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## **FLYING THROUGH LEGAL GAPS: THE AIRCRAFT OBJECTS ACT, 2025 AS A SECTORAL RESPONSE TO IBC, 2016 LIMITATIONS**

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Saranya Mondal, University of Burdwan

### **ABSTRACT**

The Protection of Interest in Aircraft Objects Act, 2025, is an important step towards India's aviation insolvency system with international standards. This shift has occurred after major Indian airlines like Jet Airways, Kingfisher Airlines, and Go First faced financial difficulties. The Act strengthens creditors' protection, especially foreign aircraft lessors, who have struggled with the ambiguity and uncertainty in India's current cross-border insolvency framework. The resolution process for Jet Airways revealed several issues related to jurisdictions in a cross-border insolvency case. Meanwhile, the situation with Go First became more complicated, as lessors couldn't reclaim aircraft because of a moratorium under the Insolvency and Bankruptcy Code, 2016 (IBC). The new law implements the Cape Town Convention and Aircraft Protocol (2001), which mainly focuses on resolving high-value aviation assets. Though India signed the protocol in 2008, but there was no particular legislature implementing those rules and as a consequence there was no enforcing factors. This essay examines the flaws created by the IBC in cross-border insolvency, the jurisdictional problems the foreign creditors encounter, and how the new Act aims to address these issues. This essay looks at the necessity, framework, and effects of the Aircraft Objects Act, particularly as India's insolvency laws continue to evolve. It also analyses and identifies the vagueness about procedural methods under IBC, 2016 in dealing with multinational creditors, and the overlapping zone of timelines for repossession between IBC, 2016 and Cape Town Convention.

## INTRODUCTION

India felt the necessity of enacting a consolidated insolvency and bankruptcy law in 2016 when the existing frameworks on insolvency (Indian Insolvency Act 1948, Presidency-Towns Insolvency Act 1909, Provincial Insolvency Act 1920) proved to be highly insufficient in handling increasing insolvency cases. There was a sharp rise in Non-Performing Assets (NPAs), unpaid loans, outstanding dues and older laws for debt recovery mechanisms like Sick Industrial Companies Act (SICA) 1985, The Securitization and Reconstruction of Financial Assets and Enforcements of the Security Interest Act (SARFAESI) 2002, other various voluntary mechanisms for debt restructuring formulated by Indian Banking Regulator, Reserve Bank of India (RBI)<sup>1</sup>, were not able to handle the situations as those processes were excessive time consuming which caused piling up of pending insolvency cases in the Tribunals. So, the **Insolvency and Bankruptcy Code, 2016** came into effect, aimed at consolidating all the existing fragmented insolvency laws in a single code and to provide a mechanism for the swift disposal of cases. It was beneficial for both creditors and debtors.

The main feature of this Code is a departure from earlier laws as the replacement of a “debtor in possession” approach with a “creditor in control” regime, and for corporate debtors (CD) facing insolvency, the Code spells out two processes: insolvency resolution (CIRP) and liquidation.<sup>2</sup> Whenever an insolvency issue arises under IBC, first all efforts are made to resolve the insolvency by applying the CIRP process, and if the attempt fails, the liquidation process takes place. However, even if the IBC was a remarkable reform but there were no sector-specific insolvency laws or provisions particularly for the Indian aviation sector, which usually involves cross-border cases. In recent years, some issues related to cross-border insolvency cases involving **Jet Airways**, **Go First** airline have highlighted the need for enacting a law particularly dealing with aviation sector insolvencies in a unified manner following international standards, aiming at protecting the economic interest of India. To achieve this goal, Minister of Civil Aviation Shri Ram Mohan Naidu introduced **The Protection of Interest in Aircraft Object Bill, 2025**, and it got assent of the President on 16.04.2025 following its earlier acceptance in Rajya Sabha and Lok Sabha respectively.<sup>3</sup> This

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<sup>1</sup> Insolvency & Bankr. Bd. of India & Int'l Fin. Corp., Understanding the IBC: Key Jurisprudence and Practical Considerations – A Handbook (2024), <https://share.google/8XHfLCZfJjoM20UK9>

<sup>2</sup> Id.

<sup>3</sup> Ministry of Civil Aviation, Parliament Passes the Protection of Interest in Aircraft Objects Bill, 2025 (Apr. 4, 2025, 4:03 PM), <https://pib.gov.in/PressReleasePage.aspx?PRID=2118797> (last visited July 28, 2025).

Act includes the framework of the Cape Town Convention of 2001<sup>4</sup>, attempting to adapt the standardized international leasing agreements.

### NEED FOR A SECTOR-SPECIFIC LEGISLATION:

In recent years, the aviation sector in India has witnessed significant growth. Minister of Civil Aviation illustrated this growth with concrete figures, “For almost 65 years—from Independence to 2014—the total number of passengers flying annually in India was 10 crore 38 lakh and in just the next 10 years, that number has more than doubled to 22 crore 81 lakh in 2024,” and “Similarly, the number of airports in India increased from 74 in 2014 to 159 in 2024, with two more ready to be launched soon” he highlighted.<sup>5</sup> But over the past few years, some complicated issues related to cross-border insolvency created challenges for foreign creditors, especially lessors involved in aircraft leasing in India. A situation of conflict has been observed rising between international leasing standards and IBC, which emphasized the need to implement a standardized international framework in India to overcome those issues in a time-bound manner and get back the trust of foreign creditors and lessors, and to sustain the remarkable growth in our aviation sector.

**The Convention on International Interest in Mobile Equipment**, as well as the **Protocol on Matters Specific to Aircraft Equipment**, concluded in Cape Town on **16<sup>th</sup> November 2001** under the joint auspices of ICAO and UNIDROIT.<sup>6</sup> The primary aim of the Convention and the Protocol is to resolve the problem of obtaining certain and opposable rights to high-value aviation assets, namely airframes, aircraft engines, and helicopters, which, by their nature, have no fixed location.<sup>7</sup> As per the International Civil Aviation Organization (ICAO), the above-mentioned convention and protocol also reduce the borrowing cost for the debtors and the risk for creditors as well.

Though India formally adopted this convention in 2008 but due to non-enforcement of the provisions the leasing cost in India is typically 8 to 10 percent higher than other nations.<sup>8</sup> Some

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<sup>4</sup> International Civil Aviation Organization, Cape Town Convention and Protocol, <https://share.google/bC1ljdXDm98czqGCo> (last visited July 31, 2025).

<sup>5</sup> Ministry of Civil Aviation, Parliament Passes the Protection of Interest in Aircraft Objects Bill, 2025 (Apr. 4, 2025, 4:03 PM), <https://pib.gov.in/PressReleasePage.aspx?PRID=2118797>

<sup>6</sup> International Civil Aviation Organization, Cape Town Convention and Protocol, <https://share.google/bC1ljdXDm98czqGCo> (last visited July 31, 2025).

<sup>7</sup> Id

<sup>8</sup> Ministry of Civil Aviation, Parliament Passes the Protection of Interest in Aircraft Objects Bill, 2025 (Apr. 4, 2025, 4:03 PM), <https://pib.gov.in/PressReleasePage.aspx?PRID=2118797> (last visited July 28, 2025).

recent multiple issues in Jet Airways and Go first airlines insolvency cases triggered the enactment of this Aircraft Object Act, 2025 through which the provisions of Cape Town Convention in this regard also got enforced in India.

### **STRUCTURAL FLAWS RELATING TO CROSS-BORDER INSOLVENCIES UNDER IBC, 2016:**

The IBC, 2016, is considered an umbrella legislation for Insolvency and bankruptcy cases in India. As IBC mostly focuses on domestic issues so when it comes to international or cross-border insolvency cases, there was a need felt to modify the IBC provisions, as it proved to be insufficient to handle those critical and complicated multinational issues. Currently, 2 sections, namely section 234 and section 235, deal with the cross-border insolvency issues. **Section 234** grants authority to the Central Government to enter into bilateral agreements with other countries, and **section 235** permits the Adjudicating Authority in India to issue a letter of request to a court or an authority of such other country to deal with such request in matters of seeking assistance in evidence or action relating to the assets.

But these two provisions proved to be not enough for guiding or providing any details regarding the insolvency process in complicated multinational or cross-border insolvency situations. On 16<sup>th</sup> November, 2017 The Ministry of Corporate Affairs (MCA) constituted Insolvency Law Committee (ILC) which submitted its first Report in March, 2018 recommending various modifications in the existing Insolvency and Bankruptcy Code and submitted the second report with recommendations relating to the Cross Border Insolvency issue via **Draft Part Z**<sup>9</sup> aligning with the UNCITRAL model law on Cross-Border Insolvency (1997). The United Nations Commission on International Trade Law (UNCITRAL) is the principal body of the United Nations System in the field of international trade law. The model law is basically based on principles of access to foreign and domestic courts by Resolution Professionals (RPs), recognition of foreign proceedings, co-operation between courts, and co-ordination of two or more concurrent insolvency proceedings.<sup>10</sup> On 23<sup>rd</sup> January, 2020, the MCA constituted the Cross Border Insolvency Rules/ Regulations Committee (CBIRC) to propose the rules and regulatory framework that would enable the implementation of Draft Part Z. CBIRC drafted

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<sup>9</sup> Insolvency and Bankruptcy Board of India, Cross-border Insolvency Resolution: From Chairperson's Desk, <https://share.google/rwLohYgHBaHppBKRO> (last visited July 31, 2025).

<sup>10</sup> Insolvency and Bankruptcy Board of India, Cross-border Insolvency Resolution: From Chairperson's Desk, <https://share.google/rwLohYgHBaHppBKRO> (last visited July 31, 2025)

and submitted its report on this, but these are yet to be enforced and operationalized under the IBC, 2016. Hence, the main issues relating to cross-border insolvency remain unresolved without a notified and operational mechanism. And therefore, there's still an effective legal gap in cooperation with foreign jurisdictions and insolvency processes discourages foreign creditors from investing in India.

### **PROBLEM FACED IN JET AIRWAYS INSOLVENCY CASE:**

Jet Airways insolvency case (2019) was India's first-ever significant cross-border insolvency case where parallel insolvency proceedings were initiated in India and in the Netherlands, and it exposed all the insufficiencies in the IBC, 2016, to deal with the jurisdictional issues involved in cross-border insolvency cases. This case also brought attention to the need to align with an international standardized framework relating to insolvency proceedings. Jet Airways, which was once a leading private airline in India, had to suspend its business operations due to financial distress in 2019. Jet was admitted to the CIRP process by an order of the National Company Law Tribunal (NCLT)-Mumbai in 2019 [State Bank of India Vs. Jet Airways (India) Limited]<sup>11</sup>. The Resolution Professional set up an Asset Preservation Team. Meanwhile, the Dutch Court also appointed a bankruptcy trustee representing creditor claims over aircraft grounded in Amsterdam. Though NCLT first denied to give approval to the Dutch proceedings but eventually NCLAT allowed limited recognition of the Dutch Proceedings, and there was also signed a 'Cross-Border Insolvency Protocol'. In January 2024, the Supreme Court directed the liquidation of Jet Airways.<sup>12</sup> Though the Dutch Trustee was permitted to participate in the committee of Creditors (CoC), this case brings to light jurisdictional issues and gaps in India's Cross-Border Insolvency Framework. This case also triggered the formal adoption of a standardized international framework to ensure harmony between IBC 2016 and international insolvency regulations.

### **GO FIRST INSOLVENCY: A CATALYST FOR DRAFTING THE AIRCRAFT OBJECT ACT, 2025:**

Finally Go First Airways insolvency case became the final nail in the coffin. Go First Airways (formerly known as GoAir) voluntarily filed for insolvency in May 2023 under section 10 of

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<sup>11</sup>. Case Details, Nat'l Co. L. Trib., <https://share.google/Qqy3gHCiC7esAj0i5> (last visited July 31, 2025).

<sup>12</sup> State Bank of India v. Murari Lal Jalan, Civil Appeal Nos. 5023–5024 & 12220–12221 of 2024, (India Sup. Ct. Nov. 7, 2024), <https://share.google/RIKdDq30Vuu666Bo0> (last visited July 29, 2025)

[IBC, 2016](#).<sup>13</sup> This case is one of the major aviation insolvency cases post Jet Airways. As soon as NCLT admitted the insolvency application of Go First, a moratorium was imposed under section 14 of the IBC, 2016. As per section 14 moratorium prevents some activities once the CIRP process has started, such as starting any new or continuing any legal actions against the corporate debtor, disposal or transfer of any assets of the debtor or other beneficial interest, recovery of any property by a lessor or owner in possession of the corporate debtor, etc.

But several Foreign Aircraft lessors, including Dublin's GY Aviation Lease, SMBC Aviation Capital, demanded immediate repossession and deregistration of the aircraft, including brand new A320neo jets, to the Directorate General of Civil Aviation (DGCA).<sup>14</sup> As they relied on the Cape Town Convention (2001) and protocol. But the Indian adjudicating authority relied on the moratorium process under Section 14 and did not approve repossession of assets during insolvency proceedings. In Contrast Cape Town Convention provides that aircraft must be returned to lessors within 60 days of insolvency. NCLT has ordered the liquidation of Go First Airways following a request from the Committee of Creditors, with judicial and technical members presiding over the decision, despite Lessors' legal challenges and a clarified exemption from the Ministry of Corporate Affairs, the fleet's deregistration and liquidation were finalized by 2024.<sup>15</sup>

This case somewhere shattered the trust of the foreign lessors and creditors in India's insolvency regime and also narrowed down India's reputation as a leasing market, which can also cause a rise in leasing cost, if necessary, modifications are not made to align international procedures and obligations with our domestic insolvency law frameworks.

Meanwhile Government chose not to take the risk of putting the Indian aviation sector in danger and to prevent any further complications in this regard, drafted the Protection of Interests in Aircraft Objects Act, 2025. By enacting this legislation, India gave statutory force to the Cape Town Convention and Protocol, gave overriding power to section 14 of IBC, 2016, in aircraft leasing matters, and it also provides suitable timelines for repossessions of assets.

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<sup>13</sup> Insolvency and Bankruptcy Board of India, Home Page, <https://ibbi.gov.in> (last visited July 31, 2025).

<sup>14</sup> Go First Lessors' Request to Repossess Planes on Hold, Not Rejected: DGCA, The Economic Times (July 25, 2024, 10:18 AM), <https://share.google/0ybvsiodMhmQWQb7>. (last visited July 30, 2025)

<sup>15</sup> NCLT Orders Liquidation of Go First Airways, The Economic Times, <https://share.google/OERQQNtwsxcbFyntt> (last visited July 31, 2025).

**SOME ESSENTIAL FEATURES OF AIRCRAFT OBJECT ACT:**

The major objectives of this Act, as per the preamble<sup>16</sup> of this Act –

1. To provide for the protection of interests in aircraft objects
2. To implement the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, each signed at Cape Town on 16th Novembre 2001

***Features-***

- To prevent some future complications regarding cross-border insolvencies, this Act grants the force of law to the above-mentioned convention and protocol. **(Section 3.)**
- Empowers the central Government to make rules to implement the provisions of the convention and the protocol. **(section10)**
- In the issues regarding de-registration and export request authorization, the provision of Article XIII of the protocol will apply. **(section 7)**
- In the case of any inconsistencies between a provision of this Act and any other law, the provision of this Act will prevail as far as the inconsistencies relate. **(section 10)**
- In the event of any default under a leasing agreement, the lessor may terminate the agreement and take possession of the objects or the assets relating to the agreement. **(The First Schedule- Article 10)**
- The contracting state must ensure that if a creditor produces evidences regarding the default of the debtor, and the debtor has previously agreed, the creditor may seek relief from a court which may include-1) preservation of the asset,2) taking possession, control or custody of the assets or object,3) immobilization, leasing or managing the asset or the object. **(The First Schedule- Article 13)**

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<sup>16</sup> The Protection of Interests in Aircraft Objects Act, No. 17 of 2025, INDIA CODE, <https://share.google/WdN80ZonqkoQryEFO> (as on May 6, 2025) (last visited July 30, 2025)

- This Act designates the Directorate General of Civil Aviation (DGCA) as the registry authority for the Convention.

### **FUTURE IMPLICATIONS OF THIS ACT:**

As this Act guarantees better creditor protection through implementing standardized international insolvency frameworks, foreign lessors and financiers will feel more confident leasing aircraft in India. It may result in the availability of more leased aircraft and lower leasing costs. Aligning with the Cape Town Convention and Protocol, it enhanced the global standing of India. As this Act overrides IBC,2016, there will be no ambiguity in the future cross-border insolvency processes, and it will provide clarity regarding jurisdictional, repossession issues of assets.

### **CONCLUSION:**

No doubt, the Aircraft Object Act,2025, brought a significant change in India's approach to comply with global obligations. This legislation is expected to have far-reaching effects on India's aviation sector. Operationally, this Act is less time-consuming and eases the complications regarding repossession, delivery, and redelivery of assets during the insolvency process. The Act also fills the gaps created by IBC,2016, in the area of cross-border insolvencies by recognizing the Cape Town Convention and Protocol. The major focus of this legislation is to help with the issues relating to cross-border enforcement of rights over mobile assets like aircraft.

Although IBC,2016, has been a significant umbrella legislation for insolvency laws in India but it lacks the international aspects in multinational insolvency processes, and any specific provisions for international aspects of aircraft leasing and financing. Past cases, such as Jet Airways and Go First insolvency cases, highlighted the flaws in the international aspect of the insolvency framework in India as well as the need for an aviation sector-specific insolvency framework. Aircraft Object Act,2025 rebuilds the confidence in India's aviation Market by addressing such issues and by setting up a time-bound relief option.

Still, this Act does not replace or cover the whole issue of cross-border insolvency, as it mainly focuses on the aviation sector. There's still a need to implement the UNICITRAL Model Law on cross-border insolvency,1997, in India's existing insolvency framework. This Act may be

considered useful for a specific solution, but for a long-term solution, India needs to modify its existing provisions relating cross cross-border insolvencies as a whole, not only for any specific sector. The Aircraft Object Act,2025, should not be viewed as a final solution but as a foundation for future reforms. India still needs a strong, compatible, and efficient insolvency framework, and this Act may be considered as a step in that direction.