

Soaring Above the Turbulence: Unveiling the Horizon of MCA's Moratorium Exemption for Cape Town Convention Transactions in Aviation Insolvencies in India

Atri Mukherjee and Adarsh Anand Amola***

Abstract: The Ministry of Corporate Affairs ("MCA") of India heralded a significant regulatory pivot on 3rd October 2023 by issuing a notification that exempts transactions under the Cape Town Convention ("CTC") from the prevailing moratorium instituted by the National Company Law Tribunal ("NCLT") during airline insolvencies. This article meticulously navigates the critical obstacle of aircraft object repossession by lessors, a challenge exacerbated by the NCLT's moratorium, and delineates how the exemption provides a robust solution. The discourse underscores the salient benefits emanating from the exemption including the safeguarding of revenue streams for lessors, assurance of meticulous aircraft maintenance, and a streamlined deregistration procedure, collectively orchestrating a more favourable ambiance for lessors. A profound examination of the legal and pragmatic implications of this exemption is undertaken, rendering a comprehensive understanding of its impact on the extensive aviation insolvency panorama. The article further elucidates the potentially transformative effect on the resolution process for beleaguered aviation entities, showcasing how the amendment substantially amplifies the efficacy of aircraft repossession laws. The narrative also advocates for additional reforms to fortify the enforcement frameworks surrounding aircraft repossession, thereby envisaging a more resilient aviation insolvency infrastructure in India. Moreover, the exploration accentuates India's congruence with global benchmarks, specifically the CTC and Protocol of 2001, reaffirming the nation's commitment to engendering a more lessor-friendly aviation milieu.

Keywords: MCA Notification, CTC, NCLT Moratorium, Aircraft Repossession, Aviation Insolvency.

I. INTRODUCTION

The Indian aviation industry stands as the third largest worldwide. From 79 million travellers in 2010, the figures soared to 158 million by 2017. By 2037, projections suggest a staggering 520 million passengers moving to, from, or within India.¹ India is not just a key contributor in the global aviation market, but is also witnessing unprecedented growth rates, eclipsing several of its counterparts. Presently, it ranks as the third-largest domestic aviation market on the global stage, and there are strong indicators that by 2024, India will surpass the UK to become the world's third-largest air passenger market.²

* 3rd Year Law Student at Indian Institute of Management (IIM), Rohtak, Contact Author at ipl01atrim@iimrohtak.ac.in

** 3rd Year Law Student at Indian Institute of Management (IIM), Rohtak, Contact Author at ipl01adarsha@iimrohtak.ac.in

¹ *Aircraft Leasing Industry, has India nailed the landing?* PRIMUS PARTNERS (last visited Oct. 20, 2023, 10:35 PM), <https://www.primuspartners.in/docs/documents/KVsaluunn0EVD2PZId8P.pdf>

² *Rise of the Indian Aviation Market*, INDIA BRAND EQUITY FOUNDATION (last visited Oct. 23, 2023, 10:45PM), <https://www.ibef.org/research/case-study/rise-of-the-indian-aviation-market.pdf>

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One cannot overlook the significance of aircraft leasing within the fabric of India's aviation sector. This is evident in the fact that many Indian aviation enterprises predominantly rely on leased aircraft. Reinforcing this perspective, India has been diligently working on transitioning the registration domicile of aircraft from globally recognized hubs like Ireland to GIFT City in Gujarat. Spearheaded by the Ministry of Civil Aviation, Project Rupee Raftaar³ was rolled out to streamline this transition. In alignment with the overarching policy goal of magnifying international leasing via the International Financial Services Centre Authority (IFSCA), the government has ushered in several tax amendments, including notable inclusions in the 2023 Budget.⁴

A pivotal announcement on October 3, 2023, from India's MCA unveiled a notification.⁵ These exempt transactions associated with aircraft, encompassing engines, airframes, and helicopters, from the moratorium provision under section 14(1)⁶ of the Insolvency and Bankruptcy Code, 2016 ("**IBC**"). This strategic move is in harmony with India's commitments under the CTC⁷ and its associated Aircraft Equipment Protocol.⁸ Having signed it in 2008, the CTC offers a safeguard to aircraft lessors, furnishing them with a structure to recuperate their aircraft if needed.

II. BACKGROUND OF THE NOTIFICATION

Price Waterhouse Cooper's 2021 study on aircraft leasing in India unveiled a striking statistic: 80% of India's commercial aircraft fleet operates under lease agreements. This is in stark

³ Kanakprabha Jethani, *Project Rupee Raftaar: An Analysis*, VINOD KOTHARI CONSULTANTS (last visited Oct. 27, 2023, 3:14 PM), <http://Project Rupee Raftaar: An Analysis – Vinod Kothari Consultants.html>.

⁴ *Go First Insolvency: Lessors' rights gone in thin air?*, VINOD KOTHARI CONSULTANTS (last visited Oct. 20, 2023, 4:13PM), <https://vinodkothari.com/2023/06/Go-First-insolvency-lessors-rights-gone-in-thin-air/en.html>

⁵ Ministry of Corporate Affairs Notification, S.O. 4321(E) 3rd October 2023 reads as:

WHEREAS, the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment were adopted under the joint auspices of International Civil Aviation Organization and the International Institute for the Unification of Private Law concluded at Cape Town on 16th November, 2001;

AND WHEREAS, India, being a signatory to and having acceded the Convention and the Protocol by depositing with the International Institute for the Unification of Private Law the instruments of accession on 31.03.2008;

Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (3) of section 14 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby notifies that the provisions of sub-section (1) of section 14 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), shall not apply to transactions, arrangements, or agreements, under the Convention and the Protocol, relating to aircraft, aircraft engines, airframes and helicopters.

⁶ The Insolvency and Bankruptcy Code, 2016, § 14(1), No. 31, Acts of Parliament, 2016 (India).

⁷ Convention on Integration Interests in Mobile Equipment 2001, 2307 U.N.T.S. 285

⁸ Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment 2001, 2307 U.N.T.S. 285.

contrast to the global average of 53%.⁹ Choosing to lease aircraft and engines allows aircraft operators in India to retain significant liquid working capital. This strategic choice assists in cost management, ensuring affordable ticket prices. Given India's price-conscious economic landscape, such strategies are indispensable for sustaining high flight seat occupancy rates, maximizing profits, and drawing an ever-growing passenger base.¹⁰

Yet, the aviation landscape in India has its shadows. A succession of insolvency cases – starting with Kingfisher Airlines, proceeding with Jet Airways, and most recently involving GoFirst – highlighted vulnerabilities associated with the moratorium under Section 14(1) of the IBC.¹¹ This stipulation rendered lessors powerless in reclaiming valuable assets such as aircraft and engines. Growing ripples of discontent emerged among lessors, with some believing that airlines like Go Airlines (India) Limited, colloquially known as Go First, deliberately leveraged voluntary insolvency under Section 10 of the IBC¹² to sidestep leasing agreement responsibilities. This turbulence did not go unnoticed. The Aviation Working Group (“AWG”), an international body overseeing adherence to the CTC, adjusted India's compliance index rating from 3 to 2.5 out of a maximum of 5. Furthermore, in May 2023, India found itself on the AWG watchlist.

The intrinsic nature of the moratorium under Section 14(1) of the IBC¹³ inhibits owners or lessors from reclaiming any property in the corporate debtor's custody upon insolvency initiation. Such constraints fuelled apprehensions of escalated leasing costs for Indian carriers. Lessors, anticipating challenges in reclaiming assets if an operator declared insolvency, could levy an initial premium to compensate for potential setbacks.

However, the Delhi NCLT's recent ruling on May 10, 2023, intensified the complexities. It imposed a moratorium on Go First's assets, blocking lessors from retrieving their aircraft. Challenging this ruling, lessors approached the National Company Law Appellate Tribunal

⁹ Vandit Shah & Vasantha Ravula & Shubham Gupta & Janvi Wadhwa & Vrushali Prabhu & Kushagra Kumar & Yash Shah, *Aircraft Leasing in India: Ready to take off*, PRICEWATERHOUSECOOPERS (last visited Oct. 25, 2023, 7:45 PM), [http://Aircraft leasing in India: Ready to take off \(pwc.in\).html](http://Aircraft%20leasing%20in%20India:%20Ready%20to%20take%20off%20(pwc.in).html)

¹⁰ Divyam Agarwal & Pallavi Kumar & Chirag Basu, *Lessors in the Aviation Industry Exempted from Moratorium Under Section 14(1) of the IBC*, LEXOLOGY (last visited Oct. 22, 2023, 11:23 PM), [https://Lessors in the aviation industry exempted from moratorium under Section 14\(1\) of the IBC - Lexology.html](https://Lessors%20in%20the%20aviation%20industry%20exempted%20from%20moratorium%20under%20section%2014(1)%20of%20the%20IBC%20-%20Lexology.html)

¹¹ *Supra* note 6, at 2.

¹² The Insolvency and Bankruptcy Code, 2016, § 10, No. 31, Acts of Parliament, 2016 (India).

¹³ *Supra* note 6, at 2.

("NCLAT"). Still, the appeal court upheld NCLT Delhi's verdict, marking a direct contradiction with the principles of the CTC.¹⁴

The historical backdrop reveals a pattern: lessors bearing substantial losses following the collapse of major airlines like Kingfisher Airlines in 2012, Jet Airways in 2019, and the recent Go First debacle. When Go First ceased operations in May, the NCLT, acting as India's bankruptcy tribunal, barred lessors from repossessing their aircraft. The Directorate General of Civil Aviation ("DGCA"), taking cues from the NCLT, also rejected the lessors' deregistration pleas. The tribunal's rationale was simple: a potential revival of Go First would necessitate a fleet. Nevertheless, lessors are set on reclaiming Go First's robust fleet of 54 aircraft. With the latest exemption in place, lessors now hold the right to annul a lease contract in default scenarios, empowering them to recover their assets. This move resonates with the ethos of the CTC and is poised to influence ongoing lease disputes, especially those involving Go First and SpiceJet, at the NCLT.¹⁵

III. KEY CHALLENGE DURING INSOLVENCY – AIRCRAFT REPOSSESSION

The ramifications of insolvency in the Indian aviation sector are manifold, reaching a pinnacle when it comes to the repossession of aircraft by lessors. Historically, the assets of an airline undergoing insolvency were enveloped in a moratorium as delineated by Section 14(1) of the IBC.¹⁶ This provision aimed at preserving the asset value of the beleaguered airline, endeavouring to maintain its operational viability as a going concern. According to the stipulations of the IBC, the moratorium phase spanned an initial duration of 180 days, with a provision for an extension of an additional 90 days under certain circumstances.

During this moratorium interval, the aircraft lessor was bereft of the right to repossess the aircraft, a scenario which juxtaposes starkly against the provisions of the CTC—a global treaty to which India is a signatory, designed to standardize transactions involving movable property

¹⁴ Krrishan Singhania & Abhishek Nair, *The Dichotomy Between Insolvency Laws and Capetown Convention Amidst Gofirst Insolvency*, K SINGHANIA & CO (last visited Oct. 14, 2023, 3:49 PM), <https://singhanialaw.com/insolvency-laws-and-capetown-convention/en.html>

¹⁵ Andrew Curran, *India Aligns its Repossession Laws with Cape Town Convention*, CH AVIATION (last visited Oct. 25, 4:45 PM), <https://www.ch-aviation.com/portal/news/133173-india-aligns-its-repossession-laws-with-cape-town-convention.html>

¹⁶ *Supra* note 6, at 2.

like aircraft. The discord between the domestic insolvency law and the international treaty generated a quagmire of legal and financial uncertainties.

The ripple effects of the moratorium transcended beyond mere asset repossession. Primarily, it engendered a revenue void for the aircraft lessor, as the airline, shielded by the moratorium, could eschew its obligations delineated in the lease agreement.¹⁷ This predicament was exacerbated by the lessor's impotence in effectuating deregistration and actual repossession of the aircraft. The moratorium, with its potential to stretch up to a protracted 270 days, not only incubated financial haemorrhage for the lessor but also vitiated the business continuity and asset utility.

Furthermore, the quandary reverberated on a macroeconomic scale, tarnishing India's reputation in the global aviation finance landscape. The AWG's index relegated India's rating from 3.0 to 2.5, reflecting a dip in the confidence of global financiers and lessors towards India as a conducive locale for credit facilities. Given that a staggering 80% of the aircraft operating in the Indian skies are leased, this rating plummet augured a significant setback. It also cast a pall over the Government of India's ambitious schemes to morph India into a lucrative global nexus for credit facilities.¹⁸

In a bid to ameliorate this multifaceted challenge, the MCA promulgated a pivotal notification exempting aircraft from the moratorium during the insolvency of an airline in India.¹⁹ This exemption, aligning India's insolvency framework with the CTC, heralded a significant stride towards redressing the legal and financial conundrums besieging aircraft lessors amidst airline insolvencies. The MCA's notification has been dissected and elucidated further in the ensuing sections of this article, shedding light on its potential to recalibrate the dynamics of aircraft repossession during insolvency, and reinstating India's position in the global aviation leasing and finance arena.

IV. SOLUTION – EXEMPTION OF MORATORIUM FOR CTC TRANSACTIONS

¹⁷ *Go First's insolvency flight leaves Trail of concerns for aircraft lessors*, BUSINESS INSIDER INDIA (last visited Oct. 20, 2023, 5:30 PM), [http://Go-First's-insolvency-flight-leaves-trail-of-concerns-for-aircraft-lessors | Business Insider India.html](http://Go-First's-insolvency-flight-leaves-trail-of-concerns-for-aircraft-lessors-Business-Insider-India.html)

¹⁸ *Supra* note 3, at 2.

¹⁹ Arindam Majumder, *Centre Exempts Aircraft from Moratorium Protection of IBC*, THE ECONOMIC TIMES (last visited Oct. 20, 2023, 5:57 PM), [https://ibc:Centre-exempts-aircraft-from-moratorium-protection-of-IBC - The Economic Times \(indiatimes.com\).html](https://ibc:Centre-exempts-aircraft-from-moratorium-protection-of-IBC-The-Economic-Times(indiatimes.com).html)

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In a recent notable move dated 3rd October 2023, the MCA unveiled a notification signifying a monumental shift in the treatment of transactions, arrangements, or agreements under the CTC relating to aircraft, aircraft engines, airframes, and helicopters in the ambit of insolvency proceedings. This notification explicitly states that the provisions of sub-section (1) of section 14 of the IBC,²⁰ shall not be applicable to such transactions under the Convention and the Protocol, thereby marking a significant departure from the erstwhile regime where such assets were encompassed within the moratorium during an airline's insolvency.²¹

The core essence of this notification lies in its endeavour to create a conducive environment for aircraft lessors by exempting the aircraft and related equipment from the moratorium stipulated under Section 14(1) of the IBC²² during the insolvency proceedings of an airline. Although this exemption is primarily directed towards the Corporate Insolvency Resolution Process (“CIRP”), it profoundly impacts the aircraft lessor's interests within the Indian aviation sector, addressing the previously discussed challenges of aircraft repossession during insolvency.²³

By aligning the domestic insolvency laws with the international standards set forth by the CTC on International Interests in Mobile Equipment²⁴ and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment,²⁵ this notification facilitates a more streamlined process for the repossession of aircraft,²⁶ thereby mitigating the revenue losses, maintenance issues, and deregistration hurdles that lessors encountered in the past.²⁷ The alignment with the CTC is seen as a significant stride towards

²⁰ *Supra* note 6, at 2.

²¹ Tanay Dubey, *India's commitment to the Cape Town Convention: A recent MCA Notification*, INDIACORPLAW (last visited Oct. 20, 2023, 6:13 PM), <https://India's Commitment to the Cape Town Convention: A Recent MCA Notification - IndiaCorpLaw.html>

²² *Supra* note 6, at 2.

²³ Dhananjay Kumar & Annie Jain, *Sky is the Actual Limit for IBC? – Exemption from Moratorium Over Aircraft Objects During Insolvency*, CYRIL AMARCHAND MANGALDAS (last visited Oct. 20, 2023, 6:22 PM), [https://Sky is the Actual Limit for IBC? – Exemption from Moratorium over Aircraft Objects during Insolvency | India Corporate Law \(cyrilamarchandblogs.com\).html](https://Sky is the Actual Limit for IBC? – Exemption from Moratorium over Aircraft Objects during Insolvency | India Corporate Law (cyrilamarchandblogs.com).html)

²⁴ *Supra* note 7, at 2.

²⁵ *Supra* note 8, at 2.

²⁶ Ruchika Chitravanshi & Ajinkya Kawale & Deepak Patel, *Corporate Affairs Ministry Exempts Aviation from IBC's Moratorium Clause*, BUSINESS STANDARD (last visited Oct. 20, 2023, 6:29 PM), [https://Corporate affairs ministry _exempts aviation from IBC's moratorium _clause-business-standard.com\).html](https://Corporate affairs ministry _exempts aviation from IBC's moratorium _clause-business-standard.com).html)

²⁷ *Supra* note 15, at 4.

bolstering India's aviation leasing market, making it more attractive²⁸ and less risky for global lessors.²⁹

Furthermore, this regulatory amendment is perceived as a response to the recent insolvency cases like Go First, where the moratorium provisions under the IBC were viewed as impediments to the effective repossession of aircraft by lessors.³⁰ The exemption from the IBC's moratorium on asset recovery provides much-needed relief to aircraft leasing firms, who had previously faced substantial difficulties in repossessing their aircraft from airlines undergoing insolvency. This exemption also has the potential to rectify the adverse effects on India's reputation as an aviation market, consequent to the inability of lessors to recover assets during the insolvency of airlines.³¹

The ramifications of this notification are manifold, encompassing not only the facilitation of aircraft repossession, but also the broader objective of fostering a favourable environment for aircraft leasing and finance in India. By mitigating the discord between domestic legislation and international treaties, this notification underscores India's commitment to adhering to global standards in aviation finance and leasing. The detailed analysis of these impacts, in alignment with the provisions of the international treaties of the CTC and the Protocol, is further elaborated in the subsequent sections of this article.

V. KEY FACTORS IN FAVOUR OF CREDITORS

A. No Loss of Revenue for Lessors

The moratorium provision, as delineated in Section 14(1) of the IBC,³² serves as a protective mechanism, engineered to shield the assets of airlines amidst the tumult of insolvency proceedings. However, this provision has been susceptible to exploitation by airline entities, serving as a veil to obfuscate their contractual obligations towards lessors, particularly concerning lease payments. The moratorium, by virtue of its design, immobilizes the assets, inclusive of leased aircraft, thereby forestalling lessors from orchestrating any recuperative

²⁸ *Supra* note 21, at 6.

²⁹ *Aligning IBC with Cape Town Convention: A Relief for Aircraft Lessors?*, FINANCIAL EXPRESS (last visited Oct. 28, 2023, 11:01 PM), <http://Aligning IBC with Cape Town Convention: A Relief for Aircraft Lessors? - Airlines/Aviation News | The Financial Express.html>

³⁰ Anu Sharma, *Lessors Upset as Moratorium Keeps Go Planes Out of Reach*, MINT (last visited Oct. 27, 2023, 7:11 PM), [https://Lessors upset as moratorium keeps Go planes out of reach | Mint \(livemint.com\).html](https://Lessors upset as moratorium keeps Go planes out of reach | Mint (livemint.com).html)

³¹ *Cape Town Convention and IDERAs*, IASGYAN (last visited Oct. 24, 2023, 6:56 PM), [https://Government exempting aircraft from some sections of IBC UPSC \(iasgyan.in\).html](https://Government exempting aircraft from some sections of IBC UPSC (iasgyan.in).html)

³² *Supra* note 6, at 2.

actions against the defaulting airline, even in the face of blatant transgressions of lease agreements.

A paradigmatic exemplification of this legal quagmire is manifested in the narrative of Go Airlines (India) Limited. Subsequent to its rebranding as Go First, the airline, ensnared in a fiscal quagmire, sought the sanctuary of insolvency proceedings. The ensuing moratorium, sanctioned by the NCLT, precipitated a cascade of impediments for aircraft lessors.³³

An analytical dissection of the Go First insolvency saga unveils a multifaceted tableau of issues. The inception phase, characterized as the Voluntary Insolvency Plea and Moratorium, witnessed Go First's proactive engagement with the insolvency apparatus, culminating in a sanctioned moratorium that effectively thwarted lessors' repossession endeavours.³⁴ This phase accentuates the adversarial impact of the moratorium on lessors' rights, crystallized in SMBC Aviation Capital Ltd.'s futile attempts to repossess aircraft post-lease termination but pre-moratorium sanction.³⁵

Subsequently, a pall of Perceived Malicious Intent enveloped Go First's insolvency petition, with SMBC Aviation Capital Ltd. construing it as a 'smokescreen' to elude obligations towards lessors.³⁶ This narrative phase evokes echoes of antecedent insolvencies such as Kingfisher and Jet Airways, further tarnishing the reputation of India's aviation sector.

The ramifications on repossession and lessors' rights are starkly delineated, with the moratorium effectively erecting a barricade, inhibiting lessors from repossessing their assets for protracted insolvency duration, potentially spanning six to nine months.³⁷ This phase underscores a glaring discord with the CTC norms, which India has acceded to, and which envisage a protective ambit for aircraft lessors in lessee insolvency scenarios.

The concatenation of these factors propels aircraft lessors into a vortex of challenges. The cessation of lease payments, the primary revenue conduit for lessors, signifies the initial

³³ *Is Govt Notification Exempting Aviation Leases from Moratorium Applicable for go First, Delhi HC asks DGCA*, SME TIMES (last visited Oct. 23, 2023, 10:48 PM), [http://Is govt notification exempting aviation leases from moratorium applicable for Go First, Delhi HC asks DGCA \(smetimes.in\).html](http://Is govt notification exempting aviation leases from moratorium applicable for Go First, Delhi HC asks DGCA (smetimes.in).html)

³⁴ *Supra* note 3, at 2.

³⁵ Ashmit Kumar, Kanishka Sarkar, *Go First Leases Were Terminated Before Moratorium Order, Lessor Tells Bankruptcy Appellate Tribunal*, CNBCTV18 (last visited Oct. 28, 2023, 10:33 PM), [https://Go First leases were terminated before moratorium order, lessor tells bankruptcy appellate tribunal \(cnbctv18.com\).html](https://Go First leases were terminated before moratorium order, lessor tells bankruptcy appellate tribunal (cnbctv18.com).html)

³⁶ *Go First's insolvency petition a 'smokescreen': Aircraft lessor tells NCLAT*, ET LEGAL WORLD (last visited Oct. 27, 2023, 11:32 PM), [http://Go First's insolvency petition a 'smokescreen': Aircraft lessor tells NCLAT, ET LegalWorld \(indiatimes.com\).html](http://Go First's insolvency petition a 'smokescreen': Aircraft lessor tells NCLAT, ET LegalWorld (indiatimes.com).html)

³⁷ *Supra* note 17, at 5.

domino to fall. Concomitantly, the moratorium-induced asset freeze accelerates asset depreciation, further exacerbated by missed leasing opportunities during the moratorium epoch.³⁸ The legal entanglements aimed at aircraft repossession not only embody an arduous odyssey, but are financially onerous as escalating legal and administrative costs augment the financial encumbrance on lessors.

The MCA, cognizant of these challenges, promulgated the notification exempting CTC transactions from the moratorium provision during airline insolvencies under the IBC. This exemption, emblematic of a legal renaissance, mitigates the aforementioned challenges, reinstating a legal equilibrium conducive for lessor interests. By orchestrating congruence between the domestic insolvency framework and international norms, this exemption augments the legal robustness, ensuring a more equitable landscape for all stakeholders in the labyrinthine domain of the Indian aviation industry.³⁹ Through the prism of legal pragmatism, this notification heralds a propitious epoch, potentially reinvigorating lessors' confidence and fostering a milieu of legal certitude in the Indian aviation sector.⁴⁰

B. Maintenance Assurance: An Indispensable Prerogative

The saga of aircraft maintenance within the purview of insolvency proceedings in India unfurls a narrative of intricate legal and operational dilemmas. Rooted in the fundamental premise of preserving asset integrity, the maintenance paradigm is an indispensable prerogative, particularly accentuated by the substantial investment epitomized by aircraft assets. These high-value assets, representing a confluence of engineering excellence and operational necessity, necessitate a rigorous maintenance regimen to uphold their airworthiness, safety standards, and overall asset value.

Historically, the onus of maintenance has been a contractual obligation embedded within the lease agreements inked between the aircraft lessors and the airlines.⁴¹ This stipulation, fundamental in its essence, safeguards the lessors' investment while ensuring that the aircraft

³⁸ Abhinav Dixit, *Analysing the law on airline insolvency in India*, THE CONTEMPORARY LAW FORUM (last visited Oct. 27, 2023, 10:51 PM), [https://Analysing The Law On Airline Insolvency In India - THE CONTEMPORARY LAW FORUM \(tclf.in\).html](https://Analysing The Law On Airline Insolvency In India - THE CONTEMPORARY LAW FORUM (tclf.in).html)

³⁹ Indranil Sarkar & Arpan Chaturvedi & Jayshree Pyasi, *India amends insolvency rules in wake of Jet Leasing dispute*, REUTERS (last visited Oct. 23, 2023, 10:22 PM), <https://India amends insolvency rules in wake of jet leasing dispute | Reuters.html>

⁴⁰ *Go first dispute spurs improvements in India's lessor protections*, CAPA - CENTRE FOR AVIATION (last visited Oct. 29, 2023, 11:29 PM), [https://Go First dispute spurs improvements in India's lessor protections | CAPA \(centreforaviation.com\).html](https://Go First dispute spurs improvements in India's lessor protections | CAPA (centreforaviation.com).html)

⁴¹ *Supra* note 31, at 6.

remains in an operable and safe condition, adhering to the stringent aviation standards that govern the skies. The maintenance covenant, thus, is not merely a contractual stipulation but a quintessence of asset preservation and operational reliability.

However, the advent of insolvency proceedings under the IBC ushered in a milieu of uncertainty and legal perplexity. The moratorium provisions, integral to the IBC framework, emerged as a double-edged sword. While on one side, they aimed to preserve the assets of the beleaguered airline, on the flip side, they inadvertently shackled the lessors from enforcing the maintenance obligations stipulated in the lease agreements. This legal quandary manifested a vacuum of accountability, with the airlines, ensnared in the throes of insolvency, evading the maintenance obligations, while the lessors found themselves in a legal straitjacket, unable to enforce the maintenance covenants or undertake the maintenance initiatives independently.

The narrative of Go Airlines (India) elucidates this conundrum in a real-world scenario. The insolvency proceedings, under the aegis of the NCLT, underscored a priority paradigm that relegated the lessors' rights to a secondary pedestal.⁴² The moratorium, while protecting the airline's assets, obliterated the lessors' ability to recover, inspect, and maintain the aircraft and engines. This scenario exacerbated the maintenance dilemma, with the aircraft languishing in a state of neglect, accruing substantial maintenance arrears, and depreciating in value.

The financial ramifications for the lessors were manifold and profound. The accrued maintenance costs burgeoned, the asset value plummeted, and the lessors' reputation in the aviation market frayed. This scenario orchestrated a milieu of financial adversity and reputational damage that reverberated through the lessor's future business engagements. The industry narrative of neglected maintenance and the ensuing financial haemorrhage became a cautionary tale that underscored the exigency of a regulatory renaissance.

The exemption, harmonizing the domestic insolvency framework with the international obligations under the CTC, ushered in a new epoch of procedural efficacy and lessor-friendly regulatory environment. The erstwhile challenges associated with maintenance oversight were significantly mitigated, ensuring that the spectre of neglected maintenance was relegated to the annals of regulatory history.

⁴² *Supra* note 3, at 2.

The exemption encapsulated in the MCA notification augments the procedural transparency, expedites the maintenance oversight process, and refurbishes India's image in the global aviation sector. The transition from a quagmire of uncooperative business practices to a more collaborative and lessor-friendly environment manifests a balanced approach that not only safeguards lessors' interests but also augments the overall vitality of the Indian aviation sector.

This narrative underscores the exigency of a robust regulatory framework that ensures asset preservation, operational readiness, and financial vitality, even in the crucible of insolvency. The MCA notification is a testament to India's progressive stride towards aligning its insolvency regime with global standards, fostering a conducive ecosystem for aviation business engagements.⁴³

While the exemption alleviates the maintenance conundrum, it also precipitates a discourse on the constitutional validity of the distinctive treatment accorded to the aviation industry vis-à-vis other sectors.⁴⁴ This discourse, beyond the purview of this article, embodies substantial jurisprudential significance and beckons a broader legal and regulatory deliberation.

In summation, the narrative of maintenance assurance in the face of insolvency proceedings epitomizes a critical facet of the aviation leasing industry. The regulatory innovations encapsulated in the MCA notification exemplify a progressive step towards ensuring that the crucible of insolvency does not compromise the intrinsic value and operational readiness of leased aircraft, thereby fostering a more conducive and collaborative business environment in the Indian aviation sector.

C. Streamlined Deregistration Process: A Leap Towards Regulatory Harmony

The realm of aircraft leasing and financing in India previously navigated through tumultuous waters due to the encumbrance imposed by Section 14(1) of the IBC.⁴⁵ The stipulated moratorium during an airline's insolvency process not only ensnared aircraft in a legal quagmire but also metamorphosed them into liabilities for lessors. The deleterious

⁴³ Deepanshi Gupta & Rajat K Mittal, *Aligning IBC with Cape Town Convention: A Relief for Aircraft Lessors?*, FINANCIAL EXPRESS (last visited Oct. 20, 2023, 10:48 PM), <https://Aligning IBC with Cape Town Convention: A Relief for Aircraft Lessors? - Airlines/Aviation News | The Financial Express.html>

⁴⁴ Reuters, *Govt changes insolvency rules to exclude leased aircraft from moratorium*, BUSINESS STANDARD (last visited Oct. 27, 2023, 11:04 PM), [https://Govt changes insolvency rules to exclude leased aircraft from moratorium \(business-standard.com\).html](https://Govt changes insolvency rules to exclude leased aircraft from moratorium (business-standard.com).html)

⁴⁵ *Supra* note 6, at 2.

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reverberations of this regulatory framework resonated far and wide, casting a shadow over India's profile as a conducive and secure destination for aircraft leasing and financing.

Historically, the legal conduit for deregistering aircraft in India was enshrined in the Aircraft Rules, 1937.⁴⁶ The amended Rule 30(7)⁴⁷ posits that upon receipt of an application from an Irrevocable Deregistration and Export Request Authorisation (“**IDERA**”) holder before the termination of the lease, the Central Government is mandated to cancel the registration of an aircraft, to which the CTC or Protocol apply, within a stringent timeline of five working days.⁴⁸ Nonetheless, this deregistration procedure is orchestrated in a manner that retains the rights of the Central Government and other designated entities to arrest, detain, attach, or sell the aircraft object under the prevailing legal framework to recoup unpaid dues.⁴⁹

The legal terrain prior to the recent amendments was fraught with challenges. Judicial pronouncements in precedents such as DVB Aviation Finance Asia PTE Ltd. V. Directorate General of Civil Aviation⁵⁰ and Wilmington Trust SP Services (Dublin) Limited v. Directorate General of Civil Aviation⁵¹ momentarily alleviated the bureaucratic impediments faced by aviation creditors in India, affording them transient reprieve through remedies including deregistration under the IDERA. Yet, the intransigent lack of enabling domestic legislation for the CTC and Protocol, juxtaposed with a judicial proclivity to uphold domestic laws in scenarios of conflict with India's international law obligations, incubated a perception of India as a less favourable jurisdiction for the aviation industry.⁵² The exemption paves the way for lessors to expeditiously repossess their aircraft from airlines in insolvency, thereby restoring their rights which were erstwhile stifled under the moratorium regimen.⁵³

⁴⁶ Aircraft Rules, 1937 (India).

⁴⁷ Aircraft Rules, 1937, § 30(7) (India).

⁴⁸ Nitin Sarin, *New Law: Aircraft in India to be De-registered within 5 days*, SARIN & CO (last visited Oct. 23, 2023, 10:36 PM), <https://sarinlaw.com/new-law-aircraft-in-india-to-be-de-registered-within-5-days/.html>

⁴⁹ *Supra* note 6, at 2.

⁵⁰ DVB Aviation Finance Asia PTE Ltd. v. Directorate General of Civil Aviation, WP (C) 7661/2012 and CM No. 4208/2013 (DHC).

⁵¹ Wilmington Trust SP Services (Dublin) Limited v. Directorate General of Civil Aviation, WP(C) 871/2015 (DHC).

⁵² Bhavini Mishra, *Delhi HC tells DGCA to clarify stand on MCA notification on moratorium*, BUSINESS STANDARD (last visited Oct. 28, 2023, 11:14 PM), [https://Delhi HC tells DGCA to clarify stand on MCA notification on moratorium \(business-standard.com\).html](https://Delhi HC tells DGCA to clarify stand on MCA notification on moratorium (business-standard.com).html)

⁵³ Ruchika Chitravanshi, Ajinkya Kawale, Deepak Patel, *Corporate Affairs Ministry Exempts Aviation from IBC's moratorium clause*, BUSINESS STANDARD (last visited Oct. 26, 2023, 11:43 PM), [https://Corporate affairs ministry exempts aviation from IBC's moratorium clause \(business-standard.com\).html](https://Corporate affairs ministry exempts aviation from IBC's moratorium clause (business-standard.com).html)

The MCA notification is emblematic of India's evolving regulatory framework, aiming for congruence with the international norms delineated in the CTC. Particularly, Article XI⁵⁴ of the Protocol (adopted by India under Alternative A) enshrines a provision that permits a creditor with a security interest or a lessee under a leasing agreement to repossess aircraft objects of the debtor undergoing insolvency proceedings after a stipulated waiting period of two calendar months from the onset of insolvency proceedings, without necessitating court intervention.

However, the journey towards a seamless deregistration process is not devoid of hurdles.⁵⁵ A conspicuous drawback of the MCA notification is its non-retrospective nature.⁵⁶ This nuance implies that aircraft embroiled in ongoing moratoriums, as exemplified in the case of Go First, remain ineligible for deregistration and repossession by lessors.⁵⁷ Despite this caveat, the notification substantively alleviates the challenge concerning deregistration and repossession of aircraft during an airline's insolvency in India's aviation sector for the foreseeable future.⁵⁸

This legislative advancement is a monumental stride towards bridging the schism between international treaty obligations and domestic laws. It not only attenuates the bureaucratic red tape surrounding aircraft deregistration but also significantly augments India's appeal as an attractive and secure haven for global aircraft leasing and financing enterprises. The amendment exudes a message of commitment to fostering a robust legal ecosystem that synergizes with international standards, thereby progressively enhancing India's standing in the global aviation industry.

Moreover, this regulatory pivot underscores the pivotal role of harmonizing domestic laws with international treaty obligations to foster a conducive environment for the growth and sustainability of the aviation industry in India. The MCA notification is a testament to India's resolve to ameliorate the impediments that beleaguered lessors and to recalibrate the legal infrastructure to resonate with industry-standard practices worldwide.

⁵⁴ Convention on Integration Interests in Mobile Equipment 2001, art. XI, 2307 U.N.T.S. 285.

⁵⁵ Stewart B Herman, *Aircraft deregistration and repossession in India: Lessons from Kingfisher and SpiceJet*, NATIONAL LAW REVIEW (last visited Oct. 21, 2023, 10:19 PM), [https://Aircraft Deregistration and Repossession in India: Lessons from K \(natlawreview.com\).html](https://Aircraft Deregistration and Repossession in India: Lessons from K (natlawreview.com).html)

⁵⁶ Ruchika Chitravanshi, *Govt may clarify prospective clause of IBC exemption for Aviation*, BUSINESS STANDARD (last visited Oct. 28, 2023, 11:42 PM), [https://Govt may clarify prospective clause of IBC exemption for aviation | News - Business Standard \(business-standard.com\).html](https://Govt may clarify prospective clause of IBC exemption for aviation | News - Business Standard (business-standard.com).html)

⁵⁷ *Supra* note 40, at 9.

⁵⁸ *Supra* note 6, at 2.

The narrative of aircraft deregistration in India is gradually unfolding, with the MCA notification being a seminal chapter in this evolving saga. It reflects a nuanced understanding of the intricacies involved in aircraft leasing and financing, and a deliberate endeavour to nurture an environment that is propitious for the flourishing of the aviation sector in India.

VI. LEGAL AND PRACTICAL IMPLICATIONS OF THE MORATORIUM EXEMPTION

Article 30⁵⁹ of the CTC specifies that insolvency procedures related to property rights enforcement, overseen by an insolvency administrator under national laws (such as a moratorium impacting security interest enforcement), remain unaffected unless the Contracting States adopt Alternative A. Notably, even after India's accession to the CTC and its declaration of Alternative A, Indian judiciary has persistently applied the broad moratorium from Section 14(1)⁶⁰ of the IBC to aviation objects. This application notably extends beyond the 2-calendar month period as stipulated under India's Alternative A declaration.⁶¹

This prevalent deviation can be ascribed to:

1. Legislative Void: The lack of tailored legislation by the Indian Parliament, which results in the absence of a clear legal apparatus for the CTC's application in India.
2. Statutory Overrule: The non-obstante clause found in Section 238⁶² of the IBC could be a contributory factor in the overriding of the CTC stipulations.

As of May 2023, concerns within the aviation sector surfaced when SMBC Aviation Capital labelled the Indian Aviation Industry as a 'risky jurisdiction.' This was instigated by the NCLT inducting Go Airlines (India) Limited into insolvency resolution and consequently limiting lessors from reclaiming Go First aircraft. Leading leasing firms' efforts to re-acquire aircraft engines and restrict Go First airlines from commercial operation were dismissed, citing the moratorium's impact.

Such resolutions have diminished the trust of foreign aircraft lessors in the Indian market. This sentiment was further reflected when the AWG downgraded India's compliance score from

⁵⁹ Convention on Integration Interests in Mobile Equipment 200, art 30, 1 2307 U.N.T.S. 285.

⁶⁰ *Supra* note 6, at 2.

⁶¹ ET LegalWorld, *supra* note 36, at 8.

⁶² The Insolvency and Bankruptcy Code, 2016, § 238, No. 31, Acts of Parliament, 2016 (India).

medium to low. In response, the MCA Notification aimed to counteract this by exempting aircraft-related transactions from the IBC's moratorium. AWG, recognizing these efforts, revised India's outlook from negative to positive.

The MCA Notification is not an across-the-board exemption for aviation companies in the midst of or facing the CIRP. Instead, it specifically negates transactions pertaining to aircraft objects (like engines, airframes, and helicopters) from the IBC's moratorium. Such a modification is poised to rejuvenate trust among international aircraft leasing entities, curtail risk, and reduce credit and lease costs, ultimately fortifying the aviation sector and making airfare more cost-effective for passengers.⁶³

The intertwined nature of international treaties and domestic legal systems becomes conspicuous when analysing aircraft deregistration and repossession amid airline insolvency. For a robust aviation sector, synchronizing India's global commitments with local needs is paramount, demanding legal consistency.⁶⁴

Historically, this juxtaposition became especially pronounced during the Kingfisher Airlines fiasco in 2012. The non-existence of localized legislation integrating the CTC posed immense challenges for lessors and financiers seeking aircraft retrieval post-default.⁶⁵

The lack of domestic legislation implementing the CTC introduces lessors and financiers to the unpredictable realm of local repossession laws, especially in India. Here, a dense web of insolvency, taxation, and regulatory rules converge, posing potential threats from tax or airport liens, jeopardizing lessors' interests during insolvency.⁶⁶

The deregistration and repossession protocol post-insolvency is laden with legal nuances and pragmatic hurdles. Even with amendments to the Aircraft Rules, the anticipated outcomes remain elusive. Introducing the IBC in 2016 added layers of complexity, with Section 238⁶⁷ of the IBC obstructing the Aircraft Rules' benefits. Recent cases like Go First's insolvency underpin this intricacy.

⁶³ *Supra* note 3, at 2.

⁶⁴ Harshita Kushwah, *Navigating turbulence: Indian insolvency regime and the Cape Town Convention in the light of GoFirst voluntary insolvency*, IBC LAWS (last visited Oct. 24, 2023, 10:36 PM), <https://IBC LAWS - Navigating Turbulence: Indian Insolvency Regime and the Cape Town Convention in the light of GoFirst Voluntary Insolvency - Harshita Kushwah.html>

⁶⁵ *See id.*

⁶⁶ *See id.*

⁶⁷ Economic Times, *supra* note 19, at 5.

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The DGCA is tasked with executing Irrevocable Deregistration and Export Request Authorizations (IDERA) for aircraft retrieval. Yet, implementing Rule 30(7)⁶⁸ in the Aircraft Rules has emerged to be more convoluted than anticipated. With Go First, the NCLT rapidly admitted the insolvency plea adhering to the IBC's framework, while the DGCA procrastinated on the aircraft deregistration.

The induction of a moratorium via Section 14⁶⁹ of the IBC compounds the intricacies, hindering lessors or owners from recuperating assets held by an insolvent firm. This disparity, as witnessed with Go First and Jet Airways, creates a disconnect between the pre-established regulations and the burgeoning insolvency guidelines. This highlights an imperative need for synchronization between legislative aspirations and their practical ramifications.

The moratorium's exemption for CTC-related transactions carries multifaceted legal repercussions:

1. Aircraft Lessors' Rights: They remain unhindered by the moratorium, enabling them to enforce lease agreements, crucial given the significant security interests they hold in leased aircraft.
2. Creditor's Rights Amid CIRP: Those with CTC rights can reclaim aircraft and engines even during CIRP, crucial for safeguarding their security interests and avoiding asset undervaluation during liquidation sales.
3. Potential Impact on Resolution Process: The exemption might hamper the resolution process for beleaguered aviation entities. This is because a prospective buyer might be deterred, knowing they will be subject to the CTC rights of aircraft lessors and other creditors.

Practical consequences of this exemption could lead to:

1. Increased Repossession: Aircraft and engines might be increasingly reclaimed by lessors during airline insolvencies.
2. Financing Challenges for Distressed Airlines: Lenders might hesitate to finance such entities during CIRP, fearing potential loss of their security interests.

⁶⁸ Aircraft Rules, 1937, § 30(7) (India).

⁶⁹ The Insolvency and Bankruptcy Code, 2016, § 14, No. 31, Acts of Parliament, 2016 (India).

3. Impact on Indian Aviation: It might raise aircraft leasing costs for Indian airlines and potentially reduce aircraft availability.

While the MCA has used its powers under section 14(3)⁷⁰ of the IBC to exempt the aviation sector from the moratorium, the CTC still awaits ratification by Parliament. This presents two significant hurdles in the insolvency resolution pathway for airlines:

1. Efficacy of IBC: It might be compromised in addressing insolvencies within the aviation sector. The Supreme Court's verdict in the Sundaresh Bhatt case⁷¹ underscores the moratorium's intent to safeguard the assets of the corporate debtor during CIRP. Absent a moratorium, especially on assets like aircraft, the viability of an airline in insolvency is questionable. However, the tribunal might still categorize aircraft as essential under section 14(2)⁷² of the IBC.
2. CTC's Implementation: Without parliamentary ratification, it is challenging to execute the CTC's insolvency framework, as treaties often mandate domestic legal alterations, as established in the Jolly Verghese case.⁷³ The current scenario reveals a misalignment between the CTC and IBC provisions, amplifying the intricacy of the insolvency resolution process for airlines, regardless of whether using the CTC or IBC guidelines.

VII. IMPACT ON THE RESOLUTION PROCESS FOR DISTRESSED AVIATION COMPANIES WITHIN THE INDIAN REGULATORY FRAMEWORK

The exemption from the moratorium for CTC transactions promises to reshape the resolution landscape for distressed aviation companies within India. This exemption underscores the delicate balance between safeguarding aircraft lessors' and certain creditors' rights under the CTC and ensuring the viability of the insolvency resolution process for aviation companies. While this move might bolster foreign confidence in the Indian aviation sector, making aircraft leasing smoother for domestic airlines, it simultaneously presents hurdles for financially beleaguered aviation companies in their efforts to attract buyers or secure financing during the

⁷⁰ The Insolvency and Bankruptcy Code, 2016, § 14(3), No. 31, Acts of Parliament, 2016 (India).

⁷¹ Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs Civil Appeal No. 7667 of 2021 (India).

⁷² The Insolvency and Bankruptcy Code, 2016, § 14(2), No. 31, Acts of Parliament, 2016 (India).

⁷³ Jolly Verghese v. Bank of Cochin 1980 SCR (2) 913 (India).

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CIRP. This is driven by the potential risk buyers and financiers face regarding their security interests in an insolvency scenario.

To address these challenges, the Indian government could contemplate several strategies:

- Offering fiscal assistance to beleaguered aviation entities during CIRP.
- Refining the IBC to equip the resolution professional with enhanced latitude in managing CTC entitlements.
- Instituting a tailored insolvency framework exclusive to the aviation sector in distress.

Upon its enactment, the Cape Town Bill is poised to supersede the IBC's moratorium clauses. In line with Article XI of the Protocol⁷⁴ and reflecting India's commitments upon joining the CTC, it dictates that if an airline defaults for more than two months post the initiation of insolvency proceedings, the lessor can reclaim the aircraft. Throughout this duration, it is imperative for the insolvency administrator to uphold the aircraft's worth in accordance with the leasing terms. The lessor also possesses the prerogative to seek any other provisional remedies under Indian jurisprudence. Remarkably, the aircraft can remain with the insolvency administrator or lessee if within the two-month window they rectify all contractual breaches (barring the insolvency initiation itself) and pledge to honour future commitments within the lease.⁷⁵

This legislative development aligns India with its commitments under the CTC and Protocol, which it embraced in 2008. By doing so, it nullifies the inadvertent inconsistencies introduced by the IBC, reaffirming critical safeguards for aircraft lessors. Nevertheless, a cloud of uncertainty persists over whether bankruptcy tribunals will defer to the Convention/Protocol or Section 14(1)(d) of the IBC.⁷⁶ Additionally, there's anticipation regarding the course of action courts might adopt if a lessor secures a decree from a foreign court for aircraft retrieval in India. Such deliberations must be juxtaposed with Article XII of the Protocol,⁷⁷ which mandates India's maximal collaboration with overseas courts and insolvency custodians in executing the Convention or Protocol's stipulations.

⁷⁴ *Supra* note 54, at 13.

⁷⁵ Ashwin Bishnoi & Charu Chitwan & Amrit Mahal, *Insolvency in Indian aviation what does India's new cape town convention*, KHAITAN & CO (last visited Oct. 29, 2023, 11:24 PM), [https://Insolvency In Indian Aviation What Does Indias New Cape Town Convention | Khaitan & Co \(khaitanco.com\).html](https://Insolvency%20In%20Indian%20Aviation%20What%20Does%20Indias%20New%20Cape%20Town%20Convention%20%7C%20Khaitan%20%26%20Co%20(khaitanco.com).html)

⁷⁶ *Supra* note 6, at 2.

⁷⁷ Convention on Integration Interests in Mobile Equipment 2001, art. XII, 2307 U.N.T.S. 285.

In reality, a comprehensive understanding will materialize only post the Bill's transition into law, especially regarding aspects such as documentary prerequisites, fiscal implications tied to repossession petitions following insolvency commencement, associated repossession costs, and the role local legal practitioners play in facilitating these requisitions.

VIII. IMPROVING THE IMPLEMENTATION OF AIRCRAFT REPOSSESSION LAWS

Leading aircraft leasing nations are adherents to the Convention on International Interests in Mobile Equipment, commonly referred to as the CTC. This international treaty oversees the transactions involving mobile equipment, notably aircraft, railways, and space assets. At its core, the CTC aims to provide foundational default remedies for creditors. These remedies include measures such as de-registration and export of aircraft to offer immediate relief and the establishment of a clear legal framework for handling disputes. By instilling such measures, the Convention and Protocol aspire to diminish risks for creditors. This, in turn, provides debtors with an advantage by enhancing legal clarity, thereby reducing their borrowing costs.⁷⁸

A significant byproduct of this is the promotion of credit allocation towards acquiring advanced, fuel-efficient aircraft. Airlines from nations that uphold both the Convention and the Protocol are potentially eligible for a reduction of up to 10% on their export credit premiums.⁷⁹

India, although a signatory to the CTC since 2008, has faced hurdles in its smooth implementation. This has, unfortunately, portrayed India as a challenging arena for aircraft financing.

Tensions arose due to disparities between the CTC and indigenous Indian legislations, such as the Companies Law 2013⁸⁰ and the IBC.⁸¹ It was not until 2017 that local amendments, specifically in the Aircraft Rules, 1937,⁸² were made, aligning them with the CTC's directives for the creation and registration of security interests in aircraft.

In an attempt to bridge this gap, the Government introduced measures like the IDERA. This mandates the DGCA to de-register an aircraft within five days once an IDERA holder exercises

⁷⁸ *Supra* note 1, at 1.

⁷⁹ *Supra* note 1, at 1.

⁸⁰ The Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India).

⁸¹ The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).

⁸² Aircraft Rules, 1937 (India).

their rights. The efficacy of such measures was visibly demonstrated in 2019 when IDERA holders managed to de-register their aircraft in what could be termed as the most systematic and prompt action witnessed in Indian aviation history.

Yet, it took until 2022 for a comprehensive legislation titled the 'Protection and Enforcement of Interests in Aircraft Objects Bill'⁸³ to be introduced. This Bill focuses on the full-scale implementation of the CTC, providing a robust legal scaffold for the creation, registration, and enforcement of security interests in aircraft. These procedural delays have fuelled a perception among industry stakeholders that India remains a challenging environment for the aircraft financing and leasing industry.

To foster greater transparency and reinvigorate trust, it is imperative for the Government to ensure meticulous adherence to and implementation of the CTC in India, primarily through the Protection and Enforcement of Interests in Aircraft Objects Bill/Act.

IX. CONCLUSION

In light of the multidimensional analysis undertaken in this research, it becomes unequivocally evident that the MCA's notification on 3rd October, 2023 marks a pivotal juncture in the realm of Indian aviation insolvencies. The exemption of the moratorium requirement for CTC Transactions addresses a long-standing impediment faced by lessors—the repossession of aircraft objects during an airline's insolvency. This exemption, born out of a necessity to align with the CTC's tenets, which were hitherto inadequately enforced in India, heralds a significant stride towards ameliorating the precarious dynamics between lessors and distressed aviation companies.

The core advantages emanating from this exemption are manifold. It ensures lessors are not beleaguered by a loss of revenue, guarantees the maintenance of aircraft, and significantly streamlines the deregistration process, thereby propelling the sector towards a more stable and lessor-friendly milieu. The legal and practical implications of this exemption extend beyond mere transactional facilitations; they potentially redefine the contours of the resolution process for distressed aviation entities, making strides towards a more fluid and equitable resolution mechanism.

⁸³ The Protection and Enforcement of Interests in Aircraft Objects Bill, 2022 (India).

Furthermore, this development underscores the imperative of enhancing the implementation and enforcement of aircraft repossession laws, thereby aligning India's aviation insolvency framework more closely with international standards. This not only augments the legal robustness surrounding aviation insolvencies but also significantly contributes to instilling a semblance of predictability and assurance in the sector.

The pathway forged by the MCA's notification lays down a robust foundation for fostering an environment that is conducive to the seamless operation of aviation companies while safeguarding the interests of lessors. However, the journey towards a fully harmonized aviation insolvency framework requires a continuous appraisal of the existing laws and regulations, and a relentless endeavour to bridge the gaps therein. This article posits that the exemption of the moratorium is a monumental step in that direction, yet the odyssey towards a comprehensive and just framework is far from over and warrants a concerted effort from all stakeholders involved.

X. SUGGESTIONS

A. Ratification of the CTC

The CTC stands as a pivotal international treaty, delineating standardized procedures and guidelines for transactions involving mobile assets. While India proudly holds its position as a signatory to the CTC, the nation currently lacks the legislative scaffolding required for the treaty's enforcement. In 2018, India took a step towards this by introducing the CTC Bill. However, this bill remains unenacted, leaving a gap in the nation's legal framework.

For the Indian aviation sector, the stakes are high. Most lessors in the industry are multinational entities, and the harmonized processes offered by the CTC would significantly streamline transactions. We strongly advocate for India's ratification of the Convention. Such an action would not only ensure legal consistency and predictability for all stakeholders but would also provide a robust framework for recognizing and safeguarding their rights. This becomes especially pertinent when navigating the murky waters of insolvency proceedings.

The benefits of ratification extend beyond national borders. It would bolster international confidence in India's aviation financing structure, positioning the country as an enticing epicentre for global aviation investments. Furthermore, this step would amplify India's stature as a dependable and adherent jurisdiction in the global arena. Such recognition would dovetail seamlessly with the Indian government's existing initiatives, further cementing India's

reputation as a global aviation credit nexus. To realize this vision, a concerted effort from aviation industry stakeholders, legal luminaries, and policymakers is essential. Together, they must champion the swift ratification of the CTC.

B. Establishment of a Dedicated Aviation Tribunal

We strongly recommend the establishment of a dedicated aviation tribunal within India's judicial framework. Tailored exclusively for the Indian aviation sector, this tribunal should align its operations with the standards set by the CTC. Envision a tribunal where the adjudicating panel possesses profound expertise in aviation law and international regulations; such a body would be uniquely positioned to deliver judgments with enhanced precision, clarity, and coherence.

By focusing solely on aviation-related cases, such a tribunal would promise swifter case resolutions. A streamlined approach would not only ensure legal predictability and consistency, particularly in aviation insolvency cases, but also instil heightened investor and creditor confidence. Demonstrating India's robust commitment to its aviation sector, such a specialized tribunal becomes indispensable when one considers the intricacies and unique facets of aviation transactions. Moreover, a sector-specific tribunal can accelerate the adjudication process in aviation insolvency matters, safeguarding the rights and interests of lessors. Such efficiency could be pivotal in preserving the financial health and viability of airline enterprises, mitigating prolonged legal uncertainties for the tribunal to truly flourish and realize its potential, it is imperative to foster close collaboration with aviation regulatory entities and key industry stakeholders. Instituting clear procedural timelines and facilitating seamless information exchange with the DGCA will further underscore its effectiveness and relevance in the ever-evolving aviation landscape.