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## **THE JET AIRWAYS CASE AS A TEST OF INDIA'S CROSS BORDER LEGAL READINESS**

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### **ABSTRACT**

A major cross-border insolvency issue has been at the heart of the problems of the globalized aviation sector, which is characterized by multinational financing, foreign lessors, and international operational networks, thus making legal dependencies quite complex. When Jet Airways, the largest private fleet of India at that time, went down, the situation was so grim that it brought the issues to the forefront. India and the Netherlands saw the simultaneous unfolding of insolvency proceedings. It was also the first moment of "cross-border insolvency cooperation" interaction in India and challenged the domestic lawyers' system's ability to work without a comprehensive legislative framework based on the UNCITRAL Model Law. This seminar paper investigates the court and other participating institutions' improvisation and flexibility in handling Jet Airways insolvency, thus making it a judicial cooperation experiment laboratory. It also appraises the novel communication and cooperation established by the NCLT and NCLAT with the Dutch insolvency teams through agreements, acknowledgment of foreign proceeding, and modified universalism.

The article elaborates on the disjointed Indian cross-border insolvency system history and the way in which Jet Airways scandal led to the exposure of structural holes and the problem of prioritizing the creditors' claims in foreign countries. In addition to this, it examines different international practices, the influence of the principles of comity, and the operational limitations faced by multinational airlines that are in insolvency. Based on these, the authors conclude that the Indian judiciary showed creativity and willingness, yet the system is still reliant on spontaneous judicial decisions in the absence of clear statutory provisions. Finally, the study proposes the introduction of a harmonized legal framework that would ensure fairness between foreign and domestic creditors, conform India's legal standards to the global best practices, and more.

## INTRODUCTION

Jet Airways became insolvent in 2019, which was a historic moment for India's cross-border insolvency laws. Indian courts were challenged for the first time with the question of how to deal with simultaneous insolvency proceedings of the same debtor in different jurisdictions. This necessitated a principled legal response to issues such as jurisdictional conflict, judicial cooperation, coordination of foreign proceedings, and the recognition of foreign insolvency representatives. Jet Airways had a significant asset base, numerous creditors, and widespread operations, both in India and abroad. Its aircraft were stationed in different countries, it had international routes, leases, and obligations to foreign banks and lessors. When insolvency cases were filed in both India and the Netherlands, it became a challenge like no other to the Indian insolvency regime, which did not have a detailed statutory framework for such cross-border situations. The way National Company Law Appellate Tribunal (NCLAT) handled the case, in cooperation and not by statutory interpretation, provides india's legal system dealing with cross-border insolvency valuable insights in both the current situation and the limitations.

Where cross-border insolvency used to be just a niche issue, it is now at the heart of modern commercial law as corporations increasingly hold assets and take on liabilities in different jurisdictions. In general, insolvency regimes have moved towards models that encourage the cooperation, comity, and coordination of courts to avoid the scattering of assets and to maximize the creditor's returns. The UNCITRAL Model Law on Cross-Border Insolvency, 1997 ("Model Law")<sup>1</sup>, considered the main international standard, has been adopted by a number of jurisdictions like the United States, United Kingdom, and Singapore. India was part of the drafting process but has not yet adopted it in its domestic law. Therefore, India is still dependent on Sections 234 and 235 of the IBC<sup>2</sup>, provisions which theoretically provide for cooperation with foreign courts but are yet to be implemented due to the lack of reciprocal arrangements. This gap in the law was a stark reminder during the Jet Airways proceedings, when the Indian and Dutch courts could not coordinate their actions due to the absence of a formal legal basis.

The action of a foreign creditor to bring the Jet Airways bankruptcy case to the Netherlands caused the Dutch court to appoint a bankruptcy administrator. The administrator then requested recognition in India. At the same time, local creditors filed for insolvency under the IBC, through NCLT in Mumbai. Without proper legislative guidance, Indian tribunals had to make decisions about recognising the Dutch proceeding, allowing the Dutch administrator to

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<sup>1</sup> United Nations Commission on International Trade Law, *UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation* (United Nations 1997)

<sup>2</sup> Insolvency and Bankruptcy Code 2016, ss 234–235

participate in the Indian corporate insolvency resolution process ("CIRP"), and aligning both proceedings. The NCLAT eventually took a practical stance in permitting the Dutch administrator to attend committee-of-creditors meetings and in designating the Indian CIRP as the "main proceeding," while also ordering limited coordination. The cooperative mechanism was celebrated as a step forward, however, it also exposed the ad hoc nature of the cross-border decisions taken in India and reminded of the necessity for a regulated statutory framework.

Therefore, the Jet Airways case<sup>3</sup> is an excellent reference point to assess whether India is equipped to deal with cross-border insolvency issues. It brings up fundamental questions:

- Are Indian courts in a position to work together with foreign courts if there is no formal legislative framework?
- Does the IBC have enough provisions to handle cross-border intricacies, or is the Indian judiciary left to its own devices?
- Most importantly, what insights does the Jet Airways case give us about the forthcoming cross-border insolvency reforms in India?

With India on its way to positioning itself as an international commercial hub, its insolvency regime needs to be in line with global standards. The Jet Airways case is indicative of the Indian judiciary's capability to innovatively resolve intricate cross-border issues. Still, at the same time, it exposes the structural frailties that undermine legal certainty and commercial predictability. Hence, the question has shifted from whether India needs a complete cross-border insolvency framework to how soon these changes should come. Jet Airways is an uneasy moment in India's march to readiness and its lessons constitute the basis of this inquiry.

## **BACKGROUND OF JET AIRWAYS**

Jet Airways, at one time the most popular full-service private airline in India, had its collapse brought about by a financial deterioration that was going on for quite a long time and which revealed not only the structural issues of the aviation sector but also regulatory constraints, macroeconomic volatility, and managerial decisions that ultimately put the company in a

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<sup>3</sup> Jet Airways (India) Ltd. v State Bank of India C Ors., NCLT Mumbai Bench, CP (IB) 2205/MB/2019 (20 June 2021)

weak position. To understand the legal issues eventually referred to Indian and Dutch courts, it is first necessary to understand the background of the insolvency.

Jet Airways was a new company in 1992, and it made a name for itself in the Indian aviation market in a very short time, becoming a market leader domestically and internationally by the mid-2000s. It mainly relied on debt to finance its expansion, and at the same time, it pushed very aggressively for the acquisition of new aircraft and the opening of new flight routes. But, as a result of fluctuating fuel prices, an unfavorable exchange rate, competition from low-cost carriers, and increasing costs of funding, the company was in a financial position that over time became less and less resistant.

By 2018, Jet Airways was holding on to a mountain of losses of about ₹8,000 crore and total liabilities exceeding ₹15,000 crore. But the company was still unable to carry out obligations under the lease agreements of aircraft, vendors' payments, bills for fuel, and the staff's salaries. The company's debt obligations were composed of a mixture of Indian and foreign creditors. Domestic banks led by the State Bank of India (SBI) were the major lenders, while the foreign suppliers included lessors, rights holders, and airport authorities. The existence of such diverse creditors was instrumental in the creation of the later unique cross-border insolvency situation. As the company's cash inflow issues worsened, it began to skip payments to airports, oil companies, lessors, and financial institutions. Repossession of aircraft led to the grounding of some planes, both domestically and internationally. The situation was even more dire for the international operations of the company, as creditors in foreign jurisdictions, who thus became the most affected parties, insisted that the company observe the contractual rights under the local law, which were often completely different from the procedure followed in India.

In early 2019, some measures were put in place to revive the carrier through the infusion of fresh capital, restructuring its debt and by providing it with short-term credit facilities. The consortium of lenders, which was under the leadership of SBI, evaluated various offers from potential investors, one of them being Etihad Airways and several other private equity being entities. But talks kept getting stuck at a point because of the issues connected to the deteriorating financial condition of Jet Airways, its already existing liabilities and lack of a turnaround plan. The company shutting down its operations in April 2019 was the moment that most clearly signaled a move toward insolvency proceedings – at that time, it did not have enough money even for the continuation of minimal operations.

The NCLT formally started the insolvency proceeding by admitting the lenders' consortium petition under Section 7 of the IBC<sup>4</sup> in June 2019. This created a situation called corporate insolvency resolution process ("CIRP"), and the next step was the appointment of a Resolution Professional (RP), who is in charge of running the company, collecting and verifying claims, and inviting resolution proposals. At that time, the Indian insolvency regime was based on the assumption that India would be the main and controlling authority in charge of asset distribution and deciding creditor rights. However, what the lenders and the RP overlooked was one of Jet Airways's foreign operational creditors initiating parallel insolvency proceedings in a foreign jurisdiction.

Formally, the cross-border aspect came into play when a Dutch court on a bankruptcy motion filed by a foreign creditor, more specifically, a European cargo handler—declared Jet Airways bankrupt in the Netherlands and appointed a Dutch bankruptcy trustee (administrator). The foreign case was initiated because Jet Airways held some assets in the Dutch territorial jurisdiction, in particular, a grounded aircraft at Schiphol Airport, which was used as the basis for Dutch insolvency jurisdiction. The court in the Netherlands found the presence of Jet Airways in its jurisdiction enough to warrant a local insolvency order under Dutch bankruptcy law. It marked a major shift from the assumption of Indian law that all insolvency cases concerning an Indian corporate debtor would be necessarily consolidated before the NCLT under the IBC.

By its ruling, the Dutch court raised a number of new questions that fell under Indian insolvency law. For example, should the Indian tribunal recognise and cooperate with foreign insolvency representatives? Should the Dutch proceeding be considered a main or non-main one based on principles similar to those of the Model Law? And, whether the Indian proceeding had absolute jurisdiction over the debtor's assets worldwide? The complexity of the situation was enhanced by the lack of a treaty or a reciprocal arrangement between India and the Netherlands as per Sections 234 and 235 of the IBC, which made statutory cooperation formally impossible.

At the outset, the Indian RP was of the opinion that the Dutch proceeding was illegal in India. Therefore, the NCLT issued an injunction prohibiting the Dutch administrator from meddling with the Indian CIRP. The NCLT maintained that as Jet Airways was an Indian company with its centre of main interests ("COMI") in India, the IBC proceeding should take precedence

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<sup>4</sup> Insolvency and Bankruptcy Code 2016, s 7

over all foreign actions. The NCLT's view is based on the territorial reading of the IBC, which, contrary to the Model Law, does not make a distinction between main and non-main proceedings nor does it provide an explicit mechanism for recognising foreign insolvency actions. The NCLT considered it inconsistent with the statutory framework, which grants the RP exclusive control of the company, for the foreign administrator to seek to engage the Indian process.

At the same time, the Dutch administrator was moving forward with cooperation efforts and seeking recognition from India to coordinate the proceedings. The conflicting orders resulted in a jurisdictional deadlock: on the one hand, the Dutch proceeding was at a standstill without Indian cooperation; on the other hand, the Indian proceeding was at risk of being disrupted by a unilateral creditor action abroad. The NCLAT, which the issue was referred to, adopted a conciliatory approach. Rather than invalidating either of the proceedings, the court advocated cooperation between the RP and the Dutch administrator, permitting the latter to participate in committee of creditors ("CoC") meetings without voting rights and considering the Indian CIRP as the main proceeding. The NCLAT order was a pragmatic one aimed at ensuring the safety of the creditors' interests and the preservation of the assets. However, it also made clear that there was no statutory provision for such coordination.

Such a backdrop provides the fundamental context for evaluating India's preparedness to handle cross-border insolvencies. The Jet Airways fiasco was a stark reminder of the difficulties of multi-jurisdictional insolvency in the absence of a thorough legislative framework, the constraints of judicial creativity, and the necessity of statutory reform.

## **CROSS BORDER INSOLVENCY LAW IN INDIA**

Cross-border insolvency is a situation where debtors, creditors, assets, or business operations of a company are spread across different legal territories and hence, require legal courts and insolvency authorities from different countries to work together. In a globalized commercial system, enterprises are formed with components crossing borders like subsidiaries, joint ventures, branches, or asset distributions. When such enterprises default or face insolvency, traditional domestic frameworks become inadequate because they fail to offer means for recognition of foreign proceedings, protection of assets in foreign countries, or coordination with foreign courts. Hence, cross-border insolvency regulations seek to establish a legally

consistent, foreseeable, and cooperative system which would allow dealing with such cases in a just and time-saving way.

Conceptually, four fundamental principles at the core of cross-border insolvency guide these principles: access, recognition, cooperation, and coordination. Access allows foreign representatives to come to local courts; recognition gives domestic courts the power to recognize formally and to enact foreign insolvency proceedings; cooperation obliges courts from different jurisdictions to communicate and exchange information; coordination is designed to oversee concurrent insolvency proceedings in different countries in a uniform way so that conflicts and asset dispersions could be avoided. These tenets underlie the UNCITRAL Model Law on Cross-Border Insolvency (1997)<sup>5</sup> which has become a global standard and has been adopted by more than 50 jurisdictions. The Model Law aims to be procedural rather than substantive, thus it ensures that there is room for different domestic adaptations.

India's Insolvency and Bankruptcy Code, 2016 (IBC) does acknowledge cross-border insolvency, but only in a limited and incomplete form. Sections 234 and 235 are the IBC's primary cross-border provisions. Section 234 provides the Central Government with power to establish agreements with other countries for enforcement of the IBC in cross-border cases. Section 235 allows the resolution professional (RP) or liquidator, on whose behalf the request is made, to request the National Company Law Tribunal (NCLT) to write a letter of request to foreign courts for cooperation.

Nevertheless, these provisions are not without problems. Firstly, India does not have any bilateral insolvency cooperation treaties with any country, which makes Section 234 almost nonfunctional. Secondly, the approach described in Section 235 is slow, very discretionary, and the outcome depends on the foreign court's willingness to help. Thirdly, these provisions neither feature the recognition of foreign proceedings nor the management of concurrent insolvency cases in different jurisdictions. Therefore, India does not have a cohesive statutory framework to address multinational insolvencies in a logical and time-saving manner.

The Insolvency Law Committee (ILC) in its 2018 report<sup>6</sup>, recognizing these shortcomings, recommended that India should implement the UNCITRAL Model Law with changes that fit

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<sup>5</sup> UNCITRAL, Model Law on Cross-Border Insolvency (United Nations Commission on International Trade Law, 1997)

<sup>6</sup> Ministry of Corporate Affairs, *Report of the Insolvency Law Committee* (Government of India, March 2018)

Indian conditions. The recommendations included granting the government the prerogative to refuse recognition if it was against public policy, restricting the application only to corporate debtors (not individuals), and inserting provisions safeguarding local priorities. Later, a draft of Part Z (Cross-Border Insolvency) was prepared but has not been passed into law yet.

Today, India is a significant part of global capital markets, is connected with other countries through aviation networks, is a part of supply chains, and is available on digital platforms. Indian corporations hire debt from foreign lenders, get listed on international stock exchanges, buy overseas subsidiaries, and manage assets in different jurisdictions. In the same way, multinational enterprises keep operational units, manufacturing facilities, and service hubs in India. The interdependence of these events means that insolvency scandals have international consequences.

Hence, cross-border insolvency rules are required for a couple of reasons. Firstly, these regulations safeguard the worth of the assets located outside India by stopping their seizure by individual foreign creditors. Secondly, they assure foreign creditors that they will get fair treatment under Indian insolvency law, thus lowering the cost of international financing. Thirdly, these rules prohibit parallel proceedings from negatively affecting each other and thus, ensure procedural predictability. Lastly, they improve the credibility of India's insolvency regime and are consistent with India's ambition of becoming a global financial hub.

India's journey to devise a cross-border insolvency regime in line with international standards has been slow, piecemeal, and quite indicative of the country's general reluctance to permit free movement of capital, accept the rights of foreign creditors, and preserve the domestic economy. Before the introduction of the Insolvency and Bankruptcy Code, 2016 (IBC), Indian insolvency law was the result of a patchwork system of legislations like the Companies Act, 1956<sup>7</sup> and later the Companies Act, 2013<sup>8</sup> that only marginally addressed the issues of assets, creditors, and the corporate sphere beyond the national territory. Essentially, these clauses were reactive in nature, mandated that India be granted by-laws from the foreign jurisdictions, and constrained Indian judges in their decision to issue letters of request or recognize foreign insolvency proceedings. Further, they were devoid of any internal cooperation, coordination, or recognition mechanisms, thus, the difference between the

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<sup>7</sup> Companies Act 1956

<sup>8</sup> Companies Act 2013

functionalities of the Indian insolvency and the increasingly globalized Indian corporations, on one hand, and significant foreign exposure of Indian banks on the other, kept on widening.

The introduction of the IBC was the first substantial transformation in India's readiness to cross-border insolvency in an upto-date and organized manner. In order to establish bilateral cooperation, the Central government and the Indian courts were empowered through Sections 234 and 235 to make arrangements with the Central Government and courts of other countries through letters of request. Despite that, these articles never saw any implementation as a result of the absence of any agreements between two parties. Hence, the method is only theoretical at this stage. Furthermore, many financial experts are of the opinion that a bilateral model like this is not sufficient in a globalised capital market where there could be a dozen or so jurisdictions that a corporate group may be operating and where creditors may be sitting anywhere in the world.

It is worth mentioning that though a draft of the Model Law-based legislation was published in 2019, the bill is still lying unapproved. Skepticism remains to a great extent about the compatibility of the Model Law with Indian priorities such as safeguarding domestic public creditors, the role of state-run financial institutions, and, possibly, seeming contradictions with sector-specific regulatory frameworks. Besides, India has also been reluctant towards foreign insolvency proceedings being granted automatic recognition as it is worried about foreign liquidators may seize control over the assets that are essential for the domestic economic stability.

In that situation, the Jet Airways case of 2019 reached the heights of a landmark event. As a matter of fact, it was the very first time an Indian court went beyond just formalities and actually engaged with a foreign court—in this instance, the Dutch Bankruptcy Court—cooperation albeit absence of a legislative framework. The National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) did the groundbreaking move of acknowledging the Dutch administrator as a “foreign representative”

Thus, the evolution of India's cross-border insolvency regime reflects a transition from fragmented statutory provisions under the pre-IBC framework, to cautious experimentation through the IBC's bilateral model, to judicially crafted cooperation in the absence of legislation, and now to a growing recognition of the need for a comprehensive statutory model aligned with international best practices. The Jet Airways case marks an inflection

point in this trajectory, highlighting both India's readiness and its institutional challenges in dealing with multinational corporate insolvencies.

## COMPARATIVE ANALYSIS

The Jet Airways case underscores India's nascent approach to cross-border insolvency and invites comparison with jurisdictions that have developed comprehensive frameworks for resolving multi-jurisdictional corporate insolvencies. Globally, countries have largely converged around the principles enshrined in the UNCITRAL Model Law on Cross-Border Insolvency, which aims to facilitate cooperation between courts, protect creditor rights, and promote asset preservation. India, although a participant in the drafting of the Model Law, has yet to implement it formally, relying instead on Sections 234 and 235 of the Insolvency and Bankruptcy Code, 2016 ("IBC") for international cooperation. These provisions, however, are largely aspirational and lack the detailed procedural mechanism necessary for systematic cross-border engagement.

In the United States, cross-border insolvency is primarily governed by Chapter 15 of the Bankruptcy Code<sup>9</sup>, which implements the Model Law. Chapter 15 allows for recognition of foreign main or non-main proceedings, establishes the rights of foreign representatives, and provides for coordinated relief to preserve debtor assets across jurisdictions. In practice, courts routinely grant recognition to foreign insolvency representatives, enabling them to participate in domestic proceedings, attend creditor meetings, and enforce claims. This framework ensures both legal certainty and commercial predictability, minimizing disputes between domestic and foreign creditors. The Jet Airways scenario highlights that India's IBC lacks a comparable mechanism, resulting in reliance on ad hoc judicial orders to coordinate with foreign administrators.

Singapore represents another jurisdiction with a robust cross-border insolvency regime. The Singapore Companies Act<sup>10</sup> and the Insolvency, Restructuring and Dissolution Act (IRDA)<sup>11</sup> incorporate the Model Law and offer clear guidance on recognition of foreign insolvency proceedings, the rights and duties of foreign representatives, and judicial cooperation. Singaporean courts have consistently prioritized preserving the value of assets, facilitating collective resolution for creditors, and coordinating proceedings across borders. The

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<sup>9</sup> Bankruptcy Code 1978, 11 USC ch 15

<sup>10</sup> Companies Act (Cap 50, 2006 Rev Ed, Singapore)

<sup>11</sup> Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018, Singapore)

predictable and codified approach contrasts sharply with India's reactive measures in Jet Airways, where NCLAT had to balance interests pragmatically without explicit statutory authority.

The United Kingdom operates under the Cross-Border Insolvency Regulations 2006<sup>12</sup>, which adopt the Model Law and establish procedural clarity for cooperation, recognition, and enforcement. UK courts distinguish between main and non-main proceedings, define the scope of recognition for foreign representatives, and provide remedies to prevent unilateral action by creditors outside the domestic proceeding. In comparison, India has no statutory mechanism for defining the center of main interests ("COMI") or granting equivalent relief, leaving courts to determine jurisdiction and cooperation through judicial discretion.

The comparative analysis reveals that India's approach is reactive and reliant on judicial improvisation. The Jet Airways case exemplified the challenges this poses: while the NCLAT successfully allowed the Dutch administrator to participate in the committee of creditors, there was no clear statutory framework defining the extent of participation, priority of claims, or enforceability of foreign decisions. The absence of a codified approach generates uncertainty, increases litigation risks, and potentially undermines creditor confidence, particularly for foreign investors seeking to engage with Indian companies. By contrast, the US, Singapore, and the UK provide structured frameworks, ensuring predictability, facilitating cross-border investment, and protecting the collective interests of creditors.

In conclusion, the comparative perspective underscores the need for India to formally implement the UNCITRAL Model Law within its insolvency framework, providing clear procedures for recognition, participation, and enforcement of foreign insolvency proceedings. Jet Airways serves as a cautionary tale that, in the absence of statutory clarity, courts must rely on ad hoc coordination, which, while effective in isolated instances, cannot replace a coherent legal framework necessary for India's emergence as a credible hub for cross-border investment and corporate restructuring.

## **JET AIRWAYS CASE – FIRST USE OF CROSS BORDER INSOLVENCY FRAMEWORK**

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<sup>12</sup> Cross-Border Insolvency Regulations 2006, SI 2006/1030

The insolvency of Jet Airways was the first significant judicial effort to put into effect India's cross-border insolvency system which is still in the process of development. After the collapse of Jet Airways in 2019, the question of where its assets, creditors, and operations were located became the issue of the multiple jurisdictions, mainly India and the Netherlands. The most significant legal problem that was posed was new to the court: while the airline was under a corporate insolvency resolution process (CIRP) before the National Company Law Tribunal (NCLT) under the Insolvency and Bankruptcy Code (IBC), a Dutch Court was at the same time initiating bankruptcy proceedings for the airline's foreign assets. On the one hand, the Indian court was following a debtor-in-possession model under the IBC, and on the other hand, the Netherlands was appointing a bankruptcy trustee under Dutch law, so there were two competing insolvency actions.

At first, the NCLT declined to acknowledge the Dutch proceedings, labeling India as the "centre of main interests" (COMI) and thus refusing the coordination request. This brought to the fore the inherent weaknesses of the IBC structure, which did not provide for any statutory provision for recognition and cooperation with foreign courts. Nevertheless, the National Company Law Appellate Tribunal (NCLAT) changed this stance later on and allowed a kind of modified cooperation between the Indian resolution professional (RP) and the Dutch administrator. The NCLAT in its landmark decision allowed the Dutch administrator to take the stage in the Indian CIRP as an "operational creditor," thus foreign proceeding recognition was achieved without formal recognition under any statutory framework. This marked the beginning of India's cross-border cooperation through judicial comity.

The Jet Airways coordination plan also implemented the quasi-"synthetic" proceeding instrument, by which the NCLAT ordered that the foreign administrator coordinate with the Indian RP by sharing information, coordinating creditor claims, and ensuring that they do not duplicate asset realisation. This reflected the main points of the UNCITRAL Model Law, although India had not at that time adopted the Model Law. So the Jet Airways case became a demonstrator that Indian tribunals were ready to invoke their inherent judicial powers, principles of international cooperation, and equity to fill in the gaps in the IBC.

The case brought to light the systemic issues behind India's cross-border insolvency regime as well. Firstly, the absence of a binding rule for the determination of COMI was the major cause of the hesitation of foreign courts and asset holders. Secondly, the Indian tribunals were forced to come up with means of cooperation on the spot, which resulted in making decisions

arbitrarily rather than in a predictable, rules-based system. Thirdly, the silence of the statute compelled tribunals to find creative but legally less stable solutions which make them liable to be challenged by appeal or legislative override. Fourthly, the point of no return for reciprocity was not in the statute - India counted on Dutch collaboration only by way of comity, not through legal obligation. At last, the matter unveiled the main problem of the multi-jurisdiction insolvency situations: until India puts in place a structured framework for cross-border insolvency, cases of assets being scattered across different jurisdictions will not get the required coordination for optimising value and ensuring fairness to all creditors.

To sum it up, the Jet Airways case was akin to a stress test for the readiness of India's cross-border insolvency system. It was revealed that Indian judges have the ability to come up with judicial innovations to facilitate cooperation at the international level, but at the same time, the court stressed that such improvising cannot take the place of a comprehensive framework by statute. Eventually, this case paved the way for the government to renew its commitment to the adoption of the UNCITRAL Model Law,

The bankruptcy proceedings of Jet Airways have brought to light that even though the legal framework in India is adaptable, it is still not structurally equipped to deal with the intricacies of the collapse of multinational companies. One of the biggest issues was the lack of a uniform statutory mechanism that would regulate cooperation across borders. The Indian Insolvency and Bankruptcy Code (IBC) does have provisions for such cooperation in sections 234 and 235, but these are only in force when bilateral agreements are in place. However, no such agreements have been made with the main jurisdictions, such as the Netherlands. As a result, insolvency professionals and courts had to resort to judicial negotiation and improvisation in order to reach a decision since there was no clarity in the law. This patchwork approach to solving problems at hand carries the risk of being inconsistent and therefore, it can cause the confidence of investors to be lowered as the results of the cases become dependent on the disposition of the judges rather than on the designed legislative structure which is predictable.

Moreover, the Jet Airways case brought to light the problem of jurisdictional inequality between court proceedings that take place in India and those that take place abroad. In the Netherlands, the administrator had control over some essential equipment like a plane engine; however, he was not recognized in India because there was no legal provision for recognizing a foreign representative. This situation led to the very first jurisdictional deadlock and thus,

the insolvency process was less efficient. Furthermore, the simultaneous filing of the cases in India and the Netherlands caused worries about how creditors would be protected, especially foreign creditors who were afraid that they would be put in a subordinate position in local proceedings. So, the case showed how the Indian legal system in insolvency situations becomes less reliable in terms of fair treatment of claims if it lacks the features of automatic or modified universalism which are systems capable of reducing procedural uncertainty.

The problems with coordination were not limited to the legal gaps only but the operational and administrative issues were involved as well. The establishment of a "cross-border insolvency protocol" between the NCLT and the Dutch Court was groundbreaking, nevertheless, it took a lot of negotiation and judicial inventiveness to bring it about. Even though, in the end, it led to a feasible system that was based on cooperation and communication, the nonexistence of legislation directing such protocols suggests that these agreements may differ from one case to another which, in turn, affects the predictability of the system. This has also given rise to the concern of whether the judiciary is going beyond its power as courts are seen to be performing functions that belong to the legislature by creating mechanisms through which they facilitate the operations of the framework.

The Jet Airways episode has further revealed how susceptible the Indian insolvency system is to risks arising from forum shopping. In general, foreign creditors may take the initiative to start legal processes in areas which are considered more beneficial to them and as a result, the parallel actions which might be triggered become a cause for the difficulty of asset marshaling. A European creditor was the one who started the Dutch proceeding which is an example of such behavior. Due to the fact that India does not have an established method for recognizing foreign judgments or court decisions, it has become a doubtful issue concerning the authority of the directions that are given from abroad. The consequent breaking up has a lot of serious issues at stake for the businesses that operate in different countries. The main issues are that they may receive inconsistent decisions which will not only lead to a loss of their value but also to an increase of the insolvency costs because of the duplication of efforts and the spend of time that occurs on both sides.

Another big problem can be found in the area of how foreign creditors are treated under Indian law. Although the IBC requires them to be treated equally, there are some real obstacles such as different documentation standards, lack of knowledge of the procedures, and absence of digital integration with foreign systems, that make their participation a

challenge. Jet Airways, among other things, was an eye-opener in this regard. It showed how desperately there was a need for the introduction of standardised timelines, one uniform filing format, and the creation of facilitation mechanisms which can verify claims made across different jurisdictions.

Finally, the issues raised in the case about the extent to which the law of comity operates when there is no statutory guarantee are still there. Even though cooperation between the courts is a good thing, it heavily relies on the trust that they have in each other as well as on the fact that their insolvency views are compatible. In the event that any of the two courts had refused to collaborate, the conflict arising from that would have endangered the joint efforts to recover the value.

The airline was, as India's most significant privately-owned carrier with a major international presence- operating flights to the Middle East, Europe, and Southeast Asia- had a portfolio of leases on its aircraft through lessors located in foreign countries and bank loans from abroad, in addition to the incurring of airport fees in various places of the world and the setting up of operational locations in the Netherlands, the UK, and the US. The collapse of the carrier in 2019 was followed by the insolvency process that did not stay in India but spread to other countries where it initiated parallel proceedings, with the Netherlands being the most affected one.

When Dutch courts started bankruptcy proceedings against Jet Airways on the grounds of unpaid dues to aviation service providers in the Netherlands, the main cross-border challenge was identified. With the Dutch trustee placing his hands on the airline's assets located within the Dutch authority- including a Boeing 777 not in use at Schiphol Airport, the court seized control of the assets. At the same time, under the Insolvency and Bankruptcy Code (IBC), the National Company Law Tribunal (NCLT) in India had already assigned a Resolution Professional (RP) to local Corporate Insolvency Resolution Process (CIRP). Thus, two insolvency estates were formed almost simultaneously in two separate areas, different legal regimes governing them, and with disputes regarding the authority, hierarchy, and cooperation between them.

The scenario very well may have resulted in a battle over jurisdiction analogous to the well-known global insolvency disputes of Nortel Networks or Lehman Brothers, where disagreements over court orders in different countries led to delays, gradual depletion of the assets, and scattering the stakeholders for years. Nevertheless, the Jet Airways case took a

surprising and novel route: the Indian RP and the Dutch administrator signed and implemented a Cross-Border Insolvency Protocol which was the first instance of such in India's insolvency history. The agreement recognized India as the "COMI-like" place where the main proceedings would be held, and the Netherlands as the second territory where the assets were to be located. In a way resembling the UNCITRAL Model Law on Cross-Border Insolvency but without formally adopting it, coordinating activities like sharing information, checking claims, and managing assets were organised.

The importance of the agreement lies not only in its tangible effects but also in the things it signifies from a normative point of view. Despite the absence of a statutory cross-border insolvency mechanism, India could still participate in cooperative insolvency governance through judicial innovation and administrative pragmatism, as evidenced by this agreement. The NCLAT's permission of the protocol demonstrated a readiness to employ comity and coordinate with foreign courts thus indirectly indicating a shift toward a modified universalist approach. At the same time, the decision of the Dutch court to halt its separate bankruptcy proceedings and opt for coordinated administration evidenced trust in Indian insolvency institutions.

Besides, Jet Airways event revealed the legal and structural weaknesses of India. Foreign creditors lacked the willingness to provide funds because of the non-existence of statutory certainty. As there were no codified rules that would indicate the time for recognition of foreign proceedings or the manner in which foreign representatives can participate, the process was dominated by judicial discretion. This brings the danger of uncertainty in future instances. Furthermore, the hesitation of India to formally take up the Model Law- although the Insolvency Law Committee has made extensive recommendations- intimates that India still opts for on-demand cooperation rather than through institutionalized schemes. Given the global commercial aviation environment where international leasing, offshore financing, and the operational liabilities of multiple jurisdictions are standard practices, these kinds of ambiguities deter the inflow of capital and raise the costs of financing.

## **CRITICAL EVALUATION**

Initially, the NCLT and NCLAT revealed a degree of openness to international collaboration that was quite surprising. Even though there was no statutory framework like the UNCITRAL Model Law, these tribunals acknowledged the necessity of staying away from a fragmented

insolvency process that could lead to conflicting rulings, asset dissipation, and stakeholder prejudice. By agreeing to draw up a joint protocol with the Dutch trustee, the two courts signalled an important institutional innovation, indicating that Indian insolvency jurisprudence was ready to give priority to creditor coordination and economic efficiency instead of strict territoriality. This was a major jurisprudential shift because, quite in contrast to this, Indian courts have traditionally been very territorial in their treatment of property, jurisdiction, and recognition of foreign judicial acts.

On the other hand, the improvisational nature of the cooperation framework in Jet Airways also reveals the extent to which India's cross-border insolvency readiness is fragile and unpredictable. The cooperation came about not because the law mandated it but because the decision-makers chose to innovate. In the absence of legislative guidance, there is therefore uncertainty, which is the opposite of what global creditors and foreign investors need. In order for cross-border insolvency to work efficiently, the parties have to be governed by predictable rules dealing with recognition, cooperation, information-sharing, and priority of claims. Thus, besides being praised as a breakthrough, Jet Airways also brought to light the discretionary and unstable features of India's present framework.

The limited involvement of foreign creditors in the Indian insolvency process is another aspect that needs to be critically examined. The claim verification mechanisms of the IBC, strict timelines, and voting thresholds were mainly intended for domestic cases. Foreign creditors, who were not familiar with Indian procedures, documentation requirements, and the role of the Committee of Creditors (CoC), found themselves structurally disadvantaged. As the joint protocol sought to establish a uniform process, the substantive rights, such as voting rights and claim priority, continued to be

determined only under Indian law. This created an imbalance, which ruined the ideal of a coordinated and creditor-neutral cross-border regime. Besides that, the insolvency resolution plan did not sufficiently represent foreign creditors' claims, which is indicative of the limits of judicial coordination without legislative harmonisation.

An additional problem is related to the manner in which foreign courts are treated. Although the NCLAT recognized the Dutch proceedings as "non-main" ones, the designation was without any legal foundation. The tribunal referred to the UNCITRAL Model Law for its ideas but did not have the corresponding clarity in the definitions or procedural safeguards. This concern raises cases where courts selectively adopt the Model Law's principles without

its discipline, thus possibly causing inconsistent interpretations that may result in India being less reliable for cross-border restructuring. Hence, Jet Airways illustrates the hazard of "judicial borrowing" in the absence of a statutory framework—concepts may be taken over, but without the structure that binds them together.

Last but not least, the Jet Airways case is evidence that India has to improve its institutional capacity. Cross-border insolvency is a matter that requires expertise in areas like private international law, foreign insolvency regimes, conflict of laws, and international finance. The officials engaged in insolvency, CoCs, and tribunals need to be competent enough to meet these global standards. The Jet Airways episode revealed that although Indian institutions had the willingness, they were still not quite up to the challenge of multi-jurisdictional debt, aircraft lease agreements under foreign law, and the treatment of offshore assets.

## **CONCLUSION**

The insolvency of Jet Airways is a landmark moment that significantly shapes the evolution of India's legal framework beyond its borders. This case, being one of the first major instances that resorted to real-time coordination between the Indian insolvency authorities and foreign courts, opened up the frame of the Indian Insolvency and Bankruptcy Code, 2016 (IBC) to scrutiny in terms of both its capabilities and limitations. The IBC has been a power tool in the resolution of insolvency at the domestic level; however, the proceedings of Jet Airways have made it clear that its capacity to resolve distress of multinational companies is at best makeshift, created by judges and reliant on the goodwill of different jurisdictions rather than a statutory regime that is predictable.

The "modified universalism" concept applied by the NCLT and the Dutch Bankruptcy Trustee was a practical and cooperative way of resolving issues. Nevertheless, it also emphasized that India still lacks a formal system for cross-border insolvency coordination that is grounded in legislation.

The case brought to light the real-life difficulties faced when an Indian company that has significant foreign operations goes bankrupt. Among the issues raised were those of jurisdiction, recognition of foreign proceedings, the treatment of overseas assets, the rights of international creditors, and the coordination of parallel insolvency processes, all of which require judicial comity to a much lesser extent than is currently the case. Although the ad hoc

protocol that was negotiated in Jet Airways was innovative, it is no substitute for a unified statutory regime. The non-adoption by India of the UNCITRAL Model Law on Cross-Border Insolvency constitutes a significant structural gap of which the Jet Airways is the demonstrative case of the tangible costs for legislative inactivity. The existence of such uncertainty discourages foreign creditors, raises the cost of cross-border lending and dents India's image as a jurisdiction that has the capability to manage insolvency in a globally integrated financial and aviation market.

Simultaneously, the Jet Airways case reiterated India's willingness to cooperatively interact with foreign insolvency systems and communicated the judiciary's readiness to accommodate foreign parallel proceedings. Hence, apart from a warning, it also stands as proof of India's institutional sophistication and preparedness for reform. This case has put a spotlight on how deeply interconnected Indian corporations are with the global markets and how pressing is the need for an insolvency framework that acknowledges this economic reality. International investment is often accompanied by transnational assets, financing structures, and stakeholders; a purely domestic code is not enough to handle such complexities. The adoption of the Model Law would facilitate this by providing legal certainty, predictability, and mutual trust, thus making India a more attractive destination for investments and bringing its insolvency regime in line with global best practices.

At the core, the Jet Airways insolvency case is a milestone as well as a mandate. The case records the extent of coordination between a foreign court and an Indian court regarding the insolvency process in India for the first time. More significantly, the case demands legislative reform to convert improvised judicial practice into laid down procedure. India's ambition of becoming a global commercial hub relies on its capacity to offer international creditors the needed trust and fairness, to protect value throughout borders, and to effectively manage corporate failure that is transnational. The Jet Airways experience is a clear indication that India is nearing the brink of this revolution. By putting in place a detailed framework for cross-border insolvencies, the country will be able to take the initiative legal readiness rather than reactive coordination thus ensuring that the next multinational insolvencies will be settled in a coherent, predictable and globally legitimate manner.

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