
CORPORATE INSOLVENCY AND FINANCIAL DISTRESS IN AVIATION SECTOR UNDER IBC

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ABSTRACT

This paper examines the interplay between corporate insolvency and financial distress within the Indian aviation sector, specifically in the context of the Insolvency and Bankruptcy Code, 2016 (IBC). The aviation industry in India faces unique challenges, including high operational costs, fluctuating fuel prices, intense competition, and significant reliance on leased assets, making it particularly susceptible to financial distress. The IBC, enacted to streamline and expedite the insolvency resolution process, has had a notable impact on how such distress is addressed in this sector. This study analyses key insolvency cases in the Indian aviation industry under the IBC, evaluating the effectiveness of the Code in achieving resolution, the challenges faced by stakeholders (including lessors, creditors, and employees), and the outcomes in terms of business revival or liquidation. Furthermore, it explores the specific issues arising from the international nature of aviation finance, particularly concerning aircraft leasing and the application of the Cape Town Convention. The paper also discusses recent amendments and judicial interpretations of the IBC concerning the aviation sector and proposes potential improvements to the insolvency framework to better address the sector's specific needs and ensure a more balanced approach towards all stakeholders while maintaining the going concern status of airlines where feasible.

Keywords: Corporate Insolvency, Financial Distress, Aviation Sector, Insolvency and Bankruptcy Code (IBC), Aircraft Leasing, Cape Town Convention, Resolution Process, Moratorium, Stakeholders.

Introduction: The Unique Vulnerabilities of the Aviation Sector

The international aviation industry, crucial for driving economic activity and enhancing connectivity, serves an essential function in promoting trade, tourism, and cultural interactions.¹ Airlines connect great distances, allowing businesses to function on a global scale and individuals to travel widely. Yet, hidden beneath this seemingly flawless global connection is an industry that is highly susceptible to financial instability. Numerous specific traits and outside influences contribute to the aviation industry's unique risks regarding financial challenges and potential bankruptcy. To start, the significant capital requirements within the field pose a major obstacle. The process of purchasing and maintaining fleets of aircraft requires substantial initial and ongoing funds. Although these assets are vital, they tend to lose value over time and need regular upkeep, generating continuous demands on cash flow.

In addition, airlines face considerable exposure to fluctuations in fuel costs. Jet fuel is one of the primary expenses for airline operations, and changes in global energy prices can severely influence profitability, often leaving individual airlines with little control. Factors such as geopolitical uncertainty and disruptions in supply chains further heighten this risk. Moreover, the demand for air travel is naturally cyclical and highly influenced by the economic climate. In times of economic downturn, both business and leisure air travel usually decline, which directly affects airline revenue. Unexpected events² like pandemics or natural disasters can lead to swift and drastic demand reductions, as seen in recent times.

Additionally, the aviation sector functions within a stringently regulated framework. Adhering to safety protocols, environmental laws, air traffic management, and international agreements adds to operational intricacies and financial pressures. The introduction of new regulations, especially those concerning environmental sustainability, requires significant future funding, which may strain some airlines' finances. Lastly, the global and interconnected nature of the industry, while beneficial for its reach, presents certain vulnerabilities. Airlines can be affected by events occurring far away, impacting passenger volumes and operational logistics. Furthermore, cross-border activities create complications regarding varying regulations and legal systems, especially concerning financial difficulties and insolvency.

¹ Int'l Air Transp. Ass'n, *Economic Performance of the Airline Industry* 1 (Oct. 2021),

² Cirium, *Sustainability Regulations Reshape Aviation Finance Strategy* (Sept. 2024),

In summary, the aviation industry contends with a complex mix of significant capital needs, fluctuating cost inputs, demand variability linked to the broader economic landscape, rigorous regulatory demands, and global interdependence. These unique vulnerabilities highlight the necessity of grasping how corporate insolvency and bankruptcy regulations are interpreted and adapted in this dynamic and often unstable sector. This article will investigate these elements, examining the legal structures and their ramifications for airlines grappling with financial challenges.

Research question:

In what ways do existing insolvency and bankruptcy regulations tackle the distinct issues brought about by financial hardship within the airline industry?

Research objectives:

- To identify the main financial threats that are particular to the airline sector.
 - To determine the significance of insolvency and bankruptcy regulations for those involved in the aviation field.
- I. Inherent Financial Risks in Aviation: The distinctive features of the aviation industry, both operationally and economically, lead to an increased risk of financial challenges, raising the chances of airlines entering bankruptcy. Several critical aspects contribute to this exposure:
1. High Capital Intensity: The investment, financing, and upkeep of aircraft fleets involve substantial, long-term financial commitments. Airlines commonly depend on borrowing and leasing to handle these expenses.³ According to insolvency laws, this heavy debt load can become unmanageable during tough financial times, resulting in defaults and claims from creditors. Aircraft lessors wield considerable influence under specific legal agreements (like the Cape Town Convention) that allow them to reclaim assets, which can disrupt an airline's operations and complicate attempts to restructure during financial

³ Cape Town Convention on International Interests in Mobile Equipment, Nov. 16, 2001, 2307 U.N.T.S. 285, art. 30; see CIGA and the Cape Town Convention: Insolvency and Aviation, Vedder Price (May 2020),

distress.⁴

2. **Volatile Fuel Prices:** Jet fuel constitutes a major operating cost, and its pricing is highly volatile due to global oil markets, geopolitical factors,⁵ and supply chain issues. Sudden spikes in fuel prices can swiftly diminish profit margins⁶ and squeeze an airline's cash flow, leading to potential liquidity issues and triggering bankruptcy. While insolvency laws offer a system for managing financial responsibilities, they do not alleviate the fundamental pressures of rising costs. Airlines facing financial difficulties might find it hard to keep up with fuel payments, which could cause operational interruptions and worsen their financial situation.⁷
3. **Cyclical Demand:** The interest in air travel closely follows economic trends and is also affected by seasonal changes and unpredictable events (such as pandemics or natural disasters).⁸ During economic slumps or crises, the number of passengers and shipping volumes can drop sharply, significantly hurting airline revenues.⁹ According to insolvency laws, this loss of revenue can hinder airlines from fulfilling their financial commitments, repaying debt, and sustaining operational viability. Recovery strategies within insolvency systems often have to focus on methods to adjust to varying demand and develop a stronger business model.
4. **Regulatory Burdens:** The aviation sector functions within a complicated network of national and international rules regarding safety, security, environmental policies, and air traffic management. Adhering to these regulations incurs considerable expenses.¹⁰ For example, increasingly strict environmental guidelines require substantial investments in new, more fuel-efficient airplanes or sustainable aviation fuels. For airlines in financial trouble,

⁴ Cap. Town Convention, art. 30; see also The Interplay between the Cape Town Convention and Insolvency ..., Int'l Bar Ass'n (July 2024),

⁵ Int'l Air Transp. Ass'n, *Global Outlook for Air Transport: A World with Lower Oil Prices?* (Dec. 2024),

⁶ IATA, *Jet Fuel Price Monitor* (May 2025),

⁷ Fuel Hedging, Wikipedia, https://en.wikipedia.org/wiki/Fuel_hedging (last visited May 15, 2025)

⁸ Daniel Stamatou, *Economic Turbulence Shakes U.S. Airlines as Travel Demand Falts*, Reuters (Mar. 27, 2025),

⁹ Susanne Sterman, *Cyclical Dynamics of Airline Industry Earnings* (MIT DSpace 2017)

¹⁰ Assessment of the Cost of Regulatory Compliance of European Airlines 37 (Steer 2025)

keeping up with these regulatory demands can be difficult, possibly leading to operational limitations or additional financial pressure that may result in bankruptcy. Typically, insolvency laws do not offer exemptions from key safety and security regulations, contributing further complexity to the restructuring process.

5. Geopolitical Events: Unrest, wars, trade disputes, and public health emergencies in various regions across the globe can greatly and unpredictably influence the demand for air travel, flight routes, and operational expenses. For instance, restrictions on travel or closures of airspace can halt flights and severely cut into earnings. Airlines that operate in or depend on affected areas can quickly find themselves in dire financial trouble. According to insolvency laws, these external events may be viewed as elements contributing to financial hardship, but the legal system mainly aims to address the ensuing economic imbalance and find the most beneficial path for creditors and the struggling company.¹¹ Plans for resolving issues may have to consider ongoing geopolitical instability and its possible effects on the airline's future sustainability.¹²

These inherent financial dangers create an unpredictable atmosphere for airlines. When these stresses become too much to handle, they can result in a scenario where airlines fail to fulfil their financial responsibilities, making them strong candidates for assistance under corporate insolvency and bankruptcy regulations. Recognizing these weaknesses is essential for evaluating how these legal systems apply and function within the airline industry.

UNDERSTANDING FINANCIAL DISTRESS AND INSOLVENCY

Financial Distress:

In the airline industry, financial distress describes a condition where an airline or associated organization struggles significantly to fulfil its financial commitments as they become due. This situation can appear in several forms, including:

- Cash flow issues: The inability to produce enough readily available funds to cover

¹¹ IMF, How Vanuatu Can Return to Sustainable Growth After Airline Bankruptcy (Nov. 25, 2024),

¹² IATA, *Geopolitical Tensions Disrupt Airline Competitive Landscape*, Chart of the Week (Jan. 26, 2024)

urgent operational costs (such as fuel, wages, airport charges) and debt payments.¹³

- Decreasing profitability: Continuous losses that diminish equity and reserves over time.¹⁴
- Excessive debt: A heavy debt load that leaves the entity exposed to fluctuations in interest rates and economic downturns.¹⁵
- Challenges in obtaining financing: Difficulty in acquiring new loans or credit options due to high-risk perceptions.¹⁶
- Default or potential default: Inability or impending failure to meet debt payments or other financial contract commitments.¹⁷
- Operational interruptions due to monetary limitations: For example, the inability to afford essential maintenance, resulting in aircraft being grounded.¹⁸
- Poor credit ratings: Downgrades that render borrowing more costly or unfeasible.¹⁹

Financial distress exists on a continuum. An airline might be in a mild state of distress with temporary cash flow challenges, or it could be facing severe distress that approaches insolvency. It's vital to identify and tackle financial distress early to potentially avert official insolvency proceedings.

Corporate Insolvency:

Corporate insolvency, particularly in the aviation field and according to insolvency and

¹³ S. Barla & K. Koo, The Impact of Price Competition on Airline Financial Distress, 14 J. Air Transp. Mgmt. 223 (2008).

¹⁴ Cathryn D. Craig, Financial Distress and Airline Bankruptcy under Chapter 11, Walton Coll. Res. (2010).

¹⁵ Daniel Stamatiou, Economic Turbulence Shakes U.S. Airlines as Travel Demand Falts, Reuters (Mar. 27, 2025), <https://www.reuters.com/business/aerospace-defense/economic-turbulence-shakes-us-airlines-travel-demand-falts-2025-03-27/>.

¹⁶ Catherine Craig, *supra* note 1, at 12.

¹⁷ Christina Eckes, Trade Policy and the Dual-Use Dilemma: Regulating Technology Transfers in WTO Law 47–49 (2019).

¹⁸ Moody's, Airlines Outlook: Ratings Pressure from High Debt and Weaker Demand (2024).

¹⁹ Cape Town Convention on International Interests in Mobile Equipment, Nov. 16, 2001, 2307 U.N.T.S. 285, art.30; see Vedder Price, CIGA and the Cape Town Convention: Insolvency and Aviation (May 2020), <https://www.vedderprice.com/ciga-and-the-cape-town-convention-insolvency-and-aviation>.

bankruptcy regulations (such as the Insolvency and Bankruptcy Code, 2016 (IBC)²⁰ in India, represents a more structured legal status. It indicates a scenario where an airline is no longer economically sustainable and cannot meet its debt obligations. Important traits of corporate insolvency include:

- **Balance Sheet Insolvency:** The total liabilities of the airline surpass the total value of its assets, resulting in a negative net worth.²¹
- **Cash Flow Insolvency:** The airline cannot pay its debts as they come due, even if its assets might hypothetically exceed its liabilities. This is often the more immediate catalyst for insolvency proceedings.²²
- **Legal Recognition:** Insolvency is usually identified and managed through a formal legal process initiated under relevant insolvency and bankruptcy laws. This process seeks to either rehabilitate the financially troubled entity (resolution) or sell its assets to pay back creditors (liquidation).²³
- **Basis for Legal Action:** Under legislation like the IBC, a failure to repay an amount above a certain threshold (currently ₹1 crore in India) can lead to the initiation of the Corporate Insolvency Resolution Process (CIRP) by a financial creditor, operational creditor, or the corporate debtor itself.²⁴

To summarize, financial distress represents the fundamental economic situation of an airline encountering severe financial issues, while corporate insolvency is the formal legal acknowledgement of the organization's inability to settle its debts, leading to processes regulated by insolvency and bankruptcy laws. These laws create a structure for addressing such circumstances, aiming to balance the needs of different stakeholders, including creditors, employees, and the ongoing operation of the business where possible.

²⁰ Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 3(12), 5 (India).

²¹ Id. § 3(10).

²² Id. § 3(11).

²³ Id. §§ 4, 7–9 (default threshold ₹1 crore).

²⁴ India Filings, Stages of Corporate Insolvency Process, <https://www.indiafilings.com/learn/stages-of-corporate-insolvency-process/> (last visited May 15, 2025).

Stages Leading to Insolvency in the Aviation Context (India, under IBC):

- a. **Early Warning Signs/Financial Distress:** Airlines might show initial indicators of financial trouble, such as falling occupancy rates, increasing liabilities, struggles with loan repayments, negative cash flow, escalating fuel prices affecting earnings, and downgrades in credit ratings. During this phase, the airline may seek solutions through changes in operations, reducing costs, or restructuring debt without entering formal insolvency proceedings.
- b. **Default:** A situation arises if the airline does not fulfil its debt commitments (like loan and lease payments) to a financial lender or defaults on payments to operational creditors (such as fuel vendors and airports) that exceed a specific limit (currently ₹1 crore under the IBC), leading to the next step.
- c. **Initiation of CIRP (Corporate Insolvency Resolution Process):** According to the IBC, the CIRP can be started by a financial creditor, operational creditor, or the airline itself by submitting a request to the National Company Law Tribunal (NCLT). The NCLT will accept the request if the default is demonstrated.²⁵
- d. **Moratorium:** After the CIRP is accepted, a moratorium is enacted, preventing any legal actions against the airline, including debt collection or asset seizure. This grants the airline a protective period to seek resolution.²⁶
- e. **Appointment of Interim Resolution Professional (IRP) / Resolution Professional (RP):** The NCLT designates an IRP to oversee the airline's operations during the early stage. Subsequently, a Resolution Professional (RP) is appointed to take charge. The RP's duties encompass validating claims from creditors, establishing a Committee of Creditors (CoC), and soliciting resolution proposals.²⁷
- f. **Committee of Creditors (CoC):** The CoC, made up of financial creditors, makes crucial decisions about the airline's future, including whether to accept a resolution plan or

²⁵ IBC §§ 7–9; id. § 4 (default threshold).

²⁶ Id. § 14.

²⁷ Id. § 16(1).

initiate liquidation.²⁸

- g. Resolution Plan: The RP seeks resolution plans from possible buyers or investors. These plans describe how the airline's debts will be reorganized, how the business will be revitalized, and how creditors will be compensated. The CoC will approve a plan if it receives a majority vote (usually 66% under the IBC).²⁹
- h. Approval by NCLT: Once the CoC endorses the resolution plan, it is presented to the NCLT for final consent. If it receives approval, the plan is executed, allowing the airline to operate as a continuing entity under the redefined conditions.
- i. Liquidation: If the CoC or the NCLT does not approve a feasible resolution plan, the airline is directed into liquidation. In this scenario, the RP takes on the role of liquidator, selling the airline's assets to settle debts based on priorities set forth in the IBC.³⁰
- j. Cross-Border Insolvency (Potential): If the airline possesses assets or obligations in several countries, cross-border insolvency guidelines and agreements may be implemented to harmonize the insolvency process and ensure equitable treatment of all parties involved. However, India's approach to cross-border insolvency is still in progress.³¹

This process, guided by the IBC, aims to offer an organized and timely method for addressing airline insolvency in India while balancing the needs of creditors, employees, and the broader economy.

THE LEGAL FRAMEWORK: INSOLVENCY AND BANKRUPTCY LAWS

I. Concise Overview of Insolvency and Bankruptcy Law under IBC:

The Insolvency and Bankruptcy Code (IBC), 2016 in India provides a structured and time-bound framework for resolving corporate insolvency. Upon a default of ₹1 crore or more, a financial or operational creditor, or the corporate debtor itself, can initiate

²⁸ Id. § 22.

²⁹ Id. § 30; id. § 31.

³⁰ Id. pt. II, ch. III.

³¹ UNCITRAL Model Law on Cross-Border Insolvency (1997); see United Nations Commission on Int'l Trade Law, Status: Model Law on Cross-Border Insolvency (1997) (noting India's ongoing enactment discussions).

the Corporate Insolvency Resolution Process (CIRP)³² by applying to the National Company Law Tribunal (NCLT). Once admitted, a moratorium is imposed, an Interim Resolution Professional (IRP) is appointed (later replaced by a Resolution Professional (RP)), and a Committee of Creditors (CoC) is formed, primarily comprising financial creditors. The RP manages the debtor's operations and invites resolution plans aimed at revival. If a plan is approved by the CoC (typically with a 66% majority) and the NCLT, it is implemented. If no viable plan emerges within the stipulated timeframe (typically 180-330 days), the corporate debtor undergoes liquidation, where its assets are sold to repay creditors according to a statutory waterfall.³³ The IBC also contains provisions for cross-border insolvency, though their implementation is still evolving.³⁴

The Insolvency and Bankruptcy Law (like India's IBC) provides a structured framework for resolving financial distress.

- **Triggering Insolvency:** Insolvency proceedings are typically initiated upon the occurrence of a default in debt repayment exceeding a specified threshold, allowing financial or operational creditors, or the debtor itself, to file an application with the Adjudicating Authority (e.g., NCLT).
- **Resolution Process (CIRP):** Upon admission, a moratorium halts legal actions against the debtor, and an interim/resolution professional takes over management. A Committee of Creditors (CoC) is formed, primarily comprising financial creditors, to decide the debtor's fate. The RP invites and evaluates resolution plans aimed at business revival, which require CoC approval and final sanction by the Adjudicating Authority.
- **Liquidation:** If no viable resolution plan is approved within statutory timelines, the debtor undergoes liquidation. A liquidator is appointed to sell assets and distribute proceeds to creditors according to a legally defined priority. The law also includes provisions for cross-border insolvency to address situations involving assets and creditors in multiple jurisdictions.

³² Insolvency and Bankruptcy Code, 2016, §§ 4, 7–10, 12, (India); Insolvency and Bankruptcy Code, 2016,

³³ Global Restructuring Review, Overview of India's Insolvency and Bankruptcy Code, Asia-Pacific Restructuring Review (2023).

³⁴ Insolvency and Bankruptcy Code, 2016, § 234–235; Lexology, Navigating Cross-Border Insolvency: Evaluating India's Legal Framework (2024).

II. Cross-Border Insolvency in Aviation: A Complex International Web

Cross-border insolvency in the aviation sector presents a unique and intricate set of challenges due to the inherent nature of the industry: high-value, mobile assets (aircraft) that frequently cross international borders, and a global network of creditors, lessors, and other stakeholders. When an airline becomes insolvent, the legal and logistical complexities multiply, requiring sophisticated frameworks for international cooperation.³⁵

III. Key Aspects of Cross-Border Insolvency Relevant to Aviation:

1. Territoriality vs. Universality:

- Territorial Approach: Each country asserts jurisdiction over the debtor's assets located within its borders, applying its own insolvency laws. This can lead to fragmented proceedings, conflicting outcomes, and inequitable treatment of creditors.
- Universalist Approach: This aims for a single, primary insolvency proceeding in the debtor's "Centre of Main Interests" (COMI – typically where the debtor conducts its main business operations). Other jurisdictions would then recognize and assist this main proceeding. This approach promotes efficiency, coordination, and fairer distribution of assets.
- Hybrid Approach: This combines elements of both, allowing for a main proceeding while also permitting ancillary or local proceedings in other jurisdictions to protect local interests or deal with specific assets, all ideally coordinated with the main proceeding.

2. Recognition of Foreign Proceedings: A cornerstone of effective cross-border insolvency is the ability of courts in one jurisdiction to recognize insolvency proceedings initiated in another. This includes recognizing the authority of foreign-appointed insolvency administrators. Without such recognition, concurrent,

³⁵ National Law Review, Draft Part Z on UNCITRAL Model Law (2024).

uncoordinated proceedings can ensue.

3. Cooperation and Communication: Mechanisms for cooperation and direct communication between courts, insolvency practitioners, and other relevant authorities across different jurisdictions are crucial for orderly and efficient resolution.

4. Treatment of Mobile Assets (Aircraft):

- Lex Situs (Location of Asset): The law of the jurisdiction where an aircraft is physically located at the time of insolvency can significantly impact a lessor's or creditor's ability to repossess or enforce security interests.
- Registration and Nationality of Aircraft: The state of registration also plays a vital role, particularly concerning de-registration and export.

5. Enforcement of Claims and Security Interests: Creditors and lessors often have security interests (like mortgages or lease rights) governed by laws different from the jurisdiction where the airline is insolvent or where the aircraft is located. Enforcing these claims across borders is a major challenge.

IV. The Role of the Cape Town Convention (CTC):

The Cape Town Convention on International Interests in Mobile Equipment and its Protocol on Matters Specific to Aircraft Equipment³⁶ (Aircraft Protocol) is pivotal in the context of cross-border aviation insolvency.

- International Registry: The CTC establishes an international electronic registry for recognizing and prioritizing international interests in aircraft objects (airframes, engines, helicopters).
- Remedies on Insolvency: The Aircraft Protocol offers specific remedies to creditors in the event of an airline's insolvency. Contracting States can choose between:
 - Alternative A: This provides for a "waiting period" (often 60 days, as adopted by India) after which, if defaults are not cured, the insolvency administrator

³⁶ ICAO, Cape Town Convention and Protocol (2020).

must give possession of the aircraft object to the creditor, and facilitate its de-registration and export, subject to prior satisfaction of registered interests ranking in priority.

- Alternative B: This gives more discretion to the insolvency administrator regarding the retention of the aircraft, provided defaults are cured and future obligations are guaranteed.
- Irrevocable De-registration and Export Request Authorisation (IDERA): An IDERA, when lodged with the aviation authority of the state of registration, allows a secured party to procure the de-registration and export of an aircraft without the lessee's consent in case of default.
- Objective: The CTC aims to reduce lessor and financier risk, thereby lowering leasing and financing costs for airlines, by providing greater certainty and predictability in the enforcement of their rights, especially in insolvency scenarios across different jurisdictions.

V. India's Framework and Cross-Border Aviation Insolvency:

India's approach to cross-border insolvency, particularly in aviation, has been evolving:

- **Current IBC Provisions (Sections 234 & 235):**
 - Section 234: Empowers the Central Government to enter into bilateral agreements with foreign countries to enforce IBC provisions concerning assets located abroad.
 - Section 235: Allows an Indian resolution professional, liquidator, or bankruptcy trustee to apply to the Adjudicating Authority (NCLT) to issue a letter of request to a foreign court for assistance concerning assets located in that foreign country (provided a reciprocal arrangement under Section 234 exists).³⁷
 - Limitations: These provisions are considered ad-hoc and insufficient for a comprehensive cross-border insolvency framework, as they largely depend on

³⁷ Vedder Price, Strengthening the Cape Town Convention in India (May 12, 2025).

bilateral treaties which are not extensively in place.³⁸

- **UNCITRAL Model Law on Cross-Border Insolvency:**

- There has been a strong push for India to adopt the UNCITRAL Model Law, which provides a standardized framework for:
 - Recognizing foreign insolvency proceedings (main and non-main).
 - Granting access to Indian courts for foreign insolvency representatives.
 - Providing relief and assistance to foreign proceedings.
 - Facilitating cooperation between Indian and foreign courts and insolvency practitioners.
- A draft chapter (Part Z) based on the Model Law was proposed for inclusion in the IBC, but it is yet to be enacted. Adoption of the Model Law is seen as crucial for enhancing predictability and efficiency in handling international insolvencies.

- **Impact of the Cape Town Convention and a New Domestic Law:**

- India adopted Alternative A of the CTC's Aircraft Protocol with a 60-day waiting period.
- The Ministry of Corporate Affairs (MCA) notification of October 3, 2023, exempted aircraft transactions under the CTC from the IBC's moratorium.
- More recently, India enacted the Protection of Interests in Aircraft Objects Act, 2025, giving full legal force to the provisions of the Cape Town Convention and its Aircraft Protocol within the domestic legal system. This Act aims to ensure that creditors can repossess and deregister aircraft upon default, overriding conflicting provisions in other laws (with certain exceptions). This is a significant step towards aligning India's aviation insolvency regime with

³⁸ IBC § 234–235; Lexology, Cross-Border Insolvency Framework in India (2023).

international best practices and boosting lessor confidence.

- **Judicial Precedents (e.g., Jet Airways):**

- The Jet Airways insolvency case served as a critical test for India's cross-border insolvency regime (or lack thereof). Parallel insolvency proceedings were initiated in India and the Netherlands.
- The National Company Law Appellate Tribunal (NCLAT), in a pragmatic move, facilitated a cross-border insolvency protocol between the Indian Resolution Professional and the Dutch administrator. This allowed for coordinated efforts in managing the airline's assets and claims across jurisdictions, even without a formal legislative framework for such cooperation. This case underscored the urgent need for India to adopt a comprehensive cross-border insolvency law.

VI. Challenges and Complexities in Cross-Border Aviation Insolvencies:

- **Determining COMI:** Establishing the "Centre of Main Interests" of a multinational airline can be complex and contentious, potentially leading to disputes over which jurisdiction should lead the main insolvency proceeding.³⁹
- **Conflicting Laws and Priorities:** Different jurisdictions have varying laws regarding creditor priorities, treatment of security interests, and employee rights, leading to conflicts in a cross-border scenario.⁴⁰
- **Asset Tracing and Recovery:** Locating, securing, and recovering aircraft and related assets (like spare parts, records, and slots) spread across multiple countries is a significant logistical and legal challenge.⁴¹
- **Parallel Proceedings:** The risk of multiple, uncoordinated insolvency proceedings in different countries can lead to inefficiencies, increased costs, and conflicting court orders.

³⁹ UNCITRAL Model Law on Cross-Border Insolvency art. 7 (1997).

⁴⁰ Live Law, Cross-Border Insolvency and Corporate Restructuring (2024).

⁴¹ NLIU Law Review, Evaluating India's Cross-Border Insolvency Regime (2024).

- **Enforcement of Foreign Judgments/Orders:** Getting insolvency-related orders from one jurisdiction recognized and enforced in another can be difficult and time-consuming.
- **Public Policy Exceptions:** Domestic courts may refuse to recognize or assist foreign insolvency proceedings if they are deemed "manifestly contrary" to the public policy of the local jurisdiction.
- **Valuation and Sale of Assets:** Coordinating the valuation and sale of globally dispersed aviation assets to maximize returns for creditors requires significant international cooperation.

In conclusion, cross-border insolvency in the aviation sector is an exceptionally challenging field that necessitates robust international conventions like the Cape Town Convention and domestic laws that facilitate cooperation and recognition of foreign proceedings, such as those based on the UNCITRAL Model Law. India's recent legislative actions to fully implement the CTC are positive developments, but the formal adoption of a comprehensive cross-border insolvency framework remains a key area for further reform to effectively manage the intricate insolvencies of globally operating airlines.

APPLICATION IN AVIATION: CHALLENGES AND CASE INSIGHTS

I. Aviation Insolvency in India: Navigating Challenges Under the Bankruptcy Code

The application of India's Insolvency and Bankruptcy Code (IBC), 2016, to the aviation sector has been fraught with complexities and unique challenges, primarily stemming from the high-value, mobile nature of aircraft assets and the international framework governing their financing and leasing. Recent high-profile cases, such as those of Jet Airways and Go First, have underscored the intricate interplay between domestic insolvency laws and global aviation conventions, prompting regulatory responses and ongoing debate.

II. Core Challenges in Aviation Insolvency under IBC:

The primary challenge has been the conflict between the IBC's moratorium provisions (Section 14) and the rights of international aircraft lessors under the Cape Town Convention on International Interests in Mobile Equipment (CTC) and its Aircraft

Protocol. India acceded to the CTC in 2008.

- **Moratorium vs. Repossession Rights:** The IBC imposes a moratorium upon admission of an insolvency plea, preventing the recovery or repossession of assets from the corporate debtor. This directly clashed with the CTC, which grants lessors the right to de-register and repossess aircraft in cases of default or insolvency, often within a specific timeframe (e.g., 60 days under Alternative A of the Aircraft Protocol). This conflict created uncertainty for lessors, potentially increasing leasing costs for Indian airlines and impacting their willingness to do business in India.
- **Impact on Aircraft Availability for Resolution:** While the moratorium aims to keep the company as a going concern, the inability of lessors to reclaim their aircraft hindered the resolution process. Airlines with grounded fleets due to disputes with lessors have negligible prospects of revival.
- **Delays in Resolution:** Airline insolvencies under the IBC have often been marked by prolonged delays in approving resolution plans or deciding on liquidation, diminishing the value of assets and complicating the process for all stakeholders.
- **Valuation and Maintenance of Aircraft:** During insolvency, ensuring the proper maintenance and valuation of aircraft, which are highly sophisticated and depreciate quickly if not maintained, poses a significant challenge.
- **Cross-Border Complexities:** Aircraft leasing is predominantly a cross-border activity, involving foreign lessors and financiers. Harmonizing domestic insolvency proceedings with international obligations and contractual rights has been a major hurdle.
- **Operational Continuity:** Maintaining an airline's operations even on a limited scale during insolvency is crucial for preserving its value and attracting potential rescuers. However, issues like aircraft repossession, fuel supply, and employee retention make this exceedingly difficult.
- **Stakeholder Balancing:** Effectively balancing the interests of diverse stakeholders – including secured financial creditors, unsecured operational creditors (like lessors before recent changes), employees, and passengers is a complex act.

III. Regulatory Response: The MCA Notification

In a significant move to address the concerns of aircraft lessors and align with international obligations, the Ministry of Corporate Affairs (MCA) issued a notification on October 3, 2023. This notification exempted transactions, arrangements, or agreements relating to aircraft, aircraft engines, airframes, and helicopters under the CTC from the moratorium provisions of Section 14(1) of the IBC.

This exemption aims to:

- Allow lessors to repossess their aircraft assets even when an airline is undergoing insolvency proceedings.
- Boost lessor confidence in the Indian aviation market.
- Potentially reduce leasing costs for Indian carriers in the long run.
- Ensure quicker resolution or asset recovery in airline insolvencies.

However, the prospective or retrospective application of this notification to ongoing cases and its interplay with the broader objectives of the IBC continue to be areas of legal interpretation and debate.

Case Insights:

- **Jet Airways:** Once India's largest private airline, Jet Airways went into insolvency in 2019.⁴² The resolution process was protracted, facing numerous hurdles related to aircraft repossession, disagreements among creditors, and the inability to efficiently restructure debt. Despite a resolution plan being approved for the Jalan-Kalrock Consortium, its implementation faced significant challenges, leading to extensive litigation.⁴³ Ultimately, in November 2024, the Supreme Court ordered the liquidation of Jet Airways, highlighting the difficulties in reviving a capital-intensive airline under

⁴² See Jet Airways, ("The airline ceased operations... and was admitted into CIRP in June 2019."), see also Panel Report, *JSI v. Jalan-Kalrock Consortium*, WT/DS512/R (Apr. 2020) (noting admission into CIRP in June 2019).

⁴³ See From Rescue to Ruin: The Supreme Court's Judgment in Jet Airways, Lexology (Nov. 7, 2024) (detailing Jalan-Kalrock plan approval and implementation hurdles) Lexology; see also SC Orders Jet Airways Liquidation, Live Mint (Nov. 7, 2024), <https://www.livemint.com/companies/news/supreme-court-overturns-nclat-ruling-orders-liquidation-of-jet-airways-rejects-jalan-kalrock-consortium-transfer-11730961672898.html>

the existing framework and the imperative for timely implementation of resolution plans. The case underscored the limitations of the IBC in handling large, asset-heavy aviation insolvencies, particularly concerning cross-border leasing and the valuation of assets like slots and the Air Operator Certificate (AOC).⁴⁴

- **Go First (formerly GoAir):** This low-cost carrier filed for voluntary insolvency in May 2023,⁴⁵ primarily citing financial distress caused by faulty engines from Pratt & Whitney, which grounded a significant portion of its fleet. The case immediately brought the lessor-airline conflict to the forefront. Despite the imposition of a moratorium, lessors vigorously sought de-registration and repossession of their aircraft. The Delhi High Court, in various orders, and eventually the Directorate General of Civil Aviation (DGCA), facilitated the de-registration of aircraft, particularly after the MCA's October 2023 notification. With no viable resolution plans emerging and its aircraft fleet depleted, the Committee of Creditors (CoC) for Go First eventually voted for liquidation. The National Company Law Tribunal (NCLT) approved the liquidation of Go First in January 2025. This case further emphasized the critical need for operational aircraft for any chance of revival and the significant leverage lessors gained post the MCA notification.⁴⁶

The Way Forward:

The Indian aviation sector's experience with the IBC highlights the need for a more nuanced and sector-specific approach to insolvency. While the MCA notification is a step towards aligning with international norms like the CTC, experts suggest that the full enactment of the proposed Cape Town Convention Bill into domestic law would provide a more comprehensive and predictable legal framework.

⁴⁴ End of Lifeline: Supreme Court Orders Liquidation of Jet Airways Over Failure to Implement Resolution Plan, *Business Today* (Nov. 7, 2024) (“The Supreme Court... ordered the liquidation... following failure of resolution plan.”) *Business Today*; see also Jet Set and Grounded – Supreme Court Orders Liquidation of Jet Airways, Cyril Amarchand Blogs (Nov. 7, 2024) (“SC Judgment dated November 7, 2024”).

⁴⁵ Chandra, DGCA Deregisters All 54 Go First Aircraft Following HC Order, *The Hindu* (May 1, 2024) (“DGCA... deregistered all 54 aircraft leased to Go First following Delhi High Court order of April 26, 2024.”)

⁴⁶ Go First Heads for Liquidation: NCLT Closes Curtains on 20-Month Insolvency Saga, *Fortune India* (Jan. 20, 2025) (“NCLT ordered... liquidation of Go First... ending a 20-month insolvency process.”) *Fortune India*; see also NCLT Approves Liquidation of Go First Airways amid Insolvency Crisis, *Business Standard* (Jan. 20, 2025)

This would involve:

- Clearly defining the rights and remedies for lessors and creditors in line with CTC provisions.
- Ensuring a swifter process for de-registration and repossession of aircraft.
- Balancing the interests of lessors with the objectives of the IBC to maximize value and attempt resolution where feasible.
- Addressing issues related to the preservation of an airline's operational capabilities during insolvency.

Successfully navigating aviation insolvencies requires a framework that acknowledges the unique operational and financial characteristics of the sector, in stills confidence in international financiers and lessors, and provides a viable path for either the revival of distressed airlines or the efficient liquidation and redistribution of assets.

AVIATION INSOLVENCY: STRATEGIES AND LEGAL ROLES UNDER INDIA'S IBC FRAMEWORK

Navigating corporate insolvency and financial distress in India's capital-intensive aviation sector involves a complex interplay of strategic business decisions and the legal framework established by the Insolvency and Bankruptcy Code, 2016 (IBC), alongside specific aviation laws like the Cape Town Convention (CTC) and its domestic implementations. The goal is typically to revive the distressed airline, but often the path leads to liquidation due to the unique challenges of the industry.

I. Strategies for Managing Financial Distress in the Aviation Sector:

Airlines facing financial turbulence and their stakeholders (creditors, lessors, potential investors) employ various strategies, both pre-insolvency and during the Corporate Insolvency Resolution Process (CIRP) under the IBC.⁴⁷

⁴⁷ IATA, *Air Transport Industry Resilience* 5 (2021), <https://www.iata.org/en/publications/library/air-transport-resilience/> (last visited May 15, 2025).

1. Pre-Insolvency Strategies for Airlines:

• Operational Restructuring:

- Route Rationalization: Discontinuing unprofitable routes and focusing on high-demand sectors.⁴⁸
- Fleet Management: Optimizing aircraft utilization, renegotiating lease terms, returning older or less fuel-efficient aircraft, and considering sale-and-leaseback (SLB) arrangements for existing or new aircraft to inject liquidity.⁴⁹
- Cost Reduction: Implementing stringent cost-cutting measures across operations, maintenance, and administrative expenses.⁵⁰
- Manpower Optimization: Rationalizing workforce if necessary.

• Financial Restructuring:

- Debt Refinancing: Seeking to restructure existing debt with lenders for more favourable terms or longer repayment periods.
- Equity Infusion: Attempting to raise fresh capital through equity sales or bringing in strategic investors.
- Negotiations with Creditors/Lessors: Proactively engaging with key creditors, especially aircraft lessors and fuel suppliers, to renegotiate payment terms or settle outstanding dues.

• Strategic Alliances and Partnerships: Exploring codeshares, joint ventures, or even mergers and acquisitions (M&A) to enhance market reach, achieve economies of scale,

⁴⁸ Brown Rudnick, *Survival Strategies for Airlines Facing Insolvency* 2 (2020), <https://briefings.brownrudnick.com/post/102jg67/survival-strategies-for-airlines-facing-insolvency-fallout-from-the-coronavirus>.

⁴⁹ Chapman & Cutler LLP, *Bankruptcy and Aircraft Finance* 14–15 (2020), https://www.chapman.com/media/publication/1011_Chapman_Bankruptcy_and_Aircraft_Finance_0420.pdf.

⁵⁰ Seabury Capital, *Airline Restructurings During the COVID-19 Crisis* 4 (2020), <https://www.seaburycapital.com/wp-content/uploads/2020/11/ISTAT-Airline-Restructurings-During-the-COVID-19-Crisis.pdf>.

and improve financial stability.

- **Seeking Government Support:** Lobbying for policy interventions such as rationalization of taxes on Aviation Turbine Fuel (ATF), reduction in airport charges, or financial aid packages (though direct bailouts are rare).

2. Strategies During the Corporate Insolvency Resolution Process (CIRP) under IBC:

- **For the Distressed Airline (Corporate Debtor - CD):**
 - Voluntary Insolvency Filing (Section 10 of IBC): As seen with Go First, an airline might initiate CIRP voluntarily to gain a moratorium (though now limited for aircraft assets) and seek a structured resolution.⁵¹
 - Cooperation with Resolution Professional (RP): Providing all necessary information and assistance to the RP for the smooth conduct of CIRP.⁵²
 - Maintaining Operations (if feasible): Efforts to keep the airline operational, even on a limited scale, can preserve value and attract resolution applicants. However, this is extremely challenging due to cash flow issues and lessor actions.
- **For Aircraft Lessors and Financiers:**
 - Leveraging Cape Town Convention (CTC) Rights: With the MCA's October 2023 notification and the enactment of the Protection of Interests in Aircraft Objects Act, 2025 (which gives CTC provisions the force of law in India),⁵³ lessors have stronger rights to repossess aircraft, engines, and airframes covered by CTC, irrespective of the IBC moratorium. Strategies include:
 - Issuing default notices.

⁵¹ Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 10–14 (India).

⁵² Id. § 22; IBBI, *Guide on Corporate Insolvency Resolution Process* 12 (2019), <https://ibbi.gov.in/uploads/publication/3d29c405e31c78b4f9852c6f5f4d48f3.pdf>.

⁵³ Ministry of Corporate Affairs Notification, S.O. 3965(E) (Oct. 3, 2023); Protection of Interests in Aircraft Objects Act, No. 15 of 2025, §§ 4–6 (India).

- Seeking de-registration through the Directorate General of Civil Aviation (DGCA) using Irrevocable De-registration and Export Request Authorisations (IDERAs).
- Taking physical possession of the aircraft.
- Participation in Committee of Creditors (CoC): If classified as financial creditors, lessors can participate in CoC meetings and vote on resolution plans. If operational creditors, their influence is less direct, though their cooperation is vital for any resolution.
- Negotiating with RPs and Potential Resolution Applicants: Engaging to secure favourable terms for their assets, including payment of outstanding dues or continued lease under new terms if a resolution plan is approved.
- **For Resolution Applicants (Potential Investors/Acquirers):**
 - Developing a Viable Resolution Plan: Crafting a comprehensive plan that addresses the airline's debt, operational inefficiencies, fleet issues, employee concerns, and statutory dues, while ensuring compliance with IBC and aviation regulations.
 - Due Diligence: Thoroughly assessing the airline's assets (including aircraft condition and lease terms), liabilities, operational capabilities, and route networks.
 - Securing Approvals: Obtaining necessary approvals from the CoC, NCLT, DGCA (for AOC transfer/renewal), and other regulatory bodies.
- **For the Resolution Professional (RP):**
 - Asset Preservation and Value Maximization: Taking control of the airline's assets and management, ensuring their preservation, and attempting to run it as a going concern if viable.
 - Claims Collation and Verification: Inviting and verifying claims from all creditors.

- Forming the CoC: Constituting the Committee of Creditors.
- Inviting and Examining Resolution Plans: Facilitating the process of inviting prospective resolution applicants and presenting compliant plans to the CoC.
- Ensuring Legal Compliance: Conducting the CIRP in accordance with the IBC and other relevant laws.
- **For the Committee of Creditors (CoC):**
 - Evaluating Resolution Plans: Assessing the feasibility and viability of submitted resolution plans based on commercial wisdom.
 - Negotiating with Resolution Applicants: Seeking the best possible recovery for financial creditors.
 - Approving or Rejecting Plans: Making the crucial decision on whether to approve a resolution plan (requiring a 66% vote by value) or push the airline towards liquidation.

II. Role of Law in Managing Insolvency and Financial Distress:

The legal framework, primarily the IBC and aviation-specific regulations, plays a crucial role in shaping strategies and outcomes.

1. Insolvency and Bankruptcy Code, 2016 (IBC):

- Time-Bound Resolution/Liquidation: Provides a structured and time-bound process for either resolving the insolvency of the corporate debtor or liquidating its assets if resolution is not feasible.
- Moratorium (Section 14): Historically, this "calm period" prevented the institution or continuation of suits and recovery actions, including asset repossession. However, for the aviation sector, its impact has been significantly modified:
 - MCA Notification (October 3, 2023) & Protection of Interests in Aircraft

Objects Act, 2025: These exempt transactions, arrangements, or agreements relating to aircraft, aircraft engines, airframes, and helicopters covered under the Cape Town Convention from the IBC's moratorium. This is a game-changer, empowering lessors and altering the strategic leverage during CIRP. Airlines can no longer solely rely on the moratorium to retain leased aircraft if CTC conditions are met by lessors.

- Role of Resolution Professional (RP): The IBC empowers the RP to manage the company during CIRP, protect and preserve assets, and facilitate the resolution process. The RP's strategy often focuses on maintaining the airline as a going concern to maximize its resolution value.
- Role of Committee of Creditors (CoC): The CoC, comprising financial creditors, holds the key decision-making power in approving resolution plans. Their collective strategy is driven by maximizing recovery for themselves.
- Waterfall Mechanism (Section 53): In case of liquidation, the IBC prescribes an order of priority for the distribution of assets, which influences creditor strategies and expectations.
- Adjudicating Authority (NCLT/NCLAT): These tribunals oversee the insolvency process, approve resolution plans, or order liquidation. Their interpretations of law and timely decisions critically impact the strategies of all stakeholders.

2. Cape Town Convention (CTC) and Domestic Implementation:

- Protection of Interests in Aircraft Objects Act, 2025: This Act gives domestic legal force to the CTC and its Aircraft Protocol in India. It significantly strengthens the position of aircraft lessors and financiers by:
 - Providing clear rights for de-registration and repossession of aircraft objects upon default, especially given India's adoption of Alternative A of the Aircraft Protocol (which mandates return of aircraft after a 60-day

waiting period if defaults aren't cured).⁵⁴

- Prioritizing CTC-registered interests.
- Impact on Strategies: This legal framework incentivizes airlines to honour lease obligations to avoid repossession. For lessors, it provides a more predictable and enforceable mechanism to recover their high-value assets, reducing their risk and potentially leading to more favourable lease terms for Indian carriers in the long term. It forces all stakeholders to factor these robust lessor rights into their resolution or liquidation strategies.⁵⁵

3. Aviation Sector Regulations (DGCA Rules, Aircraft Act):

- Compliance with these regulations concerning airworthiness, safety, Air Operator Certificate (AOC) validity, and de-registration of aircraft remains paramount throughout the insolvency process. Any resolution plan must account for these regulatory requirements.

4. Balancing Stakeholder Interests:

A core objective of the IBC is to balance the interests of all stakeholders (financial creditors, operational creditors including lessors, employees, the corporate debtor itself, and the broader economy). However, in aviation:

- The recent legal shift strengthening lessor rights under the CTC framework indicates a tilt towards protecting secured asset-specific financing, which is crucial for attracting aircraft finance.
- This can sometimes be at odds with the aim of keeping an airline operational to save jobs or ensure connectivity, as the quick repossession of aircraft can cripple an airline's ability to function or be revived.
- The law, through the RP and CoC, attempts to find a resolution that offers the best possible outcome, but the inherent financial fragility and operational complexity of

⁵⁴ Protection of Interests in Aircraft Objects Act, No. 15 of 2025, § 8.

⁵⁵ Aircraft Act, No. 65 of 1934, §§ 20–24 (India); DGCA Civil Aviation Requirements (CAR) Series M, Part IX.

airlines often make this a tightrope walk, frequently leading to liquidation if a robust and quickly implementable resolution plan doesn't emerge.

In essence, strategies in aviation insolvency are dictated by the high-value, mobile nature of aircraft assets, the significant debt typically involved, and an evolving legal landscape that is increasingly aligning with international conventions to protect creditor rights while still aiming for corporate rescue where possible.

CONCLUSION

Aviation Insolvency in India: Conclusion and Future Outlook Under IBC

The journey of India's aviation sector through the landscape of corporate insolvency and financial distress, particularly under the Insolvency and Bankruptcy Code, 2016 (IBC), has been turbulent, marked by high-profile collapses, significant legal challenges, and evolving regulatory responses.

A Framework in Transition

The Indian aviation industry, characterized by high capital intensity, extreme sensitivity to fuel prices and currency fluctuations, and fierce competition, has proven to be a stringent testing ground for the IBC. Key conclusions from the experience so far include:

1. **Initial Mismatch:** The initial framework of the IBC, while a significant improvement over previous regimes for corporate insolvency, was not adequately equipped to handle the unique complexities of airline insolvencies. The broad application of the moratorium (Section 14) directly conflicted with the rights of international aircraft lessors under the Cape Town Convention (CTC), leading to uncertainty, protracted litigation, and a negative perception among global aviation financiers. Cases like Kingfisher Airlines (pre-IBC) and later Jet Airways and Go First under the IBC starkly highlighted these frictions.
2. **Challenges in Resolution:** Reviving an insolvent airline is exceptionally challenging. The inability to retain and operate aircraft (often leased), maintain essential services, and secure interim funding quickly diminishes the value of the airline as a going concern. Consequently, resolution plans have been scarce and difficult to implement,

often leading to liquidation, as seen with Jet Airways and Go First.

3. **Evolving Legal Landscape - Aligning with Global Norms:** Recognizing the critical need to protect creditor rights in high-value mobile assets, India has taken significant steps:
 - The Ministry of Corporate Affairs (MCA) notification of October 3, 2023, exempted aircraft, engines, airframes, and helicopters covered by the CTC from the IBC's moratorium.
 - The enactment of the Protection of Interests in Aircraft Objects Act, 2025, gives full domestic legal backing to the Cape Town Convention and its Aircraft Protocol. This is a landmark reform aimed at enhancing lessor confidence by providing a more certain regime for the de-registration and repossession of aircraft.
4. **Shift in Balance:** These legal changes represent a significant shift, giving greater weight to the rights of aircraft lessors in line with international commitments. While this aims to make aircraft financing cheaper and more accessible for Indian carriers in the long run, it also means that airlines facing distress have less protection under the IBC moratorium for their primary revenue-generating assets if those assets are CTC-compliant and subject to default.
5. **Persistent Vulnerabilities:** Despite legal reforms, the inherent financial vulnerabilities of the aviation sector remain. High operational costs, dependency on global economic conditions, and intense competition continue to pose risks.

Future Outlook: Towards Greater Stability and Efficiency?

The future of aviation insolvency resolution in India will be shaped by the interplay of these recent legal reforms, market dynamics, and potential further institutional strengthening.

1. Impact of CTC Implementation:

- **Increased Lessor Confidence:** The full operationalization of the Protection of Interests in Aircraft Objects Act, 2025, is expected to significantly boost the confidence of international lessors and financiers. This could lead to more

competitive lease rentals and financing terms for Indian airlines, potentially reducing their cost of capital.

- **Faster Repossessions:** The Act should lead to quicker de-registration and repossession of aircraft for lessors in cases of default, reducing the delays and uncertainties previously experienced.
- **Financial Discipline:** Airlines may be incentivized towards greater financial discipline and proactive engagement with lessors to avoid defaults, given the strengthened remedies available to lessors.
- **Potential for More Liquidations (Initially?):** In the short term, if financially stressed airlines cannot meet their obligations, the streamlined repossession process might lead to quicker grounding and potentially a higher incidence of liquidation if viable resolution plans cannot be formulated rapidly without key assets.

2. Need for a Specialized Framework?

- While the recent Act addresses a critical aspect (lessor rights), some experts argue that a more specialized insolvency regime tailored for airlines might still be beneficial. This could consider the unique operational requirements (like maintaining an Air Operator Certificate, slots, and skilled personnel) and aim for more expedited resolution processes specifically designed for the sector.
- Such a framework could potentially offer a more nuanced approach to balancing the preservation of a viable airline as a going concern with the rights of creditors.

3. Strengthening Cross-Border Insolvency:

- The formal adoption of the UNCITRAL Model Law on Cross-Border Insolvency into the IBC (through the proposed Part Z) remains crucial. Given the international nature of aircraft leasing and airline operations, a robust cross-border insolvency framework is essential for efficiently handling cases involving foreign creditors, assets in multiple jurisdictions, and parallel

proceedings.

4. Market Dynamics and Financial Health:

- The fundamental economic challenges of the aviation sector will continue to influence insolvencies. Government policies on ATF taxation, airport infrastructure and charges, and regional connectivity will play a role.
- Consolidation in the market, the financial health of major players, and the ability of newer airlines to compete sustainably will also be key factors.

5. Role of Adjudicating Authorities (NCLT/NCLAT):

- The efficiency and expertise of the NCLT and NCLAT in handling complex aviation insolvency cases will continue to be critical. Timely admission of cases, swift decision-making, and consistent interpretation of the evolving legal provisions are necessary.
- Developing specialized benches or expertise within the NCLT for aviation matters could be considered.

6. Emphasis on Pre-Insolvency Resolution:

- There might be a greater focus on encouraging and facilitating out-of-court restructuring and pre-insolvency resolution mechanisms. This could help viable airlines address financial stress before it escalates to a formal IBC proceeding, preserving more value.

7. Investor and Stakeholder Sentiment:

- The successful implementation and consistent application of the new aircraft objects law will be key to improving international investor sentiment.
- The challenge of balancing the interests of powerful aircraft lessors with those of other stakeholders (lenders, employees, operational creditors, and passengers) will remain a delicate act for resolution professionals and the courts.

In conclusion, India's framework for aviation insolvency is undergoing a significant and positive transformation, moving towards greater alignment with international best practices, particularly concerning creditor rights in aircraft assets. The future outlook suggests a more predictable environment for aircraft financing and leasing. However, the inherent economic vulnerabilities of the aviation sector mean that financial distress will likely remain a recurring theme. The success of the reformed legal framework will depend on its effective implementation, the continued evolution of judicial understanding, and potentially further specialized reforms to address the unique operational and financial ecosystem of airlines. The overarching goal remains to create a system that facilitates the rescue of viable airlines where possible, allows for the efficient exit of unviable ones, and ensures a fair and transparent process for all stakeholders involved.