Genuine Objections shall result in the CIRP being either dismissed or admitted, in pursuance of a notice being issued under Section 65. | Sub-clause (b) lets the tribunal admit the application while issuing a notice under Section 65, making it useful in cases where the debtor really can't pay but has still teamed up with a friendly creditor to push the process. Rejecting the application blanketly, would hurt all creditors, but turning a blind eye would reward bad behaviour. |

**III. How Clause (3-A) Complements the Aircraft Objects Bill, 2025**

***A. How one law sets the rights, and the other helps enforce them:***

India's incorporation of the Convention and the Aircraft Protocol (2001) ('**Protocol'**), via the Aircraft Bill, warrants the quick repossession of aircraft by creditors in insolvency. One might say that the MCA's Notification addressed the *Go First* concern but, this doesn't solve the pre-admission problem, as it's issued under Section 14(3)(a),[58] which is regarding the moratoria and not Section 10. Showcasing, that the Notification is applicable only when the moratorium takes effect. Therefore, the Clause helps creditors to object, the exact moment when the Notification offers no recourse. Together, the Clause and the Aircraft Bill form a part of a singular solution. They work in: a) procedural (pre-admission), and b) substantive (rights in insolvency) and is visible from the following arguments:

[54] Ashish Gupta v. Delagua Health India (P) Ltd., (2023) 237 Comp Cas 212, ¶ 13.
[55] *Cf.* 11 U.S.C. § 1112(b) (2018); *In re* 15375 Memorial Corporation, 382 B.R. 652, 683 (Feb 15, 2008).
[56] (Proposed sub-clause (3-A)(5), drafted by the author:)

> (5) *Objecting creditors shall deposit, at filing, a security amount equal to one per cent or ₹50 lakhs, whichever is lower of their aggregate claim, subject to a monetary ceiling prescribed by regulations; such security shall be refunded if the Objection is found bona fide. Where it is found to be frivolous, vexatious, or filed solely to delay proceedings the security deposit shall stand forfeited.*

[57] (Proposed sub-clause (3-A)(6), drafted by the author:)

> (6) *Upon being satisfied that the Objection discloses a prima-facie case under clause (4), the Adjudicating Authority may—*
>
> *(a) dismiss the application under this section or;*
>
> *(b) admit the application but simultaneously issue notice under section 65 and direct that the allegations be investigated during the corporate insolvency resolution process.*

[58] MCA Notification, *supra* note 4, at 2.

(i.) **Avoiding Treaty Transgression:** It is possible that international creditors could have avoided the Go First filing, had the proposed framework been implemented. Therefore, reconciling the gap between the Aircraft Bill, which, even if it were applicable, couldn't have solved this predicament.

(ii.) **Overriding Effect:** The Bill concedes the Protocol "*the force of law in India*,"[59] and is given priority over inconsistent laws.[60] It prevents inconsistencies between the IBC and the Convention from inception. Thus, it aligns with Section 9(2) of the Bill to ensure that the it complements existing laws and doesn't conflict with them.[61]

(iii.) **The 60-day repossession:** When the debtor makes a default, within 60 days creditors can repossess their planes.[62] Malicious filings are effectively prevented by sub-clause (6) as the filing can be dismissed or an inquiry under Section 65 can run parallel. It ensures that those without a realistic prospect of curing the defaults in the first place are removed. [63]

(iv.) **Deregistration and Export vs. Moratorium:** The deregistration of creditors and the export of a plane is allowed on default via IDERA.[64] The Aircraft Rules, 1937, recognise IDERA's alignment with the Treaty,[65] but the moratorium has thrown a wrench in it by preventing DGCA action.[66] Clause (3-A)(4) allows a resolution by objecting that the Section 10 filing is aimed at frustrating a 'proceeding.' In *Go First*, creditors approached the IDERA, but they were kept on hold by the DGCA because of the moratorium. Thus, an objecting creditor can argue that the debtor filed under Section 10 to delay the DGCA's deregistration process, i.e., a regulatory action. This remains a major concern as deregistration was prayed for by the creditors, and it was only ordered once the matter reached the DHC.[67]

59 Aircraft Bill, *supra* note 12, § 3.
60 Aircraft Bill, *supra* note 12, § 9(1).
61 Aircraft Bill, *supra* note 12, § 9(2).
62 Aircraft Bill, *supra* note 12, § 6.
63 Aircraft Bill, *supra* note 12, art. XI(7) of the Protocol.
64 Aircraft Bill, *supra* note 12, § 7.
65 Aircraft Rules, 1937, r. 30(7).
66 Helen Biggin, *Strengthening the Cape Town Convention in India*, VEDDER PRICE (May 12, 2025), https://www.vedderprice.com/strengthening-the-cape-town-convention-in-india (last visited July 23, 2025).
67 Accipiter Investments, ¶¶ 44.2–44.3.

### *B. The 'universal' application of clause (3-A)*

Clause (3-A) has a universal application and protects all classes of high-value movable assets like aircraft today, or ships tomorrow. The DHC in *Accipiter* upheld the MCA's Notification as it was to *"cure a lacuna in the existing law"* to effectuate the legislative intent.[68] India has not yet ascended to the Luxembourg Rail Protocol to the Cape Town Convention.[69] However, in case it does, unlike the aviation sector, railway rolling stock under the Rail Protocol wouldn't have any special exemption from the moratorium. The lack of measures for similar high-stakes assets means that if a rail operator or lessee in India's application for insolvency is admitted, secured lenders of locomotives or rolling stock would be stayed from repossession, despite the 60-day timeline. Therefore, post accession, the government could issue a similar Notification and carve out railway rolling stock. In essence, it counters this lacuna by making the pre-admission filing '*universal*.' In addition, it streamlines the IBC with the cross-border insolvency rules safeguarding creditors under the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI).[70] As a result, this framework protects any future treaty-covered assets from bad-faith insolvency filings at inception.

### *C. Conclusion*

Justice Rohinton Nariman, while concluding the *Swiss Ribbons*, termed the IBC a legislative 'experiment' that deprived defaulters of the paradise they previously enjoyed. If Section 10 continues to allow strategic misuse of moratoria, then it risks reopening that very paradise. Thus, Clause (3-A) is no leap; it completes what the Parliament has already enacted and the Supreme Court has twice endorsed. The twin Article 14 tests applied by *Swiss Ribbons* already necessitate matching protections; Section 65 already averts alleged strategic exploitation in pre-admission settings; Cape Town and the Aircraft Objects Bill promise creditor security. Clause (3-A) is a restatement of these established holdings into a pre-admission framework that balances rights before any infliction of harm. Adopting it converts Section 10 from a tactical escape hatch into the rule-of-law gateway, insolvency was always meant to be.

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[68] Accipiter Investments, ¶ 38.7.

[69] Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock, Feb. 23, 2007, https://www.unidroit.org/instruments/security-interests/rail-protocol/ (last visited July 22, 2025); *see* Syed Tamjeed Ahmed, *Rail Finance in India: Financing Rolling Stock and the Future of the Cape Town Convention and Luxembourg Protocol*, SARIN & CO. BLOG (Apr. 21, 2023), https://sarinlaw.com/rail-finance-in-india-financing-rolling-stock-and-the-future-of-the-capetown-convention-and-luxembourg-protocol/ (last visited July 22, 2025).

[70] *See* United Nations Commission on International Trade Law, Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation, U.N. Doc. A/RES/52/158 (1997), Arts. 13, 21.