ENFORCING *EX ANTE* CONTRACTUAL OR STATUTORY OBLIGATIONS: MANOEUVRING THE TURBULENCE IN AIRLINE INSOLVENCY LAW THROUGH THE CAPE TOWN CONVENTION

Harshit Madaan, National Law Institute University, Bhopal

Ali Asghar, National Law Institute University, Bhopal

I. Introduction

"*Capitalist reality is first and last a process of change*"

1. Joseph Schumpeter

The idea that an effective exit mechanism for companies is crucial to the capitalist realities of the market was realised by Joseph Schumpeter in the 20th century.[1] These capitalist realities, through innovation, have played a crucial role in transforming society. These Corporate Bodies throughout the globe, have a capital financing structure, which substantially includes debt and equity.[2] Due to certain circumstances, if these companies enter insolvency proceedings, globally, corporate creditors generally take control of the company's assets through a Committee of Creditors.[3]

In India, the Insolvency and Bankruptcy Code 2016,[4] (IBC, 2016) seeks to balance the rights of corporate creditors and debtors by allowing the Committee of Creditors to take control of assets while ensuring the maximisation of the corporate debtor's asset value.[5] Furthermore, IBC, 2016 prioritises rehabilitating companies over liquidation.[6] However, companies that operate on leasehold properties or floating third-party charges, lack owned assets making it

[1] Joseph Schumpeter, *Capitalism, Socialism and Democracy* (1st edn, Routledge 1976).
[2] Ferran et al., *Capital Structure, Sources of Finance, and Financial Reporting* (3rd edn, OUP 2023).
[3] Insolvency and Bankruptcy Board of India, *'*Discussion Paper on Corporate Liquidation Process*'* (2019) <https://ibbi.gov.in/Agenda%2011_27_03_19.pdf> accessed 20 August 2025.
[4] The Insolvency and Bankruptcy Code, 2016 (31 of 2016).
[5] Insolvency and Bankruptcy Board of India, *'*Understanding the IBC: Key Jurisprudence and Practical Considerations: A Handbook*'* (October 2020) <https://ibbi.gov.in/uploads/whatsnew/e42fddce80e99d28b683a7e21c81110e.pdf> accessed 21 August 2025.
[6] ibid.

challenging for them to achieve the intended goal of rehabilitation.

The leasehold management creates complications in the insolvency resolution process, particularly concerning the enforceability of contractual obligations at the time of Insolvency. One leading example of such leasehold management companies is present in the Aviation Industry. The Airplane engines are generally leased from different countries and are the substantial assets of the Airline to operate its business.

If these companies enter insolvency, a moratorium will be imposed on assets like aeroplanes that they do not own. This prevents corporate creditors from reclaiming their assets, hindering their business, increasing asset depreciation, and accumulating unpaid debt. Additionally, this situation has negative economic impacts and erodes trust between lessors and lessees for future transactions. To address this issue, aviation industry creditors often use *ex-ante* contracts to protect their rights during insolvency.[7] However, enforcing these rights, such as *ipso facto* clauses and repossessing leased aircraft, can harm the corporate debtor's ongoing operations. [8] This has created a conflict between lessors, who want to enforce these contracts, and lessees, who seek to maintain the moratorium's statutory protections.

The Government of India, recognizing the aviation industry's unique insolvency challenges, signed the Cape Town Convention to balance lessors' and lessees' rights. However, this balance remains unachieved in India due to the lack of a dedicated Aviation Insolvency Regime.

Therefore, in this paper, the authors shall provide a comprehensive analysis of the impasse between Lessors and Lessees in the Indian aviation industry. Part I of the paper will examine the enforceability of *ex-ante* contracts and statutory obligations, with a special focus on the insolvency case of Go Air. Part II shall explore proposed solutions to this deadlock, including mediation as an alternative approach and the adoption of the Cape Town Convention as the primary solution.

[7] Nitin Sarin et al., *'*Aviation Finance & Leasing*'* (Sarin Sarin & Co., 2020) <https://sarinlaw.com/wp-content/uploads/2020/08/India-Chapter-Chambers-Global-Practice-Guide-%E2%80%93-Aircraft-Finance-and-Leasing-2020.pdf> accessed 25 August 2025.
[8] Ministry of Corporate Affairs, *'*Report of the Insolvency Law Committee*'* (March 2018) < https://ibbi.gov.in/ILRReport2603_03042018.pdf> accessed 26 August 2025 (8.1).

II. The Role and Impact of *ex-ante* Contracts in the Context of IBC, 2016

The IBC, 2016, prioritizes resolution over liquidation, aiming for timely resolution of corporate persons, partnership firms, and individuals, while maximizing asset value.[9] Before the IBC in 2016, existing law under the Companies Act, 1956 focused on liquidation once winding-up began, without mandating revitalization.[10]

Under the IBC once an application for the Corporate Insolvency Resolution Process (CIRP) is filed with the Adjudicating Authority (AA),[11] two outcomes are possible: either the resolution process succeeds, leading to the revival of the company, or, despite all efforts, the company must be liquidated to maximise the value of its assets for distribution among the creditors.[12]

However, there is a specific type of contract that contradicts the very spirit of the IBC, namely *ex-ante* contracts. *Ex-ante* is a Latin term in which '*ex*' means on account of and '*ante*' means before i.e., the contract which is based on an event predicted beforehand.[13] *Ex-ante* contracts are agreements made before bankruptcy and are pivotal in the financial and legal frameworks governing creditor-debtor relationships.

These contracts, formed under state law, often structure or limit creditor and debtor rights during financial distress.[14] The essence of *ex-ante* contracts lies in their anticipatory nature, they are designed to establish the rules of engagement before insolvency occurs, often aiming to provide certainty and predictability in situations where the debtor may default or file for bankruptcy. The need for *ex-ante* contracts arises from the inherent uncertainty in credit transactions as it allows to allocate the risks and set expectations in advance.

Creditors extend loans by securing priority over the debtor's assets or limiting actions that threaten repayment. These contracts are also used by debtors to negotiate terms that may provide them with greater flexibility or more favourable conditions in times of financial distress. By defining the rights and obligations of each party before any financial difficulties

[9] IBBI Handbook (n 5).
[10] The Companies Act, 1956 (1 of 1956) s 439.
[11] The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 10.
[12] IBBI Handbook (n 5)
[13] Black's Law Dictionary (11th edn, 2019).
[14] Matthew P. Goren, 'Chip Away at the Stone: The Validity of Pre-Bankruptcy Clauses Chip Away at the Stone: The Validity of Pre-Bankruptcy Clauses Contracting Around Section 363 of the Bankruptcy Code' (2006) 51(4) New York Law School Law Review 1086 .

arise, these contracts can reduce litigation and disputes during bankruptcy proceedings.[15] *Ex-ante* contracts can also incentivize debtors to engage in prudent financial management by creating consequences for risky behaviour, thereby potentially reducing the likelihood of bankruptcy.

- **The Intersection of ex-ante Contracts and Insolvency Proceedings in the Aviation Industry**

In the aviation industry, it is a prevalent strategy for companies to opt for leasing aircraft instead of purchasing them, primarily due to the high cost of ownership.[16] A lease agreement between a lessee and lessor can vary widely, including options like providing the aircraft along with pilots, crew, maintenance, fuel, and insurance, or just the aircraft, with the lessee handling all operational aspects.

Airline companies often encounter significant financial challenges due to the high operational costs and the industry's volatile nature. Over the past few decades, these factors have driven several airlines, including Jet Airways,[17] Kingfisher Airlines,[18] and Air Costa,[19] to resort to insolvency and bankruptcy proceedings. The assets of airline companies are often distributed across multiple jurisdictions, underscoring the significance of cross-border insolvency laws.

When parties to a leasehold agreement create an *ex-ante* contract outlining their rights and obligations for potential future insolvency, it can be viewed in two ways. Firstly, the lessor may seek to recover assets like aircraft or engines by reclaiming leased property during insolvency. The *ex-ante* contract serves as a safe harbour, helping to prevent the default of one company from affecting others.[20] This action would impair the insolvency resolution process, as the company's going concern status will be threatened.

[15] Alan Schwartz, *'*Bankruptcy Workouts and Debt Contracts*'* (1993) 36(1) The Journal of Law & Economics, University of Chicago 599.
[16] Wandelt et al., *'*Is the aircraft leasing industry on the way to a perfect storm? Finding answers through a literature review and a discussion of challenges*'* (2023) 111 Journal of Air Transport Management 3.
[17] *State Bank of India v Jet Airways (India) Ltd.* (2019) SCC OnLine NCLT 23875.
[18] *Aerotron Ltd. v Kingfisher Airlines Ltd.* (2016) SCC OnLine Kar 8999.
[19] *MTU Maintenance Berlin-Brandenburg GmbH v LEPL Projects Limited* (2019) SCC OnLine NCLT 19187.
[20] Unnikrishnan A., *'*Safe Harbour in Insolvency Proceedings*'* (2019) Insolvency and Bankruptcy Code A Miscellany of Perspectives: IBBI <https://ibbi.gov.in/uploads/whatsnew/2019-10-11-191223-exc18-2456194a11939
4217a926e595b537437.pdf> accessed 21 August 2025.

Secondly, the lessee may wish to revive the company by initiating the CIRP under the IBC, 2016.[21] Once the CIRP begins, the bankruptcy court will impose a moratorium on all proceedings and transactions involving the company,[22] preventing the lessor from recovering assets. This situation underscores the conflict between contractual obligations and statutory mandates. Prioritising contracts could hinder the resolution process and aggravate the risk of liquidation which is contrary to the Code's goals. Conversely, strict adherence to statutory mandates might limit parties' ability to set their own contract terms.

- **Comparative Analysis of ex-ante Contract Treatment in Bankruptcy: The US and EU Perspectives**

The approach to *ex-ante* contracts in the context of bankruptcy law reveals different approaches or levels of flexibility between the legal frameworks of the European Union (EU) and the United States (US), particularly in how these jurisdictions treat pre-bankruptcy agreements once a bankruptcy case is initiated. In the U.S., the Bankruptcy Code[23] plays a central role in determining the enforceability of *ex-ante* contracts.

The US legal framework is characterised by a strong federal bankruptcy system that frequently alters or invalidates *ex-ante* agreements to achieve broader bankruptcy objectives, such as the equitable distribution of assets and the rehabilitation of the debtor.[24] This approach is rooted in the constitutional authority granted to Congress under the Bankruptcy Clause, which allows federal bankruptcy law to override state law and pre-existing contractual rights.[25]

Section 365 of the U.S. Bankruptcy Code allows debtors, with court approval, to assume or reject contracts, prioritizing collective resolution over strict enforcement of pre-bankruptcy entitlements to avoid undermining the debtor's ability to restructure. Also, the Code's strong-arm powers allow trustees to avoid unperfected liens and contractual provisions like *ipso facto* clauses are rendered unenforceable.[26]

[21] The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 10.
[22] The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 14(1).
[23] U.S. Code 11 Bankruptcy.
[24] Bruce Grohsgal, 'The Alteration of *Ex ante* Agreements by the Bankruptcy Code' (2021) 95(4) American Bankruptcy Law Journal.
[25] U.S. Constitution, art I, § 8.
[26] 11 U.S.C. § 365(e)(1).

E.U. particularly in its detailed EU Restructuring Directive,[27] reflects a concerted effort to harmonize insolvency laws across member states while promoting the rescue of financially distressed but viable businesses. The Directive seeks to strike a balance between preserving the contractual freedom of creditors and the broader goal of enabling effective restructuring processes.[28]

Article 7(5) of the Directive prevents creditors from altering or terminating executory contracts solely due to the initiation of restructuring proceedings or similar insolvency actions.[29] This blanket ban on *ipso facto* clauses reflects the EU's commitment for preserving contractual stability during restructuring, allowing the debtor to continue operations without the risk of key contracts being unilaterally terminated by creditors.

Furthermore, Article 7(4) expands the scope by specifically protecting "essential executory contracts" which are deemed necessary for the day-to-day operations of the debtor's business termination of which would effectively bring the business to a halt ensuring debtor retains access to critical goods and services during restructuring, which is crucial for maintaining the business as a going concern.[30]

The divergent approaches of the U.S. and the E.U. to *ex-ante* contracts in bankruptcy reflect their respective priorities: the U.S. emphasises flexibility and collective resolution by allowing significant alterations to pre-bankruptcy agreements, while the E.U. prioritises contractual stability and business continuity through strict protections against the enforcement of *ipso facto* clauses.

- **Implications of Restricting Pre-Bankruptcy Agreements on the Leasing Industry and Corporate Finance**

The prohibition on enforcing pre-bankruptcy agreements, like *ipso facto* clauses, impacts the leasing industry and corporate finance. When companies can't terminate or alter contracts during a lessee's insolvency, leasing risks increase. Consequently, lessors may require larger security deposits or guarantees to mitigate potential bankruptcy losses. This effect is reflected

[27] EU Restructuring Directive (EU) 2019/1023.
[28] Sarra et al., 'The promise and perils of regulating *ipso facto* clauses' (2021) 31(1) International Insolvency Review.
[29] EU Restructuring Directive (EU) 2019/1023 art 7(5).
[30] EU Restructuring Directive (EU) 2019/1023 art 7(4).

as mentioned in India's 1.5-point drop in the compliance index maintained by the Aviation Working Group (AWG) when NCLT and NCLAT restricted lessors from repossessing planes during insolvency proceedings.[31]

The increased risk may prompt a shift from leasing to outright sales, as selling assets avoids the complications and losses of a lessee's bankruptcy. This change could reduce leasing as a financing option, particularly for businesses relying on leases to conserve capital, thereby limiting the operational flexibility of less financially stable companies and hindering their growth.

This highlights a key tension in insolvency law while protecting debtors and facilitating restructuring are crucial, restricting pre-bankruptcy agreements may raise leasing costs and reduce its use. This could create a more cautious, risk-averse corporate environment, compromising the long-term availability and affordability of leased assets.

III. Go Air's Insolvency Case: Driven by Economic Impact vis-a-vis the Contractual and Statutory Obligations

A. NCLT Verdict: Navigating the Statutory Obligations.

This tapestry of conflict between the enforcement of statutory and contractual obligations in the Aviation Industry came upfront in the insolvency proceedings of Go Airlines (India) Limited (***the Airline)*** when it filed itself for Insolvency under Section 10 of the IBC, 2016.[32] The airline was unable to meet its surmountable debt of Rs. 2,660 crores owed to aircraft lessors across jurisdictions.[33] The National Company Law Tribunal (NCLT) accepted the insolvency application, and an Insolvency Resolution Professional was appointed to commence the Corporate Insolvency Resolution Process for the airline.[34]

The Tribunal, upon accepting the insolvency application, prioritised statutory obligations under the IBC of 2016[35] over contractual ones and imposed a moratorium on all airline assets. Lessors

[31] Garv Arora and Ananya Badaya, 'Navigating The Impact of Cape Town Convention: Indian Aviation Sector' (*Law School Policy Review NLSIU*, 7 December 2023) <https://lawschoolpolicyreview.com/2023/12/07/navigating-the-impact-of-cape-town-convention-indian-aviation-sector/> accessed 30 August 2025.
[32] The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 10.
[33] In the matter of Go Airlines (India) Limited, (National Company Law Tribunal, New Delhi 2023).
[34] ibid.
[35] The Insolvency and Bankruptcy Code, 2016 (31 of 2016).

appealed to the NCLAT, claiming fraudulent intent by the airline to defraud creditors and sought termination of insolvency proceedings under Section 65 of the IBC, 2016.[36] The NCLAT dismissed the appeal, upheld the insolvency proceedings, and confirmed that statutory obligations take precedence over the lessors' contractual rights.[37]

Distressed Lessors filed an Interim Application in NCLT to request the repossession and denial of usage of the aircraft till the conclusion of an insolvency proceeding. In a unique and potentially precedent-setting verdict, the NCLT observed that repossession of leased aircraft cannot be permitted, as these aircraft fall under the definition of property whose possession cannot be altered during the moratorium period.[38] As a consequence of this judgment, lessors were deprived of their rights over the aircraft they owned for the duration of the moratorium period, which could extend up to 330 days.[39]

The verdict of NCLT brought India backlash from Lessors across the jurisdictions. Furthermore, the Aviation Leasing Watchdog, Aviation Working Group (AWG), placed India on the CTC Compliance Watch list.[40] The backlash could lead to severe economic hardships for the Aviation Industry because the Lessors could severely increase the lease rate in India as they termed it a high-risk jurisdiction.[41]

The judgment favoured the lessee's rights over the lessor's, leading to disputes over leased aircraft engines during insolvency. This enforcement of statutory obligations strained economic trust between lessors and lessees, affecting the IBC, 2016's goal of resolving insolvency while balancing stakeholder interests and promoting entrepreneurship and credit availability.

B. MCA Notification and Delhi High Court Verdict: A Shift in Favour

The Indian government recognized the lessors' concerns and the economic distress affecting

[36] The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 65.
[37] *SMBC Aviation Capital Ltd. v Interim Resolution Professional of Go Airlines (India) Ltd.* (National Company Law Appellate Tribunal, New Delhi 2023).
[38] *Bluesky 31 Leasing Company Limited and others v Interim Resolution Professional of Go Airlines (India) Ltd.* (National Company Law Tribunal, New Delhi 2023).
[39] The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 12.
[40] Aditi Shah and Shivam Patel, *'*Aviation leasing watchdog cuts India*'*s compliance rating amid Go First tussle*'* (*Reuters*, 26 September 2023) < https://www.reuters.com/business/aerospace-defense/aviation-leasing-watchdog-cuts-indias-compliance-rating-amid-go-first-tussle-2023-09-25/> accessed 27 August 2025.
[41] Aditya Kalra and Aditi Shah, *'*Risky jurisdiction*'*: Aircraft lessors raise alarm over Go First crisis in India*'* (*Reuters*, 12 May 2023) <https://www.reuters.com/business/aerospace-defense/risky-jurisdiction-aircraft-lessors-raise-alarm-over-go-first-crisis-india-2023-05-11/> accessed 27 August 2025.

the aviation industry's economy. The Ministry of Corporate Affairs (MCA) used its power under Section 14(3) of the IBC, 2016, which allows exceptions to moratorium restrictions for certain contracts as notified by the Central Government.[42] Due to a lack of corresponding notification a previous amendment to Section 14(3) of the IBC, 2016,[43] to include sureties in contracts of guarantee was never implemented.

However, the MCA, notified on October 3, 2024, that '*the restrictions of moratorium shall not apply to transactions, arrangements or agreements, under the Convention and the Protocol, relating to aircraft, aircraft engines, airframes and helicopters*'.[44] The Indian Government issued this exemption to support lessors and restore balance, likely as a response to the global aviation sector's economic backlash. However, this notification has created legal challenges for the airline facing insolvency.

The impugned notification contradicts the intention of the IBC, 2016,[45] which aims to maximise asset value[46] and make every effort to rehabilitate the company.[47] This is pertinent because, with the application of the notification, an airline already on the brink of insolvency would struggle to recover, much like trying to squeeze water from a stone.[48] If the assets, such as aircraft, were handed over to the lessee, there would still be a chance to pay off surmountable debt. However, once the assets are returned to lessors, even they face a lost cause.

Following the notification, lessors petitioned the Delhi High Court to order the de-registration and repossession of leased aircraft under Rule 30(7) of the Aircraft Rules, 1937.[49] The Court clarified that the notification applied retrospectively to the Go Airlines case and ordered the

[42] The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 14(3).
[43] ibid.
[44] Exemption from provisions of §14(1),2023, Ministry of Corporate Affairs, S.O. 4321(E).
[45] The Insolvency and Bankruptcy Code, 2016 (31 of 2016).
[46] Insolvency and Bankruptcy Board of India, *Insolvency and Bankruptcy Code A Miscellany of Perspectives* (2019) 29 <https://ibbi.gov.in/uploads/whatsnew/2019-10-11-191223-exc18 2456194a119394217a926e595b537437.pdf> accessed 27 August 2025.
[47] Ministry of Corporate Affairs, 'Restructuring and Liquidation' (*Ministry of Corporate Affairs, Report of the Expert Committee on Company Law) <https://www.mca.gov.in/content/mca/global/en/data-and-reports/reports/other-reports/report-company-law.html>* accessed 28 August 2025..
[48]Director General of Civil Aviation, 'Regulation and Guidelines', <https://www.dgca.gov.in/digigov-portal/?dynamicPage=publicNotices/0/0/viewAllService> accessed 28 August 2025; Business Today, 'NCLT Extends Go First's Moratorium Period till Feb 4, Demands Resolution Plan Within 90 Days, November 2023' *Business Today* <https://www.businesstoday.in/industry/aviation/story/nclt-extends-go-firstsmoratorium-period-till-feb-4-demands-resolution-plan-within-90-days-406839-2023-11-23> accessed 28 August 2025.
[49] Aircraft Rules, 1937, V-26 r 30(7).

deregistration of the aircraft.[50] The verdict faced multifarious criticism as the reasons provided were deemed insufficient to justify the retroactive application.

The Court ruled that the notification was retroactive due to India's ratification of the Cape Town Convention in 2008, and it only clarified India's obligations under the convention. Critics found this reasoning unconvincing, suggesting that explicit intent should have been stated in the notification.[51] Furthermore, the Delhi High Court declined to classify leased aircraft as 'property' under Section 3(27) of the IBC, 2016,[52] ruling that the aircraft were no longer Go Air's property upon lease termination before insolvency.[53]

This verdict seemed to overlook the Supreme Court's ruling in *Rajendra K. Bhutta v Maharashtra Housing and Area Development Authority* and the Appellate Tribunal's judgment in M*/s Navbharat Castings LLP v M/s Moserbear India Ltd.*, which defined "occupy" as physical possession rather than property rights.,[54] which held that "occupy" refers to actual physical possession, not rights or interests in property. Since Go Air physically possessed the aircraft, deregistering all aircraft would render the insolvency proceedings a mere formality.

Therefore, the NCLT and NCLAT rulings favoured statutory obligations by imposing a moratorium on insolvency proceedings and blocking aircraft repossession. However, the MCA's notification and the Delhi High Court ruling shifted focus to recognizing contractual rights and supporting the lessors. This conflicting approach highlights the need for a resolution to the current airline insolvency issues, as the government's stance negatively affects the airline on the brink of insolvency.

IV. Model Law on Insolvency: A Potential Solution for India?

In India, the aviation industry is facing challenges in balancing the rights of lessors and lessees during insolvency proceedings, especially when dealing with cross-border. Cross-border creditors shall not only enforce their contractual rights but also handle issues like the non-

[50] *Accipiter Investments Aircraft 2 Ltd. v Union of India* 2023 SCC OnLine Del 3895.
[51] BZA Law Firm, 'Delhi High Court directs Deregistration of Go Air Aircraft despite Insolvency Challenges Top of Form' (*Mondaq* 29 May 2024) < https://www.mondaq.com/india/insolvencybankruptcy/1472050/the-delhi-high-court-directs-deregistration-of-go-air-aircraft-despite-insolvency-challengestop-of-form > accessed 30 August 2025.
[52] Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 3(27).
[53] *Accipiter Investments Aircraft 2 Ltd. v Union of India* 2023 SCC OnLine Del 3895.
[54] Zarir Bharucha & Dhwani, 'The Delhi High Court Directs Deregistration Of Go Air Aircraft Despite Insolvency Challenges Top Of Form' (*ZBA*, 23 May 2024) <https://zba.co.in/knowhow/the-delhi-high-court-directs-deregistration-of-go-air-aircraft-despite-insolvency-challenges/#> accessed 29 August 2025.

enforcement of foreign awards. Presently, the IBC, 2016 is the only solution for these challenges, but it brings its own challenges, complicating matters for cross-border creditors.

A. Cross Border Insolvency and IBC,2016

The IBC,2016 addresses cross-border insolvency in Sections 234[55] and 235.[56] Section 234 allows the Central Government to make bilateral agreements for enforcing the Code abroad, while Section 235 enables the Adjudicating Authority to seek foreign assistance through a letter in writing. However, no such bilateral agreements have been signed by India so far, limiting the effectiveness of these provisions for cross-border creditors.[57]

The insolvency proceedings of Jet Airways brought to light significant legal gaps in cross-border insolvency.[58] Currently, Section 44A of the Code of Civil Procedure, 1908,[59] upholds the principle of comity, stating that a foreign court's judgment can be enforced in India if it originates from a superior court in a reciprocating country. However, muddy waters of determining the Centre of Main Interest (COMI) and the enforcement of foreign orders, persist. The Government of India formed the Insolvency Law Committee, which in its II[nd] report, recommended adopting the UNCITRAL Model Law on Insolvency.[60] The model Law provides an efficient framework for 44-member countries to coordinate cross-border insolvency proceedings.

B. UNCITRAL on Model Law on Insolvency and Lease Hold Rights

The UNCITRAL Model Law on Insolvency, aims to establish a coordinated framework for cross-border insolvency. For this paper, we will focus specifically on their impact on parties involved in lease agreements.

---

[55] The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 234.
[56] The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 235.
[57] Cyril Amarchand Mangaldas, 'White Paper on Cross-Border Insolvency Tools and how India Companies can benefit from them' (*Cyril Amarchand Mangaldas* 15 February 2022) <https://www.cyrilshroff.com/wp-content/uploads/2020/09/Cross-border-insolvency-tools-CAM-Thought-Leadership-Article.pdf> accessed 31 August 2025.
[58] Hrishikesh Goswami, 'Navigating Cross-Border Insolvency: Unravelling the COMI Conundrum' (*Centre for Business and Financial Laws* 27 March 2024) <https://www.cbflnludelhi.in/post/navigating-cross-border-insolvency-unravelling-the-comi-conundrum#:~:text=The%20case%20saw%20insolvency%20proceedings,its%20assets%20in%20the%20Netherlands> accessed 31 August 2025.
[59] Code of Civil Procedure, 1908 (5 of 1908) s 44A.
[60] Insolvency Law Commission, *Report of Insolvency Law Commission* (Part – II, 2020).

According to the Legislative Guide on the UNCITRAL Model Law on Insolvency, encumbered assets, such as leased aircraft, can be included in insolvency proceedings.[61] Furthermore, assets owned by third parties that are in the possession of the debtor can be included in the insolvency proceedings.[62] The Model Law addresses *ex-ante* contracts with termination clauses, such as *ipso facto* clauses, by stating that these are subject to national statutory obligations and are therefore invalid.[63] The goal is to preserve the business and maximize asset value for all creditors, not just one party.

Applying the UNCITRAL Model Law[64] to aviation would include leased aircraft in insolvency proceedings and prioritize maximizing asset value over lessors' rights to terminate leases. However, specific insolvency laws might allow exceptions for enforcing termination clauses. Developed countries like the USA and the UK have largely adopted the UNCITRAL Model Law on Insolvency.

In the UK, the Regulations include enacting provisions (Articles 1 to 8)[65] and five schedules. Thirteen entities in regulated industries with specialized insolvency regimes, are excluded (Article 1(2)),[66] limiting assistance for these debtors in Great Britain or under the Model Law for British insolvency proceedings. These Regulations work alongside two main statutory frameworks for cross-border insolvency in Great Britain: the EC Regulation,[67] and Section 426 of the Insolvency Act 1986.[68]

The U.S. has also incorporated the terms of the Model Law in the Insolvency Law of the Nation. In the U.S., the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005[69] introduced Chapter 15 to the Bankruptcy Code, replacing Section 304.[70] Chapter 15, now allows foreign representatives to seek relief in U.S. courts for foreign insolvencies, including access to automatic stay protections and handling U.S. assets and operations.

[61] United Nations Commission on International Trade Law Model Law on Cross Border Insolvency Legislative Guide (2014) 82.
[62] United Nations Commission on International Trade Law Model Law on Cross Border Insolvency Legislative Guide (2014) 112, 132.
[63] United Nations Commission on International Trade Law Model Law on Cross Border Insolvency Legislative Guide (2014) 132.
[64] United Nations Commission on International Trade Law Model Law on Cross Border Insolvency, 1997.
[65] The Cross-Border Insolvency Regulations, 2006 (2006 No. 1030).
[66] The Cross-Border Insolvency Regulations, 2006 (2006 No. 1030) art. 1(2).
[67] Council Regulation, 2000 (EC) (No 1346/2000).
[68] Insolvency Act, 1986 (c. 45) s 426.
[69] Bankruptcy Abuse Prevention and Consumer Protection Act, 2005 (11 U.S.C.).
[70] Bankruptcy Abuse Prevention and Consumer Protection Act, 2005 (11 U.S.C.) s 304.

Chapter 15 of the Bankruptcy Code,[71] was designed to simplify the recognition of foreign proceedings in the U.S., replacing the more subjective Section 304. Unlike Section 304, which allowed courts to open ancillary proceedings based on six factors, Chapter 15 establishes a clearer and more rigid procedure for recognizing foreign bankruptcy cases. Therefore, countries like the U.S.A. and the U.K. have substantially included the Model Law in their National Laws.

C. UNCITRAL and INDIA

Following the Ist Report of the Insolvency Law Commission[72] and the Bankruptcy Law Reform Committee's report[73] on the need for a cross-border insolvency regime, the IInd ILC report drafted Draft Z for this purpose.[74] Draft Z is the present panacea for the Cross-Border Insolvency Regime in India, however, there are certain lacunae which need to be addressed.

Presently, under Section 14 of Draft Z, the Centre of Main Interest (COMI) is generally assumed to be where the corporate debtor's registered office is located. However, other factors for determining COMI remain unclear. The EC Regulation recommends the location of the debtor's central administration, where COMI differs from the registered office.[75] These principles should be applied in determining COMI.[76]

Furthermore, whether to integrate the cross-border insolvency regime within existing insolvency law like in the US, or through separate legislation as in the UK and the discretionary power given to the Adjudicating Authority to modify or terminate the moratorium are certain concerns which remain unanswered.

Therefore, at first, Draft Z[77] needs to be holistically reconsidered by the government to amend the impediments to an efficient Cross Border Insolvency Regime. Subsequently, if it is implemented, there can also be impediments for the aviation industry to apply the same to Airline insolvency.

---

[71] Bankruptcy Abuse Prevention and Consumer Protection Act, 2005 (11 U.S.C.) ch 304.
[72] Insolvency Law Commission, *Report of Insolvency Law Commission* (Part – I, 2018).
[73] Bankruptcy Law Reform Committee, *The report of the Bankruptcy Law Reforms Committee* (2015).
[74] Insolvency Law Commission, *Report of Insolvency Law Commission* (Part – II, 2020).
[75] Regulation E.C. No. 1346/2000 of the European Council on Insolvency Proceedings, OJ L 160/1 (2000).
[76] Divyanshu Kumar, *'*Cross-Border Insolvency Regime in India: Draft Part-Z vis-a-vis The UNCITRAL Model Law*'* (2022) Journal of Law Business Law and Economics 104.
[77] Draft Part (Z), Draft Part on Cross Border Insolvency, Ministry of Corporate Affairs.

D. IBC and Aviation Sector

Given its unique nature of leasehold rights, the aviation sector encounters several challenges under the IBC. Firstly, once creditors initiate the Corporate Insolvency Resolution Process (CIRP) against a corporate debtor, a moratorium is imposed under Section 14 of the IBC, 2016.[78] During this period, lessors, who are the owners of the aircraft, are unable to repossess their aircraft. The moratorium can extend up to 330 days,[79] causing significant financial losses to lessors. This legal gap was notably addressed by the Delhi High Court in the Go Air case,[80] where it allowed the repossession of aircraft due to the substantial losses faced by the lessor.

Additionally, Section 36(4)(a) of the IBC stipulates that third-party-owned assets should be excluded from the liquidation process. However, in the case of Jet Airways v. State Bank of India, the NCLT allowed the inclusion of leased aircraft in the liquidation process. Therefore, lessors are significantly impacted by the application of the IBC, 2016, underscoring the need for specialized legislation tailored to address insolvency within the aviation industry.

V. The Aircraft Objects Act, 2025 : The Dawn of new era

The long-standing standoff between safeguarding a debtor airline's property under the IBC, 2016 and upholding *ex-ante* contractual entitlements of aircraft lessors has led to considerable turmoil within the Indian aviation sector. The call for a specialised legal framework focused towards India's international obligations has now resulted in a conclusive legislative answer.

The erstwhile Protection and Enforcement of Interests in Aircraft Objects Bill has been enacted as The Protection of Interests in Aircraft Objects Act, 2025 ('the Act').[81] This development has significantly transformed the landscape of aviation insolvency in India. The Act serves as the remedy for the prevailing legal uncertainty by giving the Cape Town Convention (CTC)[82] and its Aircraft Protocol[83] the full force of law in India. A major highlight of the Act is its direct resolution of the conflict with the IBC.

[78] The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 14.
[79] The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 12.
[80] *Accipiter Investments Aircraft 2 Ltd. v Union of India* 2024 SCC OnLine Del 3125.
[81] Protection of Interests in Aircraft Objects Act, 2025 (17 of 2025).
[82] Convention on International Interests in Mobile Equipment (adopted on 16 November 2001, entered into force 1 March 2006) (2001) 2307 UNTS 285.
[83] Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (adopted on 16 November 2001, entered into force 1 March 2006) (2001) 2367 UNTS 517.

Section 9(1)[84] of the Act creates an overriding effect by stating that its provisions of the act shall prevail in any case of inconsistency with any other laws for the time being in force. The moratorium placed under Section 14 of the IBC, at the core of the controversy in the Go Air insolvency case, is now clearly subordinated to the remedies open to creditors under the CTC mechanism.

The Act codifies the specific, time-bound remedies that the aviation financing industry requires, moving away from the protracted 330-day timeline of the Corporate Insolvency Resolution Process (CIRP). By virtue of Section 6[85] of the Act, India's declaration to apply Article XI, Alternative A, of the Protocol[86] in its entirety is now legally binding. This obligates an insolvency administrator or debtor to either cure all defaults or give possession of the aircraft object to the creditor within a specified waiting period of two (2) calendar months.[87]

Furthermore, India's declaration to apply Article X of the Protocol establishes a framework for speedy judicial relief, setting clear timelines of ten (10) working days for remedies such as possessing or immobilising an aircraft and thirty (30) working days for actions like its sale or lease.[88] These provisions provide the structured and predictable asset recovery process that lessors have long sought, thereby mitigating the financial risks associated with aircraft leasing in India.

Moreover, the Act significantly empowers the enforcement of *ex-ante* contracts, a core subject of creditor-debtor relations in the aviation sector. India's mandatory declaration under Article 54(2) of the Convention[89], as operationalised by the Act, confirms that remedies available to a creditor such as taking possession/control of aircraft object may be exercised without court action and without leave of the court.[90]

This provision for self-invoked remedies is a major shift, validating the contractual safeguards relied upon by the lessors and ensuring that the initiation of insolvency proceedings does not automatically freeze their ability to reclaim high-value assets. The Act also provides a clear

[84] Protection of Interests in Aircraft Objects Act, 2025 (17 of 2025) s 9 (1).
[85] Protection of Interests in Aircraft Objects Act, 2025 (17 of 2025) s 6.
[86] Protocol to the Cape Town Convention 2001, art XI, alternative A.
[87] Declarations Lodged by the Republic of India Under the Aircraft Protocol at the Time of the Deposit of its Instrument of Accession (*UNIDROIT*, 2008) <https://www.unidroit.org/instruments/security-interests/aircraft-protocol/states-parties/d-india/> accessed 29 August 2025.
[88] ibid.
[89] Cape Town Convention 2001, art 54 (2).
[90] Declaration vi page 29

statutory pathway for lessors to de-register and export aircraft by giving legal force to Article XIII of the Protocol,[91] a right whose enforcement was previously contentious.

A Case for Economic Impact of the Act

India's airlines have historically relied heavily on leased aircraft – an estimated 87% of Indian carrier fleets are leased, far above the global average of ~53%.[92] Before COVID-19, Indian carriers paid roughly **$1.6–1.8 billion per year in lease rentals** to foreign lessors.[93] This heavy dependence meant that legal uncertainty in India was effectively priced into lease terms: lessors required higher rents, security deposits and stringent clauses to offset the risk.

The new Act is expected to reduce this risk premium. By **enforcing Cape Town Convention rights**, lessors should have greater confidence that they can repossess or de-register aircraft quickly when a lessee defaults. As Reuters observes, the legislation "will improve lessors' confidence in the Indian market" and "bring down the cost of leasing".[94] In practice, this could translate into lower lease rates for airlines and, ultimately, cheaper airfares (since lower financing cost generally flows through to consumers).[95]

Expanded financing options. With the Act now fully implementing the Cape Town rules, industry analysts foresee a wave of new financing structures. For example, aviation lawyers predict the first Japanese JOLCO (joint-ownership and leasing) equity investments in Indian aircraft will occur, since the Act makes such cross-border tax-efficient deals viable.[96] Similarly, bond-backed financings like Enhanced Equipment Trust Certificates (EETCs) – which require a quick repossession regime (modelled on US Bankruptcy Code §1110) – should become

[91] Declarations Lodged by the Republic of India Under the Cape Town Convention at the Time of the Deposit of its Instrument of Accession, (*UNIDROIT*, 2008) <https://www.unidroit.org/instruments/security-interests/cape-town-convention/states-parties/d-india-ct/> accessed 29 August 2025.
[92] Shardul Amarchand Mangaldas, 'Strengthening India's Aviation Leasing Framework: From Global Conventions to Local Ecosystem Maturity' (September 2025) <https://www.amsshardul.com/wp-content/uploads/2025/09/Strengthening-Indias-Aviation-Leasing-Framework.pdf> accessed 23 September 2025.
[93] ibid.
[94] Abhijith Ganapavaram, 'India's parliament passes landmark bill in boost for aircraft lessors' (*Reuters*, 3 April 2025) https://www.reuters.com/business/aerospace-defense/indias-parliament-passes-landmark-bill-boost-aircraft-lessors-2025-04-03/ accessed 25 September 2025.
[95] Karan Dinesh Singh Rawat, 'Explained: Why The Protection of Interests in Aircraft Objects Act, 2025' (*ABC Live*, 27 December 2025) < https://abclive.in/2025/12/27/protection-of-interests-in-aircraft-objects-act-2025/ > accessed 01 January 2026.
[96] Watson Farley & Williams, 'The Protection of Interests in Aircraft Objects Bill, a Further Crucial GIFT to the Indian Aviation Industry' (24 March 2025) < https://www.wfw.com/articles/the-protection-of-interests-in-aircraft-objects-bill-a-further-crucial-gift-to-the-indian-aviation-industry/ > accessed 02 January 2026.

feasible.

Capital-market investors expect that under India's **Alternative A** regime, the 60-day waiting period for repossession provides the certainty needed for EETC deals. India may also benefit from export-credit agencies: under global "ASU" rules, India's compliance with Cape Town could qualify it for lower ECA financing margins. Together, these developments could dramatically **broaden the pool of available capital** for Indian airlines, intensifying competition among lessors and financiers and lowering effective lease costs.

Stronger repossession and deregistration rights. Legally, the Act transforms long-standing aspirational rights into enforceable remedies. It expressly gives Cape Town remedies (repossession, deregistration, sale/lease of aircraft) statutory force and an **overriding effect** over inconsistent laws.[97] In practical terms, this means that the IBC moratorium no longer blocks lessors. A government notification now clarifies that the insolvency moratorium "shall not apply" to transactions under the Cape Town Convention.[98]

Thus, an international lessor can exercise contractual rights (via its deregistration-and-export authorization, or other repossession powers) without waiting for the 330-day Corporate Insolvency Resolution Process to conclude. Importantly, the Act's mandatory declaration under Article 54(2) allows **self-help repossession** and deregistration without court leave. This vindicates ex-ante remedies: lessors can take back or immobilize an aircraft swiftly after default, rather than being forced into lengthy litigation. Vedder Price notes that the Act "clarifies" that a creditor who declares default is "entitled to exercise any remedy available…under the Convention or the Protocol."

Remaining safeguards and challenges. The Act is deliberately balanced: it **protects government and employee claims** over private creditors. India's declarations (now law in Section 9(3) and Article 39) ensure that statutory liens – for unpaid wages, taxes, airport fees, etc. – rank ahead of a registered international interest. Lessors therefore cannot simply strip an aircraft free and clear without accounting for such dues.

[97] Vedder, 'Strengthening the Cape Town Convention in India' (12 May 2025) < https://www.vedder.com/insights-events/strengthening-the-cape-town-convention-in-india/ > accessed 04 January 2026.
[98] Paul P. Jebely, 'Aviation Finance & Leasing 2025' (*Chambers and Partners*, 22 July 2025) < https://practiceguides.chambers.com/practice-guides/aviation-finance-leasing-2025 > accessed 10 January 2026.

In fact, even as the Act was hailed by lessors, its draft implementation rules have drawn pushback: the Aviation Working Group (representing major lessors) protested that proposed regulations would require a lessor to **clear unpaid wages and tax liabilities** of a bankrupt airline before repossession. Critics argue this would "take four steps back" by delaying recovery and undermining the Act's intent. These disputes illustrate that, in practice, lessors' gains under the Act may be tempered by executive or regulatory measures aimed at safeguarding domestic interests.[99]

Therefore, the Protection of Interests in Aircraft Objects Act is expected to be broadly positive for lessors. It resolves long-standing uncertainty and aligns India with global leasing norms, which should **restore competitiveness**. By unlocking new channels (JOLCO, EETC, etc.) and enforcing repossession rights, the Act should reduce finance costs and attract capital. However, lessors will still face India's curated priorities, especially employee wages and taxes.

VI. Balancing the Scales: National Interests and Stakeholder Priorities

Structural Tension Between Asset Certainty and Airline Survival

The Protection of Interests in Aircraft Objects Act, 2025 represents a decisive policy choice in favour of asset certainty and creditor confidence. However, this certainty is not costless. By insulating aircraft objects from the protective ambit of the Insolvency and Bankruptcy Code, 2016, the Act fundamentally alters the architecture of airline insolvency in India. The resulting framework prioritises rapid asset extraction over enterprise preservation, thereby recalibrating insolvency outcomes away from resolution and towards liquidation.

This shift is particularly consequential in the aviation sector, where asset structure and operational continuity are inseparable. Unlike manufacturing or service enterprises, an airline's value is almost entirely embedded in its access to aircraft. The removal of these assets at the early stages of insolvency deprives the resolution process of its central organising resource, rendering the objective of corporate rescue largely theoretical.

[99] Abhijith Ganapavaram, 'Lessor's protest India draft rules on payment of dues to reclaim jets, sources say' (*Reuters*, 22 October 2025) < https://www.reuters.com/sustainability/sustainable-finance-reporting/lessors-protest-india-draft-rules-payment-dues-reclaim-jets-sources-say-2025-10-22/ > accessed 11 January 2026.

The Operational Vacuum Created by Accelerated Repossession

The Act's mandatory incorporation of Article XI, Alternative A of the Aircraft Protocol imposes a rigid two-month cure-or-repossession rule. While this provision aligns Indian law with international financing norms, its operational implications for distressed airlines are severe. In an industry where over eighty percent of the fleet is leased, compliance with Alternative A effectively permits the systematic dismantling of an airline's operational capacity within sixty days of insolvency commencement.

Once aircraft are repossessed, the airline ceases to function as a going concern. Revenue streams collapse immediately, route rights lose value, employees become redundant, and the enterprise is reduced to a corporate shell burdened with residual liabilities. In such circumstances, the insolvency process no longer performs a rehabilitative role but merely formalises an inevitable liquidation. The experiences of Jet Airways and Go First illustrate this trajectory, where the withdrawal of aircraft extinguished any realistic prospect of revival.

This outcome stands in marked contrast to the design of the IBC, where the moratorium under Section 14 preserves the debtor's asset base precisely to enable restructuring around core productive assets. The Aircraft Objects Act creates a sector-specific insolvency regime where this foundational logic is inverted.

Erosion of the Collective Insolvency Bargain

A defining feature of the IBC is its commitment to collective resolution. The moratorium suspends individual enforcement actions to prevent value-destructive races among creditors and to ensure pari passu treatment within a structured process. The Aircraft Objects Act departs from this principle by carving out aircraft lessors from the collective framework and granting them an enforcement pathway entirely external to the CIRP.

In doing so, the Act elevates lessors, who are classified as operational creditors under the IBC, into a position of functional supremacy. Their right of repossession operates independently of the committee of creditors, the resolution professional, and the resolution timeline. Other stakeholders, including secured lenders, bondholders, and trade creditors, remain bound by the collective process while the most valuable assets exit the estate.

Although India's declarations under Article 39 preserve certain non-consensual liens, these protections are narrowly circumscribed and do not arrest the primary remedy of repossession. The result is a fragmented insolvency landscape in which one class of creditors enjoys a privileged exit while others bear the consequences of asset depletion. This asymmetry undermines the internal coherence of the IBC and weakens its normative commitment to collective value maximisation.

The Illusion of the "Cure" Option Under Alternative A

Proponents of the Act often point to the debtor's right to cure defaults within the sixty-day waiting period as a safeguard against premature liquidation. In practice, this safeguard is largely illusory. An airline that has entered insolvency has typically accumulated substantial lease arrears, cross-defaults, and liquidity shortfalls over an extended period. The prospect of mobilising sufficient capital to cure all outstanding defaults and provide credible assurances of future performance within two months is, in most cases, commercially implausible.

Empirical data underscores this impracticality. Insolvency resolution under the IBC routinely exceeds two years, reflecting the complexity of financial distress in capital-intensive industries. Against this backdrop, the sixty-day window operates less as a genuine opportunity for rehabilitation and more as a pre-determined countdown to repossession. The binary structure it imposes forces stakeholders into accepting pre-insolvency workouts dominated by lessor interests or facing near-certain liquidation post-filing.

Macroeconomic Trade-Offs and Sectoral Risk Allocation

The legislative rationale behind the Act is rooted in economic necessity. The uncertainty generated by protracted repossession disputes, particularly during the Go First insolvency, significantly impaired India's standing in global aviation finance markets. Lessors reportedly priced a substantial jurisdictional risk premium into Indian leases, increasing financing costs in a market where leased aircraft dominate fleet composition.

However, the Act reallocates this risk rather than eliminating it. By shifting insolvency risk away from lessors and onto airlines and their domestic stakeholders, the law stabilises one side of the market at the expense of the other. While this may lower lease rentals and expand access to capital, it also increases the fragility of airline business models during downturns. Insolvency

becomes a terminal event rather than a mechanism for correction, with adverse implications for employment, connectivity, and market competition.

VII. Towards a More Calibrated Insolvency Interface

A critical assessment of the Aircraft Objects Act does not suggest that the legislation is misguided or unnecessary. Rather, it highlights the need for a more sophisticated reconciliation between asset protection and airline viability. Judicial interpretation will play a crucial role in shaping this balance. High Courts, vested with jurisdiction under the Act, could adopt an interventionist supervisory approach that uses the threat of repossession to facilitate time-bound negotiations rather than treating the sixty-day period as an automatic trigger.

While a more interventionist role for the High Courts may offer a partial corrective to the rigidity introduced by the Aircraft Objects Act, an over reliance on judicial supervision risks generating its own set of legal frictions. In a sector as time-sensitive and capital-intensive as aviation, such judicial congestion can undermine both asset value preservation for lessors and operational continuity for airlines. This makes it worthwhile to explore non-judicial, consensual mechanisms that can function alongside formal insolvency processes without exacerbating litigation risk.

Mediation offers a particularly compelling alternative. The aviation industry is characterised by long-term, relational contracts in which lessors and airlines often prefer commercial accommodation over abrupt enforcement. Yet under the IBC, insolvency proceedings frequently become adversarial due to third-party interventions, operational creditor claims, and procedural disputes, with the CIRP extending up to 330 days. Mediation, by contrast, provides a confidential, flexible, and time-efficient forum in which parties can negotiate interim standstills, lease restructurings, or phased repossession arrangements that courts are structurally ill-equipped to craft. While mediation may not resolve every insolvency dispute, it can significantly reduce value-destructive outcomes by facilitating solutions that align creditor enforcement with business continuity.

Comparative practice reinforces the suitability of mediation in insolvency contexts. In the United States, mediation is an integral feature of Chapter 11 proceedings, with a substantial proportion of cases reaching settlement through court-annexed mediation, including in complex and high-value disputes. Several European jurisdictions, including the United

Kingdom, France, Italy, Spain, and Greece, actively promote mediation in insolvency matters, a policy direction endorsed at the European Union level through Directive 2008/52/EC.

At the international level, the Singapore Convention on Mediation further enhances the attractiveness of this approach by enabling cross-border enforcement of mediated settlements an especially critical advantage in aviation insolvencies involving foreign lessors and multi-jurisdictional assets. Incorporating mediation into India's insolvency ecosystem could therefore serve as a vital pressure-release mechanism, reducing dependence on courts while preserving the economic gains achieved through the Aircraft Objects Act.

VIII. Conclusion

The aviation industry's unique insolvency challenges, particularly concerning leased aircraft, highlight the limitations of India's current insolvency framework. While the Insolvency and IBC 2016, seeks to protect the debtor's assets, it often clashes with the rights of lessors under *ex-ante* contracts. These conflicts, exemplified in cases like Go Air, point to the need for specialized legislation that balances both interests. Enacting mediation as an alternative solution, along with substantive legislation on Aviation Insolvency, could address these intensified issues. The Cape Town Convention (CTC), with its unequivocal provisions for asset recovery, offers a solution to harmonize lessor and lessee rights during insolvency proceedings.

Therefore, a comprehensive solution could involve India fully adopting the CTC, particularly focusing on Alternative A under Article XI, which promotes timely asset recovery by the lessor while allowing the airline company to restructure. The proposed Protection and Enforcement of Interests in Aircraft Objects Bill, 2022, is a crucial step in aligning Indian laws with international standards. However, to ensure a lasting impact, amendments to the IBC are needed to incorporate the CTC's protections, providing an unequivocal, fair framework for both creditors and debtors.