
CROSS-BORDER INSOLVENCY AND RESTRUCTURING: THE INDIAN AVIATION SECTOR UNDER THE CAPE TOWN CONVENTION

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ABSTRACT

The Indian airline industry has experienced a quick transformation in the last 20 years, as flying in India changed from being a luxury for the few to an everyday choice for millions. Low-cost carriers made air travel affordable, regional connectivity schemes opened up smaller towns to flights, and more Indians began choosing planes over trains for long journeys. But even though there was growth, INDIA'S airline industry has witnessed significant financial turbulence in recent years, with leading airlines, i.e., Kingfisher and Jet Airways, collapsing under debt and operational challenges. This research paper provides an in-depth study of the legislation governing aviation insolvency in India, with a special focus on the incorporation of the Cape Town Convention 2001 and its Aircraft Protocol, 2008, into domestic law. Key legislations such as the 2016 (IBC) code, civil aviation laws, and the newly enacted The Protection of Interests in Aircraft Objects Act, 2025, are examined in detail. Through this paper, an attempt is made to draw a comparison between India's airline insolvency regime and global insolvency standards to figure out the positive aspects that can be borrowed from other jurisdictions and where the gaps still exist.

*An understanding of how Indian courts have dealt with airline insolvencies when cases like *Awas Ireland v. DGCA* (2015), *Jet Airways* (2019 and 2024), and *Go Airlines* (2023–24) come up before them. This comparative analysis showcases how adopting the Cape Town Convention, how it has strengthened the domestic laws, enhanced creditors' protection, and narrowed the gap between Indian laws and global standards. Despite this, certain challenges still exist, especially with respect to its implementation on a day-to-day basis, lack of coordination in cases related to cross-border insolvency, and creating a balanced approach between protection and enforcement of creditors' rights and raising the airline revival chances.*

Keywords: *Aviation Insolvency, Cape Town Convention, IBC, 2016, Aircraft leasing, Cross-border insolvency, Airline Bankruptcy.*

I. INTRODUCTION

“In the middle of difficulty lies opportunity” _____ *Albert Einstein*

In the last two decades, India has positioned itself as one of the leading and evolving aviation markets globally. With the advent of budget carriers and the addition of new routes by the airlines, millions of Indians fly on an everyday basis using the services which were once limited to a small group of people having pocket strength. Being the *3rd-largest aviation market in the world, carrying a humongous 376 million passengers in the 2023-2024 financial year, clocking 15% annual growth.*¹ Timely policy actions, smart policy initiatives, big-ticket investments for airport upgradation, and schemes like the UDAN scheme² have led to the booming of India's aviation sector and enhanced accessibility even for the smaller cities. But the aviation sector isn't just about travelling – it's a crucial part of the Indian economy, adding a whopping USD 53.6 billion and providing nearly 8 million jobs in 2024³, both directly and indirectly.

However, this rapid expansion and economic significance have also exposed structural vulnerabilities within the sector, particularly when airlines face financial distress and insolvency. India's prospering aviation sector has been hit by repeated airline failures, highlighting the urgent need for a holistic and comprehensive insolvency legislation based on the special requirements of the aviation sector. In the last 10 years or so, a chain of bankruptcies, starting with Kingfisher Airlines (which discontinued its services in 2012)⁴, the initiation of Jet Airways insolvency in 2019, Go First's insolvency matter of 2023, have raised the alarm bells pointing towards the inadequacy of the existing laws.

These upsetting experiences clear the dust by revealing what the actual problem is – that the aviation sector has certain unique aspects and requires well-calibrated and well-formulated

¹Economic Survey 2023–24: Indian Aviation Has a Lot of Untapped Potential", *CNBC TV18*, July 21, 2024, available at: <[https://www.cnbc18.com/...](https://www.cnbc18.com/)> (last visited on May 5, 2026).

²Press Information Bureau, "UDAN Scheme: Connecting India", available at: <https://pib.gov.in> (last visited on May 11, 2026).

³India's Aviation Boom", *Drishti IAS*, Mar. 28, 2025, available at: <https://www.drishtiias.com/daily-updates/daily-news-analysis/india-s-aviation-boom> (last visited on May 3, 2026).

⁴Ashok Panigrahi, Antra Sinha, et.al., "A Case Study on the Downfall of Kingfisher Airlines" 6(2) *Journal of Management Research and Analysis* 81 (2019) available at: <[https://jmra.in/...](https://jmra.in/)> (last visited on May 5, 2026).

policies that address the specific issues related to the aviation sector, and India's insolvency legislation's one-size-fits-all tendency is inadequate to cater to the aviation sector-specific demands. The sector involves various parties like aircraft, foreign creditors, and internationally recognized legal obligations, and the absence of a mechanism that effectively enforces and secures foreign creditors' rights has created uncertainty. Even though India officially became a part of the '*Cape Town Convention*' in 2001 and its supporting '*Aircraft Protocol*' in 2008,⁵ India did not implement these instruments, which aim to protect the legitimate rights in the aircraft objects, for many subsequent years. As a result, the international lessors and financiers became vulnerable to sector-specific shocks, which came to the fore in the case of Go First in 2023, where the lessors were left in limbo as they were not able to repossess their leased aircraft due to IBC's moratorium clause.

II. LEGISLATION, REGULATION, AND THE CAPE TOWN CONVENTION

The Aircraft Objects Act, 2025 (CTC Act 2025),⁶ was implemented, with an aim of giving legal backing to the Cape Town accord and the Aircraft Protocol on aircraft. This adoption & implementation of the convention (CTC) will provide a strong base for lowering such kinds of financial debacle. What this move will do for our domestic aviation sector is to enhance the investors' trust, boost accessibility to financial resources, and provide impetus to the insolvency resolution process in case of any default. Notwithstanding the problems, the adoption will certainly prove to be beneficial for the Indian aviation industry and its overall growth. Some additional benefits attached to the domestic implementation of the convention would be access to additional capital resources, help airlines purchase newer and more advanced and effective aircraft, and solidify the industry's standing against any sort of financial crisis and improve its overall general stability.⁷

It is within this context of cross-border assets and foreign creditors that international legal frameworks governing aviation insolvency assumes critical importance. The Cape Town

⁵PRS Legislative Research, "Press Release: Draft Cape Town Convention Bill, 2018", available at:https://prsindia.org/files/bills_acts/bills_parliament/2019/Press%20Release-%20Draft%20Cape%20Town%20Convention%20Bill,%202018.pdf (last visited on May 11, 2026).

⁶The Aircraft Objects Act, 2025 (Act 16 of 2025), s. 1.

⁷S&R Associates, "The Cape Town Convention: Its Application and Benefits in India", available at:<https://www.snrlaw.in/wp-content/uploads/2025/07/The-Cape-Town-Convention-Its-Application-and-Benefits-in-India.pdf> (last visited on May 11, 2026).

Convention on International Interests in Mobile Equipment, 2001⁸ (hereinafter Cape Town Convention or CTC), along with the Aircraft Protocol, is a global treaty designed to standardize and strengthen the rights of creditors (such as lessors and secured lenders) in high-value mobile assets like aircraft, aircraft engines, and helicopters.⁹ The Aircraft Protocol supplements the Convention by tailoring these rules to the specific needs of aircraft equipment finance.

One key feature of the Aircraft Protocol is Article XI, Alternative A¹⁰ (often likened to the US bankruptcy code). Under Alternative A – which India has chosen – if a debtor enters insolvency, the insolvency administrator or debtor must either cure all defaults or agree to perform future obligations within a stipulated waiting period or else give possession of the aircraft objects to the creditor?

Although India signed onto the Cape Town Convention and Aircraft Protocol in 2008, the treaty was not self-executing in the Indian legal system. For many years, the Convention's principles were in limbo domestically – Indian courts gave effect to some aspects (e.g., honoring IDERA requests as seen in SpiceJet's case), but there was no comprehensive legislative framework. This changed with the introduction and passage of the Protection of Interests in Aircraft Objects Bill, 2025¹¹, which received Presidential assent and came into force on May 1, 2025. The Act, informally called the Cape Town Act, 2025 (CTC Act), gives the provisions of the Convention and Protocol the force of law in India in accordance with India's declarations made at accession.

III. INDIA'S INCORPORATION OF THE CAPE TOWN CONVENTION (AIRCRAFT OBJECTS ACT, 2025)

⁸The Cape Town Convention", *UNIDROIT*, available at: <https://www.unidroit.org/instruments/security-interests/cape-town-convention/> (last visited on May 6, 2026).

⁹Stewarts, "The Cape Town Convention: Its Application and Benefits in India" *Stewarts*, 2025, available at: <https://www.stewartslaw.com/...> (last visited on May 6, 2026).

¹⁰ Alternative A: Stowed Away for Now", *Restructuring Touchpoint*, May 2025, available at: <https://www.nortonrosefulbright.com/en/restructuring-touchpoint/blog/2025/05/alternative-a-stowed-away-for-now> (last visited on May 7, 2026).

¹¹The Protection of Interests in Aircraft Objects Bill, 2025", *PRS Legislative Research*, available at: <https://prsindia.org/billtrack/the-protection-of-interests-in-aircraft-objects-bill-2025> (last visited on May 5, 2026).

The Aircraft Objects Act, 2025¹² has emerged as the key legislation prompting a positive shift, as it aligns India's insolvency regime with global standards and removes the critical legal gap that had been in existence until now. However, the real challenge is the co-existence of CTC along with the IBC code, which still manages how the resolution plans (RPs) are submitted, granted approval and the manner of liquidation for an airline. The real challenge is the on-ground implementation of these rules. Whether the insolvency authorities, the courts, and aviation regulators have the training to apply them without any challenge, or the 60-day time limit nudges the airlines to go for swift liquidation in place of motivating for quicker resolution is yet to be seen.

A comparison across different countries showcases that the insolvency challenge is a global issue and, at the same time, informs about how different jurisdictions handle these challenges in their own customized way based on their laws and prevailing market scenarios. Chapter 11-Bankruptcy Code of the United States¹³ This gives airlines the leverage to restructure and carry on with their operations. And many airlines like Delta Airlines, United airlines availing this benefit provided under the American code. Europe lacks any single insolvency legislation, as different countries part of the European Union have their own set of rules, even though EU regulations support cross-border insolvency cases. Historically, some European airlines have been liquidated (e.g., Swissair in 2001, Malev in 2012),¹⁴ while others have been restructured or taken over (Alitalia underwent multiple restructurings and state interventions). The United Kingdom traditionally used its administration procedure for corporate rescue. However, the collapse of Monarch Airlines (2017) and Thomas Cook (2019) revealed gaps in UK law regarding passenger repatriation and airline continuity, since those companies ended up in liquidation with the government stepping in ad hoc to assist passengers.

Beyond sector-specific insolvency models, effective resolution of airline distress also depends on structured mechanisms for cross-border insolvency cooperation. UNCITRAL Model Law on Cross-Border Insolvency (1997) provides a framework for cooperation and recognition of

¹² Cabinet approves the Protection of Interests in Aircraft Objects Bill, 2025", *Press Information Bureau*, Mar. 7, 2025, available at: <https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2118797®=3&lang=2> (last visited on May 2, 2026).

¹³Chapter 11 - Bankruptcy Basics", United States Courts, available at: <https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics> (last visited on May 10, 2026).

¹⁴"Job losses as Hungarian airline collapses", *available at*:<https://www.eurofound.europa.eu/en/publications/all/job-losses-hungarian-airline-collapses> (last visited on May 11, 2026).

foreign insolvency proceedings. Under the Model Law¹⁵, A foreign insolvency can be recognized as a “main” proceeding if the debtor’s center of main interests is in that country, which then triggers relief like a local stay and cooperation by local courts. This was used, for instance, when Avianca (Colombia) filed Chapter 11 in the U.S. in 2020, or when Malaysia Airlines underwent a UK scheme of arrangement with recognition elsewhere. India has not yet implemented the Model Law, though as of 2025, it is on the anvil – deliberations are in the final stages for enacting a cross-border insolvency law based on the UNCITRAL Model.¹⁶

IV. SUGGESTIONS

In light of these challenges, certain targeted reforms are necessary to strengthen India’s cross-border aviation insolvency framework. It is high time that India implements the long-demanded provisions for swifter resolution of cross-border insolvency proceedings, modelled on the lines of the UNCITRAL Model Law, 1997. It would lead to mutual recognition of foreign insolvency proceedings in India as well as Indian proceedings in foreign jurisdictions. With an aim of ensuring the smooth functioning of the Cape Town Convention, the government should set clear procedures for the functioning of DGCA and other connected authorities (Airport Authority of India). The Delhi High Court directed the DGCA to process the deregistration request within 5 working days.¹⁷ With this timeframe in place, this would enhance creditors' confidence and help in avoiding superfluous litigation.

Through the Insolvency and Bankruptcy Board of India (IBBI) or the Ministry of Civil Aviation (MoCA), the government can issue directives/guidelines on how to effectively deal with airline insolvency cases. These guidelines can support and guide the resolution professionals to practically address challenges specific to the aviation industry, such as aircraft maintenance during the insolvency process (CIRP). One major hurdle in saving airlines is the lack of working capital during insolvency. The law does categorize interim finance as a resolution cost with the highest priority in repayment, but lenders are still wary. The

¹⁵Ministry of Corporate Affairs, "Report of the Insolvency Law Committee on Cross-Border Insolvency" (October, 2018).

¹⁶Insolvency in the Indian Aviation Sector: An Analysis of Legal Framework under the Cape Town Convention", *SSRN*, 2025, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6216458 (last visited on May 10, 2026).

¹⁷DGCA to process deregistration of all 54 aircraft of Go First within five days: Delhi HC", *The Indian Express*, Apr. 26, 2024, available at: <https://indianexpress.com/article/cities/delhi/delhi-high-court-dgca-go-first-9292326/> (last visited on May 7, 2026).

government can nudge the banks and incentivize them to extend DIP Financing to those airlines that have the potential to survive in CIRP,¹⁸ even though through partial backing. A Passenger Welfare Fund could also be created to keep safe and secure deposits for those booking in advance. Another suggestion is keeping a small portion of the ticket price aside that could be transferred to a common fund and utilized as a refund in cases of sudden shutdown of operations by the airlines in line with the recommendation given by the UK Airline Insolvency Review.

V. CONCLUSION

India's aviation insolvency regime has transformed drastically in recent years, especially with the enactment of the Cape Town Convention into the domestic laws. In the 2010s, the failure of Kingfisher Airlines brought forth a system that was ill-managed and underequipped to deal with the unique complexities regarding aviation insolvency. Among the issues were the difficulties faced by lessors to repossess their leased aircraft, banks and employees struggled during the crisis, creditors were left in limbo, and the absence of a concrete mechanism for international coordination; all these issues together led to disorderly outcomes. With the recent resolute actions taken in 2023-2025, many of the problems have been positively addressed. The "Protection of Interest in Aircraft Objects Act, 2025" has given creditors some form of legal backing and strengthened their rights, helping India meet the global standards and fulfill its legal duties under the treaty. Many are expecting some positive tangible outcomes in the form of cheaper and more accessible aircraft financing, increased confidence of the investors, and a more certain insolvency process. More important is the fact that India's implementation of the CTC and giving it a legal backing has been appreciated in the global arena for course-correcting the gaps embedded in the aviation system. The study indicates that even though Alternative A of the CTC has been implemented domestically (with a 2-month waiting period), it will solve the issue of the timely release of the stuck assets, but at the same time, narrow the rehabilitation and revival seeking window of opportunity for the distressed airlines.

Finally, the implementation of the Cape Town Convention, even though a bit delayed, has strengthened India's aviation insolvency regime image as more creditor-friendly, guided by

¹⁸Press Information Bureau, "Cabinet approves Protection and Enforcement of Interests in Aircraft Objects Bill, 2025" available at: Press Information Bureau (last visited on May 11, 2026).

the principles of the rule of law, which is the foundational block for a strong aviation finance system. The ultimate test lies in building a resolution-directed approach that creates a perfect balance by saving a distressed airline while ensuring a timely, orderly, rule-based, and effective closure when required. With the recommendations proposed – from cross-border law adoption to stakeholder protections – and commitment to creative legal thinking, India can aspire for an insolvency regime for aviation that not only meets global benchmarks in statutes but also becomes a case study in effective, humane insolvency resolution in practice.