

TACKLING INEFFICIENT INSOLVENCY IN INDIA'S AIRSPACE: A CRISIS IN THE SKY

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In 2021, the global aircraft leasing market was valued at USD 290.07 billion in 2019, owning one-fourth of the total commercial fleets. From there on, the industry has only witnessed an upward trend commanding 48.9% of the total fleet in 2020. In India, aircraft leasing is a 'central competent' of the aviation sector with lessors controlling 80% of the country's commercial fleet. While COVID-19 was a major contributor to this development, it also exposed a grey yet fragile area of law, that called for immediate redressal – airline insolvency. This research paper aims to highlight that the current Indian insolvency landscape i.e. the Insolvency and Bankruptcy Code is not able to secure the rights of lessors, taking into account the financial defaults of domestic air carriers. Additionally, while the Union government has 'liberated' aircraft lessors from the IBC's moratorium period through an official notification, the authors will argue that such notification will only provide temporary relief to the lessors and is therefore not a long-term solution for insolvency resolution. To ensure that the current IBC landscape does not move from a 'creditor-in-control' model to a 'debtor-in-possession' model, the authors call for the ratification of the Cape Town Convention and the Protocol on Matters Specific to Aircraft Equipment, therefore, harmonising internationally accepted laws with India's domestic framework. In conclusion, the authors state that airline insolvency needs specialised expertise and that the IBC 2016 does not possess it.

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I. INTRODUCTION

The onset of COVID-19 wreaked havoc on the global aviation industry. According to a study conducted by McKinsey & Company in collaboration with the International Air Transport Association ('IATA') the airline sector was the hardest hit sector as compared to all other sub-sectors of the industry.¹ The

¹ Jaap Bouwer, Vik Krishnan, Steve Saxon, and Caroline Tufft, 'Taking Stock of the Pandemic's Impact on Global Aviation' (*McKinsey & Company*, 31 March 2022) <<https://www.mckinsey.com>

report states that even before the pandemic i.e. from 2012 to 2019, global carriers ran into losses 'bleeding' \$17 billion USD in economic profits.² The figure is even more worrisome considering the report further states that such huge losses became synonymous with these airlines despite low fuel prices and a projected environment of strong economic growth in the industry. In 2020, revenues collapsed by 55% pushing the global aviation economy 16 years behind. The repercussions could be seen even within the Indian aviation sector. Last year during the Parliament's winter session, in response to a question concerning price hike in airfares, the Hon'ble Minister of Civil Aviation revealed the losses domestic carriers had incurred during the pandemic ranging from Rs 55,000 crores to Rs 1,32,000 crores annually, making civil aviation a victim of seasonal changes.³

II. THE BIRTH OF IBC 2016: GIVING CORPORATE INDIA A NEW LEASE OF LIFE

'The defaulter's paradise is lost. In its place, the economy regained its rightful position.' - Justice Rohinton Fali Nariman

A. A BRIEF HISTORY OF PAST PRECEDENTS IN ECONOMIC LEGISLATIONS

Justice Stephen Field's dissenting opinions at the dawn of the nineteenth century were translated into majority opinions in the first half of the twentieth century.⁴ This period witnessed the Lochner era which dethroned the jurisprudence of economic laws for a period of forty years. In *Lochner v New York*,⁵ and President Theodore Roosevelt's court-packing plan thereafter,⁶ the Supreme Court of the United States consistently struck down legislations that prioritised market economics over social and welfare legislations. In the years that followed, the

/industries/travel-logistics-and-infrastructure/our-insights/taking-stock-of-the-pandemics-impact-on-global-aviation> accessed 6 March 2024.

² *ibid.*

³ ANI, "'Covid Destroyed Financial Viability of Airlines but...': Civil Aviation Minister Responds on Air Price Hike Issue in Lok Sabha' (*Economic Times*, 7 December 2023) <<https://economic.times.indiatimes.com//industry/transportation/airlines/-aviation/covid-destroyed-financial-viability-of-airlines-but-civil-aviation-minister-responds-on-air-price-hike-issue-in-lok-sabha/articleshow/105811232.cms>> accessed 6 March 2024.

⁴ Britannica, 'Stephen J. Field, United States Jurist' (*Britannica*, 1 March 2024) <<https://www.britannica.com/biography/Stephen-J-Field>> accessed 10 March 2024.

⁵ (1905) 198 U.S. 45, 75-76.

⁶ Supreme Court Historical Society, 'FDR & The Court Packing Controversy: Full Script' (*Supreme Court Historical Society*) <<https://supremecourthistory.org/schs-historical-documentaries/fdr-courtpacking-controversy-full-script>> accessed 10 March 2024.

Lochner era was brought to an end in the case of *Ferguson v Skrupa*,⁷ which was also cited by the Supreme Court of India in *RK Garg v Union of India*.⁸ Justice Oliver Wendell Holmes, a proponent of the sociological school of jurisprudence held in the case of *New State Ice Co. v Liebman* that laws relating to economic activities must be viewed with greater latitude than laws touching civil rights such as freedom of religion and speech, etc.⁹ Adding to that, Justice Felix Frankfurter in *Morey v Doud* rightfully held that every statute pertaining to economic matters is subject to trial and error and therefore must not be readily assumed as unconstitutional on the face of it.¹⁰ Unfortunately, in the Indian landscape (the Balco Employees Case), these trials led to many errors that negatively impacted the economy.¹¹ As per statistics computed by the World Bank, India was ranked 135th out of 190 countries as it took 4.3 years to resolve a matter concerning insolvency and bankruptcy.¹²

B. MAKING INDIA A BUSINESS-FRIENDLY COUNTRY

Before 2016, the framework for initiating bankruptcy in India was a highly fragmented process and the powers that were given to creditors and debtors were located in different statutes. Given the state of affairs in India's business ecosystem at that time, it was distressing to note that the rights of all stakeholders were separately defined which ultimately resulted in conflicting jurisprudence between different laws. Furthermore, this also led to a plethora of issues that involved concerning the subject matter jurisdiction between the High Courts and the Board for Industrial and Financial Reconstruction ('BIFR'), and a lack of expertise while adjudicating disputes of such nature in the *Innoventive Industries Ltd v ICICI Bank* case.¹³ This gave rise to numerous delays, extensions, and uncertainty which crippled the entrepreneurial dynamism in the country. These scenarios were highlighted in past precedents by the Supreme Court of India as well as in the Eradi Committee Report (2000) and the Reserve Bank of India's Report on Trends and Progress of Banking in India (2012-2013) which

⁷ (1962) 372 U.S. 726.

⁸ (1981) 4 SCC 675.

⁹ (1932) US 262, 310-311.

¹⁰ (1957) 351 US 457.

¹¹ *Balco Employees Union (Regd.) v Union of India* (2002) 2 SCC 333.

¹² Bikash Narayan Mishra, 'IBC: From Perceived Recovery Tool to Resolution Mechanism - Challenges and Opportunities' (*Economic Times*, 21 October 2023) <<https://bfsi.economictimes.indiatimes.com/blog/ibc-from-perceived-recovery-tool-to-resolution-mechanism-challenges-and-opportunities-ahead/104579161>> accessed 10 March 2024.

¹³ (2018) 1 SCC 407.

questioned the conflicting objectives of certain legislations that were in force at that time.¹⁴ This led the Parliament of India to constitute a committee to come up with a robust framework for solving the googly that was present in different legislations.

C. THE SEARCH FOR A UNIFIED AND COMPREHENSIVE STATUTE

On the sixth anniversary of India's insolvency and bankruptcy framework,¹⁵ the Union Minister for Finance said that the country could not afford to lose the 'sheen' of its Insolvency and Bankruptcy Code, 2016 ('IBC'). India is on the verge of becoming a mature market economy. In 2016, the Union government took a step in the right direction when the Indian economy was struggling to cope with a welter of bad loans and was eagerly searching for a comprehensive and unified code to manage stress situations in a time-bound and efficacious manner, as well as ensure the seamless implementation of liquidation and bankruptcy for maximisation of value of assets of such persons to promote entrepreneurship, and balance the interests of all stakeholders and 'matters connected therewith or incidental thereto' in the corporate sector.¹⁶ This Code was designed to bring revolutionary changes in India's insolvency and bankruptcy landscape by (a) creating a comprehensive and understandable process for insolvency and bankruptcy of individuals and corporates; (b) establishing a dedicated committee of creditors and adjudicatory authorities; and (c) bringing judicial discipline in the scheme of things. This was done to draft a legislation that was simple, coherent, and easy to navigate the complexities of India's business environment.¹⁷ More importantly, for a sound insolvency and bankruptcy process, the Code also envisaged the creation of four pillars namely

¹⁴ Eradi Committee, 'Report of the High-Level Committee on Law Relating to Insolvency and Winding Up of Companies' (2000) <<https://ibbi.gov.in/uploads/resources/July%202000,%20Eradi%20Committee%20Report%20on%20Law%20relating%20to%20Insolvency%20and%20winding%20up%20of%20Companies.pdf>> accessed 10 March 2024. See also Reserve Bank of India, 'Report on Trend and Progress of Banking in India 2012-13' (2013) <https://rbidocs.rbi.org.in/rdocs/Publications/PDFs/ORTP21112013_F.pdf> accessed 10 March 2024.

¹⁵ Insolvency and Bankruptcy Board of India, 'Sixth Annual Day' (1 October 2022) <<https://ibbi.gov.in/annualday2022>> accessed 10 March 2024.

¹⁶ Harshvardhan Koradavasanth and Vasanth Rajasekaran, 'Five Years of Insolvency and Bankruptcy Code: A Promising Journey' (*The Hindu Business Line*, 20 February 2022) <<https://www.thehindubusinessline.com/business-laws/five-years-of-insolvency-and-bankruptcy-code-a-promising-journey/article65058628.ece>> accessed 10 March 2024.

¹⁷ Insolvency and Bankruptcy Code 2016 ('IBC'), Preamble.

(i) Insolvency Professionals; (ii) Information Utilities; (iii) Adjudicating Authorities; and (iv) the Insolvency and Bankruptcy Board of India.¹⁸

D. THE BANKRUPTCY LAW REFORMS COMMITTEE:
TURNING VISION INTO ACTION

The Bankruptcy Law Reforms Committee headed by Dr TK Vishwanathan took note of the multiple contradictory arrangements that were present across various legislations.¹⁹ The Committee repealed two important legislations – the Presidency Towns Insolvency Act of 1909²⁰ and the Provincial Insolvency Act of 1920.²¹ As provided under the Statement of Objects and Reasons,²² the IBC amended eleven statutes including, inter alia, the Companies Act, 2013,²³ Sick Industrial Companies (Special Provisions) Repeal Act, 2003 ('SICA'),²⁴ Limited Liability Partnership Act, 2008 ('LLP Act'),²⁵ Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI'),²⁶ and Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ('RDDBFI').²⁷ Another reason to introduce the IBC was to mandate the existence of an impartial, efficient, and expeditious administration.

E. IBC, 2016: AN EVOLVING LEGISLATION

Apart from prescribing a solid legislative framework, it is equally remarkable to state that the IBC is one of the handful of economic legislations in India that has undergone multiple amendments to smoothen the functioning of its regulatory framework and upgrade its institutionalised and time-sensitive approach to resolve financial distress even during extraordinary circumstances such as the coronavirus pandemic. This masterpiece has been nothing short of a proverbial

¹⁸ Aditya Kaushik, 'Is IBC 2016 Effective?' (*NITI Aayog*, 5 November 2020) <<https://www.niti.gov.in/ibc-2016-effective>> accessed 11 March 2024.

¹⁹ Bankruptcy Law Committee Report, 'The Report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design' (2015) <https://ibbi.gov.in/BLRCReportVol1_04112015.pdf> accessed 11 March 2024.

²⁰ Presidency Towns Insolvency Act 1909.

²¹ Provincial Insolvency Act 1920.

²² Insolvency and Bankruptcy Act 2016, Statement of Objects and Reasons.

²³ Companies Act 2013.

²⁴ Sick Industrial Companies (Special Provisions) Repeal Act 2003.

²⁵ Limited Liability Partnership Act 2008.

²⁶ Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002.

²⁷ Recovery of Debts Due to Banks and Financial Institutions Act 1993.

giant in the Indian corporate landscape.²⁸ As per the Report on Trend and Progress of Banking in India (2022-23),²⁹ the improvement in asset quality measured by their Gross Non-Performing Assets ('GNPAs') ratios witnessed positive developments beginning from 2018-19, and this good run was also evidenced in the financial year of 2022-23. While the IBC has a promising future, the constitutional validity of its various provisions was challenged before the Supreme Court of India in *Swiss Ribbons Pvt Ltd & Anr v Union of India & Ors*,³⁰ which was defended by a two-judge bench comprising Justice Rohinton Fali Nariman and Justice Navin Sinha.³¹ India is on the road to becoming a developed country by 2047.³² For her dream to materialise, the IBC has to play a defining role towards improving the credit system and rechristening India with the tag of the fastest-growing economy in the world.

III. THE INSOLVENT INDIAN AIRSPACE

Over the last decade or so, the Indian aviation sector has been an abode of policy changes, because of which it has seen tremendous growth. Realising that the aviation sector needs to go an extra mile, the Hon'ble Finance Minister in her Interim Budget 2024 speech announced the government's plan to double the number of airports to a total of 149 and at the same time increase the total number of routes to 517.³³ While many key stakeholders of the sector had expected an infrastructural boost (which can be noted clearly from the key reforms brought about), aircraft lessors—who command 80% of India's

²⁸ Devendra Mehta, 'Insolvency Resolution: The IBC Story So Far and the Way Forward' (*Economic Times*, 22 January 2021) <<https://economictimes.indiatimes.com/news/economy/policy/insolvency-resolution-the-ibc-story-so-far-and-the-way-forward/articleshow/80399160.cms>> accessed 11 March 2024.

²⁹ Reserve Bank of India, 'Report on Trend and Progress of Banking in India for the year 2022-23' (2023) <<https://rbidocs.rbi.org.in/rdocs/Publications/PDFs/0RTP27122023D9394304B3D149428EB730022B3BB232.PDF>> accessed 11 March 2024.

³⁰ (2019) 4 SCC 17.

³¹ Deepak Joshi, 'Justice Rohinton Nariman's Contribution to IBC Jurisprudence in India' (*Bar and Bench*, 14 August 2021) <<https://www.barandbench.com/columns/litigation-columns/the-contribution-of-justice-rohinton-nariman-to-ibc-jurisprudence-in-india>> accessed 11 March 2024.

³² Abhishek Tripathi and Mani Gupta, 'Overview of India's Insolvency and Bankruptcy Code' (*Global Restructuring Review*, 6 October 2021) <<https://globalrestructuringreview.com/review/asia-pacific-restructuring-review/2022/article/overview-of-indias-insolvency-and-bankruptcy-code>> accessed 11 March 2024.

³³ Jagriti Chandra, '60% Cut in Allocation for Regional Air Connectivity Scheme in Interim Budget' (*The Hindu*, 1 February 2024) <<https://www.thehindu.com/business/budget/budget-2024-60-cut-in-allocation-for-regional-air-connectivity-scheme/article67800136.ece>> accessed 7 March 2024.

commercial fleet—were still left unanswered.³⁴ They were hopeful of the government clarifying India's stance amidst the ongoing insolvency proceedings of domestic carriers such as the likes of Mumbai based Jet Airways and Go First.

A. JET AIRWAYS

The Jet Airways insolvency case initiated and exposed India's troubled relationship between her insolvency framework and global aircraft lessors. Once considered India's most renowned airline, the Naresh Goyal-led Jet Airways entered the doors of bankruptcy in April 2019 post unsuccessful attempts at reviving it.³⁵ The carrier's resolution plan saw a decrease in participation from market leading aviation firms and at the same time, saw an increase in participation from firms that were least important in the market such as Russia's Treasury RA Creator.

B. GO FIRST

With over Rs 2,600 crore in debt, the airline pointed fingers at its engine supplier Pratt and White for supplying faulty engines to them.³⁶ The airline states that this was the ultimate reason for initiating voluntary insolvency under Section 10 of the IBC.³⁷ The National Company Law Tribunal ('NCLT') allowed the application, as a consequence of which a moratorium was set in place. This meant that all the leased assets of the aircraft were frozen. The lessors contested this to no avail. They argued that they were not given a chance to put forward their claims even before the admission of the insolvency application. Additionally, the lessors pointed out that since they were the ones who terminated the lease agreement with the airline, they had the right to take back their assets. An appeal to the National Company Law Appellate Tribunal ('NCLAT') resulted in no relief for the lessors. As far as the case at hand is concerned, it must be noted that the government filed an affidavit before the

³⁴ Yuthika Bhargava, 'Buying vs Leasing: How Airlines Pay for Air India-like Mega Deals for Fleets Worth Billions' (*The Print*, 2 March 2023) <<https://theprint.in/business/buying-vs-leasing-how-airlines-pay-for-air-india-like-mega-deals-for-fleets-worth-billions/1406860>> accessed 7 March 2024.

³⁵ M Rajshekar, 'Jet Airways' Bumpy Flight Path Points to Serious Issues with India's New Bankruptcy Code' (*The Wire*, 25 February 2023) <<https://thewire.in/business/jet-airways-insolvency-bankruptcy-code-naresh-goyal-kalrock-jalan>> accessed 7 March 2024.

³⁶ Garv Arora and Ananya Badaya, 'Navigating the Impact of Cape Town Convention: Indian Aviation Sector' (*Law School Policy Review & Kautilya Society*, 7 December 2023) <<https://lawschoolpolicyreview.com/2023/12/07/navigating-the-impact-of-cape-town-convention-indian-aviation-sector>> accessed 7 March 2024.

³⁷ IBC, s 10.

Delhi High Court³⁸ providing further clarity to the Ministry of Corporate Affairs ('MCA') notification,³⁹ re-assuring aircraft lessors that the exemption would apply retrospectively to all pending insolvency proceedings. However, it is interesting to note that in a fresh development, the Wadia group owned domestic carrier is now seeking an extension in its moratorium period in front of the NCLT Mumbai bench.

The authors of this paper argue that despite the clarification issued by the Ministry of Civil Aviation, the confusion over the rights of aircraft lessor companies continues to 'hang in the balance' and this can be attributed to multiple factors: (a) the unsuitability of the current IBC in the context of aircraft leasing, and (b) the lack of intent to ratify and incorporate the Cape Town Convention and the Protocol on Matters Specific to Aircraft Equipment within the Indian legal framework. It is because of this confusion that Go First could now approach the NCLT for an extension in moratorium period, thereby ensuring that lessors suffer another jolt in the already diffident Indian Insolvency landscape. Such an extension will only make matters worse for the future of aircraft leasing in India. According to a report titled 'Aircraft Leasing in India: Ready to Take Off',⁴⁰ by the year 2038, the country is poised to host air traffic 4.8 times the size of what was witnessed in 2018. Furthermore, the rapid growth predicted in the report has resulted in India becoming the third largest aviation market in the world, only after the United States and China.⁴¹ Recognising the significance of the given data, the authors of this research paper will now delve into why more clarity from the Union government is the need of the hour. This clarity is urgent because the current insolvency landscape is only making matters worse. It is further explained that the delay in issuing relevant clarity from the

³⁸ Banikinkar Pattanayak, 'Government Mulls Two-month Asset Freeze for Bankrupt Airlines' (*Economic Times*, 20 December 2023) <<https://economictimes.indiatimes.com/industry/transportation/airlines/-aviation/government-mulls-two-month-asset-freeze-for-bankrupt-airlines/articleshow/106133866.cms>> accessed 7 March 2024.

³⁹ Ministry of Corporate Affairs, 'Notification' (3 October 2023) <<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Mzc0NTE5NTQx&docCategory=NotificationsAndCirculars&type=open>> accessed 7 March 2024 (MCA Notification).

⁴⁰ PwC India, 'Aircraft Leasing in India: Ready to Take Off' (February 2021) <<https://www.pwc.in/assets/pdfs/research-insights/2021/aircraft-leasing-in-india-ready-to-take-off.pdf>> accessed 7 March 2024.

⁴¹ Daanish Anand, 'India has Become the World's Third Largest Aviation Market: Jyotiraditya Scindia' (*CNBC TV18*, 7 June 2023) <<https://www.cnbctv18.com/aviation/india-has-become-the-worlds-third-largest-aviation-market-jyotiraditya-scindia-16871821.htm>> accessed 7 March 2024.

Ministry of Civil Aviation, only gives the IBC more opportunity to operate in territory which does not suit it.

IV. INDIA, THE CAPE TOWN CONVENTION & THE AIRCRAFT EQUIPMENT PROTOCOL: A COMPLICATED ASSOCIATION

On 16 November 2001, a group consisting of not more than 20 member states came together to create history in the world of civil aviation.⁴² What marks the significance of this day was how the International Institute for the Unification of Private Law and the International Civil Aviation Organisation, working hand-in-hand, adopted two very important international instruments, namely, the Convention on International Interests in Mobile Equipment ('the Mobile Equipment Convention' or 'the Cape Town Convention') and the Protocol on Matters specific to Aircraft Equipment ('the Aircraft Equipment Protocol').⁴³ Both the instruments when read together aim at providing a robust legal regime that governs the leasing and financing of high value aviation (and related) assets. They also provide for an international registration system to protect these assets. To further add, the 'two-instrument structure' specifically entails specific remedies for aggrieved creditors and lessors of aircrafts and connected equipment in case of a default or in the event of insolvency of the debtor/lessee.⁴⁴ Hence, it can be said that the Mobile Equipment Convention and the Aircraft Equipment Protocol reduce the financial risk of creditors and lessors which ultimately leads to the reduction of costs in aircraft leasing and financing. It is inferred that such aids will help in decreasing the operational costs in maintaining aircrafts. The Convention protects five different categories of interests:

1. *International interests*: As for the first category of interests, these are granted by the charger in a security agreement or vested in a conditional seller under a title reservation agreement or a lessor under a leasing agreement. These interests are the primary focus of the Mobile Equipment Convention and the Aircraft Equipment Protocol.
2. *Prospective international interests*: These interests are intentions to establish international interests in existing, identifiable equipment in the future. These interests are not yet formalised but can be indicated in the

⁴² Roy Goode, 'The Cape Town Convention on International Interests in Mobile Equipment: A Driving Force for International Asset-Based Financing' (2002) 7 Uniform Law Review 3.

⁴³ Convention on International Interests in Mobile Equipment 2001.

⁴⁴ *ibid.*

International Registry. They gain effect once they become international interests and are prioritised from the time of their registration as prospective international interests.

3. *National interests*: The third category of interests are registered under a national system that would qualify as international interests if not for the fact that they arise from internal transactions exempted by a Contracting State's declaration under Article 50. However, such exemptions have a limited effect.
4. *Non-consensual rights/interests*: This category arises under national law and are prioritised without registration. A Contracting State may declare under Article 39 certain non-consensual rights or interests to have priority over registered international interests, even without registration.
5. *Registrable non-consensual rights/interests*: These can be registered in the International Registry under a Contracting State's declaration under Article 40. Once registered, these rights or interests are treated as registered international interests under the Convention. Examples include judgments affecting equipment covered by the Convention and legal liens in favour of repairers or warehousemen.⁴⁵

The Mobile Equipment Convention extends its coverage beyond the specified categories to include another category called 'associated rights.' These rights pertain to payments or other obligations owed by a debtor under an agreement and are secured by or connected with the object in question. Associated rights exclude payments due under separate contracts, whether by the debtor or a third party. However, these payments can be considered associated rights if the agreement includes a commitment by the debtor to fulfil or ensure the fulfilment of those contracts, with such commitment secured by the object. Associated rights are particularly relevant in assignment scenarios, leading to extensive discussions and the inclusion of additional provisions, as further discussed below. Given the wide ambit of the interests protected under the Convention, it was only necessary to outline the boundaries of such protection accorded. Contracts that solely entail personal obligations not tied to any object fall outside the Mobile Equipment Convention's scope. However, Article 39(1)(b) upholds the validity of rights to arrest or detain assets under a state's law for sums owed by a provider of public services.⁴⁶ Being one of 65

⁴⁵ Goode (n 42) 6.

⁴⁶ Convention on International Interests in Mobile Equipment 2001, art XXXIX(1)(b).

signatories, India adopted the Convention on 31 March 2008. The adoption of the Convention however has been in the limbo, with the Cape Town Convention Bill, 2018 yet to be passed by the Parliament of India.⁴⁷ It is said that one of the major reasons for why the Bill was not passed was because of its conflict with provisions of various Indian legislations (apart from the IBC), including the Specific Relief Act, 1963,⁴⁸ the Code of Civil Procedure, 1908,⁴⁹ and the Companies Act, 2013.⁵⁰

V. THE MCA NOTIFICATION IS NOT IN SYNC WITH PROVISIONS OF THE COVENTION AND THE PROTOCOL AND GOES AGAINST THE IBC

A. THE AVIATION WORKING GROUP DOWNGRADES INDIA

The United Kingdom based Aviation Working Group ('AWG') also referred to as the Global Aviation Watchdog downgraded India's outlook to aircraft leasing compliance to 'negative'.⁵¹ This development came almost one and a half months after the very same organisation recognised India's aircraft leasing compliance to be 'positive' when the Union government through the Ministry of Corporate Affairs had decided to exclude 'transactions, arrangements, or agreements, under the Convention and the Protocol, relating to aircraft, aircraft engines, airframes, and helicopters' from the purview of the IBC, vide a notification dated 3 October 2023.⁵²

The reverse in outlook from 'positive' to 'negative' came in light of a denial of relief to lessors in the Go Air Insolvency case wherein the Tribunal had allowed for the latter to initiate voluntary insolvency proceedings. For the other existing domestic carriers like Indigo, SpiceJet, Akasa, and Air India, the AWG's

⁴⁷ Rashi Salva, 'Airspace Safeguarding: The Protection and Enforcement of Interests in Aircraft Objects Bill 2022' (2023) 3 Indian Journal of Projects, Infrastructure and Energy Law 1, 9.

⁴⁸ Specific Relief Act 1963.

⁴⁹ Code of Civil Procedure 1908.

⁵⁰ Companies Act 2013.

⁵¹ Business Today Desk, 'Aviation Working Group Downgrades India Ratings Amid Go First, Lessors Fight Over Possession of Aircraft' (*Business Today*, 7 December 2023) <<https://www.businesstoday.in/industry/aviation/story/aviation-working-group-downgrades-india-ratings-amid-go-first-lessors-fight-over-possession-of-aircraft-408553-2023-12-07>> accessed 8 March 2024.

⁵² MCA Notification (n 39).

downgrade could result in an increase in cost to lease planes for day-to-day operations.⁵³

B. THE MCA NOTIFICATION IS NOT IN SYNC WITH THE
CONVENTION AND PROTOCOL

With respect to the MCA Notification that did in a way send waves of confidences amongst international lessors, the authors point out that the said notification is not in sync with the provisions of the Convention and the Protocol respectively. A bare reading of the Notification shows that a total relaxation of the moratorium period has been provided for and hence, if need be, aircraft leasing companies can immediately seek repossession of their aircrafts upon the commencement of insolvency proceedings against the corporate debtor.

Whereas, when the provisions of the Protocol and the Convention are read, it can be noted that the former provides for a 60-day waiting period – Article XI provides an insolvency administrator two alternatives, A and B, in case of an insolvency event.⁵⁴ As per a requirement of Article XXX(3) of the said Convention,⁵⁵ India declared her approval for the usage of Alternative A, which provides for the aforementioned waiting period, before the aggrieved lessor can repossess the aviation assets in question. The sole purpose of opting for Alternate A was to permit the insolvency administrator to manage the operations of the corporate debtor, thereby, ensuring ‘a sense of continuity’.

The latter i.e. the Protocol under Article IX states that the corporate debtor may retain the leased aircrafts if the defaults (other than the default of instituting insolvency proceedings) are cured within the prescribed 60-day period, and additionally, the corporate debtor shows a commitment to meet future payment obligations of the lessor as required.⁵⁶

C. THE MCA NOTIFICATION GOES AGAINST THE SPIRIT OF THE IBC 2016

The IBC was drafted into force in order to ensure time bound maximisation of the value of assets of different persons such as partnership firms, corporate

⁵³ ET Spotlight, ‘AWG Downgrades India Again as Lessors Fail to Get Back Planes from Go’ (*Economic Times*, 7 December 2023) <<https://economictimes.indiatimes.com//industry/transportation/airlines/-aviation/awg-downgrades-india-again-as-lessors-fail-to-get-back-planes-from-go-first/articleshow/105816459.cms> > accessed 8 March 2024.

⁵⁴ Convention on International Interests in Mobile Equipment 2001, art. IX.

⁵⁵ *ibid*, art XXX(3).

⁵⁶ *ibid*, art IX.

persons, and individuals. In its Preamble,⁵⁷ the Act aims to promote entrepreneurship and the availability of credit, and most importantly, balance the interests of all stakeholders. The aforesaid MCA Notification goes against the very spirit of the IBC. It excludes 'transactions and agreements related to aircrafts' from relevant provisions of the IBC. Such exclusion would have been constitutionally valid if it was intended to 'fill in the gaps' in the law passed by the Parliament of India. In a couple of cases titled *Alaru Ramkrishnaiah v Union of India and Comptroller and Auditor-General of India v Mohan Lal Mehrotra* involving the provisions of the Companies Act, 2013, the Court held that circulars and other clarifications addressed by the MCA should not be in contradiction to the central legislation in question.⁵⁸ As far as the IBC is concerned, the authors have shown that the MCA Notification has in no way promoted the availability of credit and balanced the interests of all concerned stakeholders. The notification has only come to the rescue of one class of stakeholders i.e. global aircraft leasing companies, leaving corporate debtors stranded. In short, the IBC tries to revive the management of the corporate debtor so that the entity does not die a 'corporate death through the process of liquidation'.

The MCA Notification specifically prevents a Resolution Professional or Interim Resolution Professional from carrying out his/her duties as mandated by the said Act. Section 14(2) of the IBC states that the appointed resolution professional/interim resolution professional can prevent the return of supply of goods and/or services to the creditor if such goods or services are deemed critical for the functioning of the corporate debtor's business.⁵⁹ It is understood that the leased aircrafts are the most critical part of the smooth operation of an airline i.e. the corporate debtor. In a case concerning an ipso facto clause in a Power Purchase Agreement ('PPA') that had come before the Supreme Court of India, it was held that the PPA in question was solely critical for the corporate debtor's continued existence in business.⁶⁰ Therefore, the Court held that in order to maintain to prevent the status quo of the debtor from being disturbed by insolvency, it was prudent to return the supply of goods/services (in this case PPA) to the creditor. Therefore, the agreement was not terminated.

⁵⁷ IBC, Preamble.

⁵⁸ (1990) AIR SC 166; (1992) 1 SCC 20.

⁵⁹ IBC, s 14(2).

⁶⁰ *Gujarat Urja Vikas Nigam Ltd v Amit Gupta* (2021) 7 SCC 209.

A similar argument can be made as far as the essentiality and critical nature of aircrafts leased in the favour of corporate debtors. The leased aircrafts are the most crucial aspect in the functioning of the debtor. The termination of aircraft leases will lead to a change in the status quo of the debtor affecting the business, leaving no scope for recovery.⁶¹ This violates the jurisprudence envisioned by our lawmakers as far as Section 14(2) of the IBC is concerned.⁶² The above-mentioned reasoning behind the said Section was utilised by the NCLT when it was tasked with considering the pleas brought forth by Go First's lessors. Hence, it is concluded that in order to uphold the very reasons for the existence of the IBC, it is important to apply the reasoning applied in the Gujral case in the business of aircraft leasing. Its revocation will be detrimental in balancing the interests of all stakeholders.

VI. UNDERSTANDING THE DEREGISTRATION OF AIRCRAFTS IN INDIA

A. AVIATION IN INDIA: A BOOMING INDUSTRY OR A NOSEDIVED INDUSTRY

The Indian aviation sector is witnessing an unprecedented economic boom. It is now the third largest aviation market in the globe, and it is poised to overtake the USA and China by 2026, as per the IATA.⁶³ In the next couple of years, the country's aviation market is expected to witness infusion of capital worth Rs 35,000 crores (USD 4.99 billion).⁶⁴ To keep this reputation intact, it is important to note that maintaining and servicing aircrafts in India is a herculean responsibility that has to be done in accordance with specific rules and regulations. However, with many of India's premium airlines going belly up in such quick succession, India's aviation story might face many bottlenecks in the future.⁶⁵

⁶¹ Uravi Pania, 'MCAs Latest Move – Inconsistency with the Insolvency and Bankruptcy Code, 2016' (*Centre for Business & Commercial Laws*, 7 December 2023) <<https://cbcl.nliu.ac.in/insolvency-law/mcas-latest-move-inconsistency-with-the-insolvency-and-bankruptcy-code-2016>> accessed 9 March 2024.

⁶² IBC, s 14(2).

⁶³ The Economist, 'India is Seeing a Massive Aviation Boom' (*The Economist*, 23 November 2023) <<https://www.economist.com/asia/2023/11/23/india-is-seeing-a-massive-aviation-boom>> accessed 9 March 2024.

⁶⁴ Ketan Mukhija and Marvel Soni, 'India: Big Relief to Aircraft Lessors from Moratorium' (*Mondaq*, 24 October 2023) <<https://www.mondaq.com/india/aviation/1381142/big-relief-to-aircraft-lessors-from-moratorium>> accessed 11 March 2024.

⁶⁵ Press Trust of India, 'One Domestic Airline on Average Went Belly Up Every Year in Three Decades' (*Business Standard*, 3 May 2023) <<https://www.business-standard.com/industry/>>

In 2001, India became a signatory to the Cape Town Convention and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment ('the Mobile Equipment Protocol') but is yet to ratify the same.⁶⁶ These legislations aim at protecting specific rights and enforcing obligations with respect to certain classes of persons such as conditional sellers, secured creditors, and lessors of aircraft objects by creating a high value interest of international aviation assets such as aircrafts, aircraft engines, helicopters, airframes etc. amongst all recognised contracting states.⁶⁷ The fundamental objectives are (a) to provide creditors with a range of remedies and speedy interim relief; (b) to meet specific needs of the industry through protocols; and (c) to give creditors greater confidence in extending credit. Additionally, another reason for interpreting the above-mentioned Convention and Protocol in accordance with Article 6 of the said Convention as a single instrument is to promote market dynamism and commercial wisdom, and boost private and public investment in the country's aviation industry.⁶⁸ It is also pertinent to note that at present there is no law to come to the rescue in case there is a bottleneck between the Cape Town Convention and any other law in force in India.

B. BRIEF OVERVIEW OF INDIAN AVIATION'S REGULATORY BODIES

In India, the Ministry of Civil Aviation is the nodal ministry responsible for overseeing the day-to-day affairs of the Indian Aviation Sector. It has four principal regulatory authorities under its jurisdiction. First, the Directorate General of Civil Aviation ('DGCA') is responsible for enforcing civil aviation rules and regulations. It handles matters pertaining to regulation of aircraft, regulation of air transport services operated by Indian and foreign aviators, certification of aerodromes, licensing of pilots, aircraft maintenance, enforcement of civil air regulations, air safety, air worthiness, and other allied matters as well. Second, the Airports Authority of India ('AAI') is responsible for the creation and upgradation of civil aviation infrastructure both on the ground as well as the airspace. Third, the Airport Economic Regulatory Authority

news/one-domestic-airline-on-average-went-belly-up-every-year-in-three-decades-123050300692_1.html> accessed 11 March 2024.

⁶⁶ Convention on International Interests in Mobile Equipment 2001.

⁶⁷ Radhika Mathur, 'Deregistration of Aircraft under Indian Law' (*LiveLaw*, 18 July 2020) <<https://www.livelaw.in/law-firms/articles/deregistration-of-aircraft-under-indian-law-160092>> accessed 11 March 2024.

⁶⁸ Convention on International Interests in Mobile Equipment 2001, art VI.

(‘AERA’) determines the tariff for aeronautical services and passenger service fees to monitor performance standards keeping quality, reliability, and continuity as the main criterion. Lastly, the Bureau of Civil Aviation Security (‘BCAS’) ensures that Indian aviation follows national and international obligations on air safety to which India is a signatory.

In the past few years, there have been disputes between the aircraft operators and lessors based on lease agreements. In most cases, these operators would continue operating their passenger jets to and fro without even paying up the outstanding dues owed to the lessors. Hence, the first step in such a circumstance would be to halt the operator’s use of the aircraft. In view of these rampant violations, the Union government passed a path breaking amendment to the Aircraft Rules, 1937.⁶⁹

C. RULE 30 (7) OF THE AIRCRAFT RULES OF 1937: WRAPPING AN OPERATOR AROUND HIS KNUCKLES

While India signed the Cape Town Convention in 2008, it was only seven years after its accession to the Convention that the Union government introduced an amendment to the Aircraft Rules, 1937, after a series of public consultations with all the stakeholders in the Indian aviation industry. This amendment was necessary to strengthen and smoothen the regulatory process for lessors within the country’s aviation sector. The government inserted Rule 30(7) which clearly states that the registration of an aircraft registered in the territory of India,⁷⁰ to which the provisions of the Cape Town Convention and its allied protocols apply, shall be cancelled by the Central Government within five working days from the date of receipt of an application for de-registration of an aircraft by a person who is a Irrevocable De-Registration and Export Request Authorisation (‘IDERA’) holder.⁷¹ The IDERA was created under Article XIII of the Protocol to the Cape Town Convention.⁷² These IDERA holders get the right to repossess the aircrafts without seeking any consent or document from the operators of an aircraft or any other person in the event of any default.

⁶⁹ Aircraft Rules, 1937.

⁷⁰ *ibid*, rule 30(7).

⁷¹ Civil Aviation Safety Authority, Government of Australia, ‘Irrevocable Deregistration and Export Request Authorisation’ (29 November 2022) <<https://www.casa.gov.au/aircraft/aircraft-registration/irrevocable-deregistration-and-export-request-authorisation-idera#Relatedrulesandpublications>> accessed 12 March 2024.

⁷² Convention on International Interests in Mobile Equipment 2001, art XIII.

If such an application is submitted before the DGCA,⁷³ then the IDERA holder is expected to furnish an original copy or certified copy of the IDERA recorded with the DGCA and a priority search report from the International Registry specifying the registered interests in the aircraft ranking in priority, along with a certificate that those interests have been discharged or the holders have consented to de-registration and export. To protect the rights of the Central government and other affected entities, the de-registration of an aircraft will not prevent the right to sell, detain or arrest aircraft objects under applicable law for payment of dues to the government or other affected stakeholders.⁷⁴

D. WHAT WAS THE LAW BEFORE THE SAID AMENDMENT?

Before the 2015 amendment to the aforesaid Aircraft Rules, 1937,⁷⁵ the competent authority i.e. the DGCA would upon receipt of a de-registration request from the concerned creditor seek clarifications from the alleged Indian defaulters. Upon satisfaction of the due diligence, the DGCA would authorise de-registration of the aircraft in accordance with the terms and conditions specified in the lease agreement, which unfortunately resulted in inordinate delays. On the other hand, the DGCA also had the power to refuse the de registration of aircrafts if revenue, customs, airport authorities and other lien holders objected to the same.

E. POST THE 2015 AMENDMENT TO THE AIRCRAFT RULES OF 1937

The Parliament of India introduced another amendment to the aforesaid rules, inserting Rule 32A stating that once the IDERA holder makes an application for export of the aircraft object and the moment its registration is cancelled under Rule 30(7) of the Aircraft Rules, 1937 by the Central Government,⁷⁶ the DGCA is bound to facilitate the export and physical transfer along with any remaining aircraft engine, if any, subject to the payment of outstanding dues relating to the aircraft, and compliance rules. In order to make the process more transparent, the DGCA through a notification issued in 2018 has issued detailed steps to avail

⁷³ Nitin Sarin, 'New Law: Aircraft in India to be De-registered Within 5 days' (2 April 2017) <<https://sarinlaw.com/new-law-aircraft-in-india-to-be-de-registered-within-5-days>> accessed 12 March 2024.

⁷⁴ Nitin Sarin, 'Q&A: Aircraft Repossession and Enforcement of Security in India' (*Lexology*, 19 April 2023) <<https://www.lexology.com/library/detail.aspx?g=803aba76-263a-4367-9117-0f6369ba0296>> accessed 12 March 2024.

⁷⁵ Amendment to the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules 2015.

⁷⁶ Aircraft Rules 1937, rule 32A.

the remedy following the de registration of the aircraft under the said rules and regulations.⁷⁷

F. HALF-BAKED AMENDMENTS: NOTHING BUT SHORT-TERM RELIEF

The remedies available to these creditors/lessors are nothing but temporary relief in India's aviation market. The Indian judiciary, in a plethora of cases, such as *DVB Aviation Finance Asia PTE Ltd v DGCA*⁷⁸ and *Wilmington Trust SP Services (Dublin) Limited v DGCA*,⁷⁹ gave creditors/lessors in the civil aviation industry the right to avail the remedy of de-registration under the IDERA. Since there is no law to legislate between international law and India's municipal law, the courts in India have given precedence to the latter as opposed to the former.⁸⁰

G. RECENT DEVELOPMENTS

In 2018, the central government, in order to give the Aircraft Rules more teeth, decided to introduce Standard Operating Procedure for implementation of Rule 32A relating to export of aircraft covered under the Cape Town Convention, which also included the format for filing an application for de-registration of aircraft.⁸¹ The civil aviation requirements were also amended to bring more conceptual clarity and understanding. Some of the terms that were introduced were as follows: (a) Clause 2K added the definition of International Registry; (b) Clause 7A inserted the recordation of IDERA; (c) Clause 9.2 was amended to give the creditor the right to repossess the aircraft in the event of any default by the operator; (d) Clause 9.3 was amended to introduced the cancellation and de-registration of the aircraft; and (e) Appendix B was inserted.⁸²

This step will enable India to align its commitments under the Cape Town Convention and the Mobile Equipment Protocol which will enhance the

⁷⁷ Director General of Civil Aviation, 'Standard Operating Procedure for Implementation of Rule 32A Relating to Export of Aircraft Covered under Cape Town Convention' (16 November 2018) <http://164.100.60.133/aic/AIC12_2018.pdf> accessed 13 March 2024.

⁷⁸ WP (C) 7661/2012 and CM No. 4208/2013 (Delhi HC).

⁷⁹ WP (C) 871/2015 & 747/2015 (Delhi HC).

⁸⁰ Insolvency Law Academy, 'The Aircraft Protocol of the Cape Town Convention and its Applicability under Indian Insolvency Regime' (2024) <<https://insolvencylawacademy.com/wp-content/uploads/2024/02/cape-town.pdf>> accessed 13 March 2024.

⁸¹ AIC Notification (n 77).

⁸² Directorate General of Civil Aviation, 'Civil Aviation Requirements' <<https://www.dgca.gov.in/digigov-portal/?dynamicPage=civilAviationRequirements/6/0/viewDynamicRulesReq>> accessed 13 March 2024.

protection given to the creditors who are in the business of leasing aircrafts.⁸³ Furthermore, this development will also impart greater confidence among potential creditors as well as leasing companies in terms of risk reduction associated with asset-based financing and leasing transactions.⁸⁴ It also aims at increasing the availability of credit by reducing time and procedural steps such as recovery under the IBC.⁸⁵ While India is a signatory to the Convention, it will only realise the benefits of these remedies only when the parliament decides to sign and ratify the Cape Town Convention and the Mobile Equipment Protocol. All in all, this move will enhance India's aviation industry, attract international lessors, and remove the stumbling blocks in the insolvency resolution process for financially distressed companies.⁸⁶

VII. CONCLUSION: MAKING OUR SKIES CLEARER

During the CAPA India Aviation Summit 2024, Mr Vumlunmang Vualnam (Secretary, Ministry of Civil Aviation) stated '... the ratification of the Cape Town Convention through enactment of a law is something ... is really in its final stages.'⁸⁷ The seriousness of the ongoing airline insolvency cases makes it imperative for the Indian government to do everything within its reach, in order to pass the Cape Town Convention Bill (which in effect would ratify the Cape Town Convention and the Aircraft Equipment Protocol). The passing of the said Bill would help in protecting the rights of foreign lessors, giving them legal certainty in the Indian Aviation Market. In the case of *Jolly Verghese v Bank of Cochin*,⁸⁸ the Hon'ble Supreme Court of India observed that unless domiciled

⁸³ Rohit Vaid, 'Explainer: India and The Cape Town Convention' (*Financial Express*, May 27 2023) <<https://www.financialexpress.com/business/airlines-aviation-explainer-india-the-cape-town-convention-3102293>> accessed 15 June 2024.

⁸⁴ Press Trust of India, 'Centre Plans to Bring in Cape Town Convention Act for Civil Aviation Sector' (*Business Standard*, 15 October 2018) <https://www.business-standard.com/article/economy-policy/centre-plans-to-bring-in-cape-town-convention-act-for-civil-aviation-sector-118101501055_1.html> accessed 15 June 2024.

⁸⁵ Saksham Bhardwaj, 'Cape Town Convention – A Masterpiece for Aviation Transactions' (*LiveLaw*, 6 February 2023) <<https://www.livelaw.in/columns/cape-town-convention-aviation-tools-aviation-assets-aviation-transactions-220853>> accessed 16 June 2024.

⁸⁶ Business Standard Web Team, 'The Cape Town Convention Bill: What is it, and Why is India Introducing It?' (*Business Standard*, 26 June 2023) <https://www.business-standard.com/india-news/the-cape-town-convention-bill-what-is-it-and-why-is-india-introducing-it-12306260044_4_1.html> accessed 16 June 2024.

⁸⁷ Dev Kachari, 'Ratification of Cape Town Convention at Final Stages: Aviation Secretary' <<https://infra.economicstimes.indiatimes.com/news/aviation/ratification-of-cape-town-convention-at-final-stages-aviation-secretary/110735138>> accessed 17 June 2024.

⁸⁸ (1980) 2 SCC 360.

within Indian laws, the Cape Town Convention would remain unimplementable. Keeping this in mind, it is noted that the said Convention contains several provisions which can come to the rescue of aggrieved aircraft leasing companies. As per a report published by the Air Transport Action Group, in the year 2016, the aviation industry supported 62.7 million jobs worldwide generating revenues attune to USD 2.7 trillion.⁸⁹ Given what is at stake, the Parliament's rapid response in ratifying the said Convention and the Protocol would also help in removing the challenges that are negatively impacting the aviation industry.

The authors state that a major reason for the need for ratification of the Cape Town Convention and the Aircraft Equipment Protocol are the beneficial remedies laid down within the texts of the instruments. Sir Royston Miles 'Roy' Goode in the Official Commentary of the Convention, writes:

The availability of adequate and readily enforceable default remedies is of crucial importance to the creditor, who must be able to predict with confidence its ability to exercise a default remedy expeditiously.⁹⁰

Both the Convention and the Protocol consist of (a) an efficient enforcement mechanism and (b) a wide range of judicial and self-help remedies for creditors i.e. aircraft leasing companies. It is pertinent to mention at this juncture that the drafters of the Convention felt the need to do a 'balancing act' between civil law and common law in terms of 'allowable remedies'. This has been done keeping in mind commercial interests of all stakeholders involved.⁹¹

Apart from remedies listed under the Convention, the Protocol has additional remedies. Article X of the Protocol introduces significant changes to relief provisions pending final determination:

1. *New Remedies*: Article X (3) adds remedies of sale and application of sale proceeds.
2. *Timely Relief*: Article X (2) mandates States to specify the number of working days for providing remedies, aligning with 'speedy relief' under Article 13 of the Cape Town Convention.

⁸⁹ Air Transport Action Group, 'Aviation: Benefits Beyond Borders' (2017) <https://aviationbenefits.org/media/149668/abbb2016_full_a4_web.pdf> accessed 17 June 2024.

⁹⁰ Aisha Ahmed Sharfi, 'Remedies Under Cape Town Convention: Easing Aircraft Financing Norms' (2019) 1 VIT Law Review 28.

⁹¹ *ibid.*

3. *Exclusion of Protections:* Article X(5) of the Protocol allows written agreements to exclude protections for debtors and interested parties under Article 13(2) of the Cape Town Convention.
4. *Expedited Actions:* These actions include remedies like de-registration and export of aircraft under Article IX(1) must be executed within five days of creditor notification.⁹²

In summary, the authors argue that for India to have clearer skies, it needs to harmonise the international equivalent of insolvency laws within its domestic legal framework. Such harmonisation should help in solving problems that may arise of stakeholders and in essence, the jurisprudential value of the law should be protected. An attempt was made by introducing The Protection and Enforcement of Interests in Aircraft Objects Bill, 2022.⁹³ Unfortunately, the Bill has still not been passed by the Parliament of India despite the deadline of inviting comments (as part of the public consultation process) extinguishing. As is evident, the legislative intent of introducing this Bill is to enforce the Mobile Equipment Convention and the Aircraft Equipment Protocol. If successfully passed, the Bill will proceed to become an Act bringing an end to the long-standing conflict between India and her international obligations. Given the context of the research paper, the Bill will provide much-needed stability, confidence, and clarity for global aircraft lessors. It clearly demarcates certain 'self-help remedies' in the case of default,⁹⁴ one of them being the power of the financier/charge to take possession or control of the aircraft object charged to it. It is crucial for this Bill to be passed given the sea of opportunities that the Indian aviation sector can embrace in the years to come.

⁹²Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, art X.

⁹³Protection and Enforcement of Interests in Aircraft Objects Bill 2022.

⁹⁴Anand Shah, Rishiraj Baruah and Saptarshi Bhuyan, 'The Protection and Enforcement of Interests in Aircraft Objects Bill, 2022' (*AZB & Partners*, 26 April 2022) <<https://www.azbpartners.com/bank/the-protection-and-enforcement-of-interests-in-aircraft-objects-bill-2022>> accessed 10 March 2024.