

NAVIGATING TURBULENCE: CRAFTING A SPECIALIZED LEGISLATION FOR INSOLVENCY IN THE AVIATION INDUSTRY

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ABSTRACT

The aviation industry in India, a critical driver of economic growth and connectivity, has witnessed several instances of airline insolvency that have left passengers, employees, and creditors grappling with uncertainties. To address the gaps in the existing insolvency laws pertaining to the aviation sector, this article proposes a new comprehensive legislation statute specifically tailored to address the unique challenges of airline insolvency. The new statute seeks to streamline the insolvency process, facilitate the sale of assets at fair prices, protect the interests of stakeholders, and ensure the continued operation of airlines during financial distress. In addition, the statute considers the specific needs of the aviation industry, the international context, and the requirement for flexibility to adapt to dynamic changes in the sector. By establishing a robust and passenger-centric insolvency framework, India can bolster the resilience of its aviation industry, safeguard the interests of all stakeholders, and foster a sustainable and prosperous air travel ecosystem.

Keywords: *Aviation Industry, Creditors, Employees, Insolvency, Stakeholders and Uncertainties.*

1. INTRODUCTION

The sky is not always blue for airlines. The Indian aviation industry is one of the world's fastest-growing, but it has also experienced its fair share of bankruptcy in recent years. In recent years, several airlines have declared bankruptcy, including Jet Airways, Kingfisher Airlines, and now Go First.

These bankruptcies have had a substantial impact on the Indian economy, leading supply chains to be disrupted and job losses to occur. They have also questioned the sufficiency of India's current insolvency legislation.

In this paper, the author will propose that the aviation sector requires insolvency legislation. He will talk about the challenges of insolvency in the aviation business, such as the high cost of assets, the complex regulatory environment, and the economic consequences. The author will then examine India's current insolvency legislation to identify any gaps that must be filled. Finally, the author will propose new aviation insolvency legislation that includes specific provisions for expediting the insolvency process, easing asset sales, preserving stakeholders' interests, and ensuring the ongoing functioning of airlines.

The author believes that separate insolvency legislation for the aviation industry is essential to protect the interests of all stakeholders and ensure the continued smooth functioning of the aviation industry in India.

2. FACTORS CONTRIBUTING TO AIRLINE INSOLVENCY

Airline insolvency is a complex and intricate issue shaped by a plethora of factors that intertwine to threaten carriers' financial stability¹. From soaring fuel prices and intense industry competition to unpredictable economic cycles and demand fluctuations, airlines must perform a delicate balancing act to stay afloat. Furthermore, exchange rate fluctuations, high debt burdens, and labour issues aggravate the financial difficulties that airlines face. Natural disasters and geopolitical tensions can also disrupt air travel, resulting in sharp drops in passenger demand and revenue. Navigating the ever-evolving regulatory landscape is equally crucial for airlines. Evolving government regulations, taxation policies, and

¹ Partha Ghosh, *Failure of Jet Airways: A Study on the Implication of Altman's Modified Z Score vs. Fuzzy Logic Z Score*, 43(4) SAMBODHI (2020)

environmental requirements can significantly impact an airline's cost structure and operations². Adherence to new regulations is imperative to avoid fines and additional financial burdens. Furthermore, the ageing fleet and its maintenance costs, as well as regulatory changes, contribute to the complex web of factors that contribute to airline insolvency.

Furthermore, the direction of the airline industry is closely linked to the global economy and passenger demand. Airlines face reduced passenger numbers and lower ticket sales during economic downturns or periods of low demand for air travel, resulting in dwindling revenues and increasing financial pressures. Exchange rate fluctuations present yet another financial challenge for airlines with international operations. Currency exchange rate fluctuations can have a significant impact on costs and revenues, leaving airlines vulnerable to financial instability. Another Achilles' heel for airlines is a high debt burden. Many carriers incur significant debt to fund fleet expansions and operational requirements. If an airline carries a high debt-to-equity ratio or takes on excessive loans, servicing the debt can become an impossible challenge during economic downturns or times of financial stress³. Safety incidents, while rare, cast a long shadow over an airline's finances. Major accidents can lead to costly legal battles, insurance claims, and a loss of public trust, jeopardizing an airline's reputation and long-term financial prospects. To successfully navigate these challenges, strategic financial planning is required.

3. REAL-LIFE EXAMPLES OF AIRLINE INSOLVENCY:

As we examine the challenges faced by the aviation industry and the need for comprehensive insolvency legislation, it is essential to understand the gravity of the issue through real-life examples. In recent years, both in India and on the global stage, several prominent airlines have grappled with insolvency, leaving a trail of disruptions and uncertainties in their wake.

One such notable case in India was the insolvency of Kingfisher Airlines, a well-known carrier founded by the business tycoon Vijay Mallya. Launched with much fanfare in 2005, the airline quickly gained popularity for its luxurious services and extensive flight network. However, as financial pressures mounted, Kingfisher Airlines faced severe liquidity

² *Id.*

³ Pietro Benintendi, *Bankrupt in Europe: A Case Study of Three Recent Airline Insolvencies*, 44(3) AIR & SPACE L. (2019)

challenges and was eventually forced to suspend its operations in 2012. The airline's inability to repay debts left employees jobless and passengers stranded, raising questions about the application of the insolvency laws and the protection of stakeholders' interests.

Similarly, another prominent Indian airline that succumbed to financial troubles was Jet Airways. Once considered a premier private airline in the country, Jet Airways faced a myriad of financial challenges, including rising operating costs and fierce competition⁴. In 2019, the airline had to suspend all flight operations, leaving thousands of employees uncertain about their future and disrupting travel plans for numerous passengers. The case of Jet Airways underscored the urgent need for a robust and tailored insolvency framework that could protect the interests of all stakeholders involved in the aviation sector.

On the global front, the COVID-19 pandemic wreaked havoc on the aviation industry, leading to a series of airline insolvencies. One such prominent example was Virgin Australia, a significant player in the Australian aviation market. The sudden drop in air travel demand, due to travel restrictions and passenger anxieties, dealt a severe blow to the airline's finances. Despite seeking government assistance and exploring investor options, Virgin Australia was forced to enter voluntary administration⁵ in 2020. This case highlighted the global nature of the aviation industry and the importance of having insolvency laws that can withstand unforeseen external shocks and provide adequate support during times of crisis.

These real-life examples illustrate the complexities and challenges faced by airlines when confronted with financial distress. The absence of tailored insolvency provisions and the lack of a clear process can have far-reaching consequences, affecting employees, passengers, suppliers, and the overall economy. As we strive to propose new insolvency legislation for the aviation industry, it is crucial to draw lessons from these cases and develop a comprehensive framework that addresses the unique needs of the sector while safeguarding the interests of all stakeholders involved.

4. LAWS GOVERNING AIRLINE INSOLVENCY IN INDIA

An airline's insolvency can have a significant impact on the aviation industry and the economy as a whole. It can result in job losses, disruptions to air travel, and a loss of faith in

⁴ Partha Ghosh, *supra* note 1

⁵ When directors realise their enterprise is in danger of going broke, they can appoint insolvency practitioners to act as administrators.

the aviation industry. In India, airline insolvency laws are governed in the manner described below.

The main insolvency laws in India are:

- The Insolvency and Bankruptcy Code, 2016⁶ (IBC)
- The Sick Industrial Companies (Special Provisions) Act, 1985 ⁷(SICA)
- The Companies Act, 2013⁸

The IBC is the primary insolvency law in India. It was enacted in 2016 to consolidate and simplify the existing insolvency laws. The IBC applies to all sectors, including the aviation sector.

The SICA is a special law that applies to sick industrial companies. A sick industrial company is one that has been incurring losses for three consecutive years and is unable to pay its debts. The SICA provides for a special process of rehabilitation for sick industrial companies.

The Companies Act is a general law that governs all companies in India. It contains provisions for the insolvency of companies. However, the Companies Act is not as comprehensive as the IBC and does not specifically address the insolvency of airlines.

In addition to these general insolvency laws, there are also some specific laws that apply to the aviation sector. These include:

- The Aircraft Act, 1934⁹
- The Indian Aircraft Rules, 1937

The Aircraft Act regulates the operation of aircraft in India. They also contain provisions for the insolvency of airlines. The Indian Aircraft Rules contain detailed regulations for the operation of aircraft, including safety requirements.

The insolvency laws in India are complex and can be difficult to understand. If you are facing insolvency, it is important to seek legal advice from an experienced insolvency lawyer.

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

⁷ The Sick Industrial Companies (Special Provisions) Act, 1985, No. 1, Acts of Parliament, 1985 (India)

⁸ The Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India)

⁹ The Aircraft Act, 1934, No. 22, Acts of Parliament, 1934 (India)

Here are some specific provisions of the IBC and other laws that are relevant to the insolvency of airlines in India:

- Under the IBC, an airline can be declared insolvent if it is unable to pay its debts for a period of 180 days.
- The IBC provides for a two-track process for the insolvency of airlines: a liquidation process and a corporate debtor resolution process.
- In the liquidation process, the airline's assets are sold to repay its creditors.
- In the corporate debtor resolution process, a resolution professional is appointed to try to revive the airline.
- The Aircraft Act provides for the suspension of the license of an airline that is insolvent.
- The Indian Aircraft Rules require airlines to maintain a minimum level of insurance coverage.

The insolvency of an airline can have a significant impact on the aviation sector and the economy as a whole.¹⁰ It can lead to job losses, disruptions to air travel, and a loss of confidence in the aviation industry. The insolvency laws in India are designed to protect the interests of all stakeholders in the aviation sector, including creditors, employees, passengers, and the government.

There are a few gaps in the insolvency laws in India as they relate to airlines.

- The IBC does not specifically address the insolvency of airlines. This means that there is some uncertainty about how the IBC would apply to airlines in certain situations. For example, it is not clear whether an airline would be able to use the corporate debtor resolution process (CDR) to try to revive itself or whether it would have to be liquidated.
- The Aircraft Act does not provide for a clear process for the insolvency of airlines. This can lead to confusion and delays in the insolvency process.

¹⁰ Akshaya Kamalnath & Hitoishi Sarkar, *Airline Insolvencies*, SSRN ELEC. J. (2020)

- There is no specific law that protects the interests of passengers in the event of airline insolvency. This means that passengers may not be able to get a refund for their tickets or be compensated for other losses if their airline goes bankrupt.

The government of India is aware of these gaps and is working to address them. In 2021, the government released a discussion paper on the insolvency of airlines. The discussion paper proposes a number of changes to the IBC and other laws to make them more applicable to airlines. These changes include:

- Clarifying that the CDR process can be used by airlines.
- Streamlining the insolvency process for airlines.
- Protecting the interests of passengers in the event of airline insolvency.

The government is still considering the proposals in the discussion paper. It is not clear when the changes will be implemented.

In the meantime, airlines in India are vulnerable to insolvency. If an airline goes bankrupt, it could have a significant impact on the aviation sector and the economy as a whole. It is important to address the gaps in the insolvency laws to protect the interests of all stakeholders in the aviation industry.

5. REFORMING AVIATION INSOLVENCY LAWS: BRIDGING GAPS IN IBC AND BEYOND

The aviation industry, with its far-reaching impact on global connectivity and economic growth, is a vital pillar of modern society. However, beneath the gleaming wings and soaring aspirations lie complex challenges, especially when airlines encounter financial turbulence. In India, the insolvency laws face several gaps and uncertainties when it comes to addressing the unique circumstances of airline insolvency. While the Insolvency and Bankruptcy Code¹¹ (IBC) strives to provide a comprehensive framework for corporate insolvency resolution, it does not offer explicit provisions tailored to the intricacies of airlines. Consequently, there is ambiguity surrounding the application of the IBC to airlines, leaving stakeholders pondering whether a financially distressed airline can attempt a corporate debtor resolution process or be forced into liquidation.

¹¹ Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India)

Compounding the issue, the Aircraft Act¹² lacks a clear process for dealing with airline insolvency. This absence of specific provisions can lead to confusion, procedural delays, and possible challenges when navigating the insolvency process. The complexity of airline operations, with assets dispersed across borders and regulatory requirements varying internationally, further underscores the need for a coherent and comprehensive approach.

Moreover, perhaps one of the most pressing concerns is the lack of a dedicated law to safeguard the interests of passengers in the event of an airline's insolvency. When an airline faces financial distress, passengers find themselves in a vulnerable position, uncertain about their rights, and anxiously wondering if their hard-earned money spent on tickets will be reimbursed or if they will be compensated for any losses incurred due to flight cancellations. The absence of a specific legal framework to protect passengers in such scenarios not only creates a sense of insecurity but also raises questions about the fairness and accountability of the insolvency process for all stakeholders involved.¹³

This article delves into these critical gaps in the Indian insolvency laws as they relate to airlines. We will explore the challenges and uncertainties that arise when applying the IBC to airline insolvencies, the implications of the lack of a clear insolvency process under the Aircraft Act, and the urgent need for a dedicated law to safeguard passengers' interests. Additionally, we will present a comprehensive proposal for new insolvency legislation tailored to the aviation industry's specific needs. Our aim is to create a regulatory framework that addresses these gaps, fosters efficiency, transparency, and accountability and provides a robust mechanism for the continuity of airlines while safeguarding the interests of passengers, employees, and other stakeholders. By striving for a holistic and passenger-centric approach, we can strengthen the aviation industry's resilience and contribute to a more sustainable and prosperous air travel ecosystem.

This proposal for new insolvency legislation for the aviation industry seeks to address the gaps in the IBC and other laws. The proposal includes specific provisions for streamlining the insolvency process, facilitating the sale of assets, protecting the interests of stakeholders, and ensuring the continued operation of airlines.

¹² The Aircraft Act, 1934, No. 22, Acts of Parliament, 1934 (India)

¹³ Akshaya Kamalnath & Hitoishi Sarkar, *supra* note 12

5.1 Specific provisions:

- The insolvency process for airlines should be streamlined to ensure that it is quick and efficient.
- The sale of assets of insolvent airlines should be facilitated to ensure that they are sold at a fair price and that the proceeds are used to repay creditors.
- The interests of passengers, employees, and other stakeholders should be protected in the event of airline insolvency.
- The continued operation of airlines should be ensured to minimize disruptions to air travel.

Here are some suggestions for improving the insolvency legislation for the aviation industry:

- Streamline the insolvency process: The insolvency process for airlines should be streamlined to ensure that it is quick and efficient¹⁴. This would help to minimize disruption to air travel and protect the interests of passengers and other stakeholders.
- Facilitate the sale of assets: The sale of assets of insolvent airlines should be facilitated to ensure that they are sold at a fair price and that the proceeds are used to repay creditors. This would help to ensure that creditors are not left out of pocket in the event of an airline insolvency.
- Protect the interests of stakeholders: The interests of passengers, employees, and other stakeholders should be protected in the event of airline insolvency¹⁵. This could include provisions for refunds for tickets, compensation for losses, and assistance with finding new jobs.
- Ensure the continued operation of airlines: The continued operation of airlines should be ensured to minimize disruptions to air travel. This could include provisions for government bailouts or takeovers of insolvent airlines.

¹⁴ Ralf Jörg Vogler & Ulrich Steppeler, *Airline Insolvency Protection – a justified form of relief or the next level of “consumerism”*, 37 AIR & SPACE L. (2012)

¹⁵ *Id.*

Crafting new insolvency legislation for the aviation industry requires thoughtful consideration of critical factors beyond the suggested reforms. Customization of laws to address the aviation sector's specific needs, encompassing the challenges of expensive assets, the urgency of swift decision-making, and the imperative to minimize disruptions to air travel, is paramount. Moreover, alignment with international standards is essential to upholding airlines' competitiveness on the global stage and facilitating cross-border operations. Embracing flexibility within the legislation is equally vital, enabling timely adaptations to evolving industry trends, such as the rise of budget carriers and transformative technological advancements. Striking a harmonious balance among these factors will pave the way for an agile, robust, and internationally respected insolvency framework tailored to the aviation industry's distinctive intricacies and ambitions.

This proposal for new insolvency legislation for the aviation industry is a comprehensive and thoughtful approach to addressing the gaps in the IBC and other laws. The proposal includes specific provisions that are designed to protect the interests of all stakeholders in the aviation industry. If implemented, this proposal will help to ensure the stability and growth of the aviation sector in India.

6. CONCLUSION

In conclusion, addressing the insolvency challenges faced by the aviation industry is of utmost importance for ensuring a resilient and efficient air travel sector. Our article has outlined several key suggestions for improving insolvency legislation, ranging from streamlining the process to protecting the interests of stakeholders and facilitating the sale of assets. These measures aim to minimize disruptions to air travel, safeguard the rights of passengers and employees, and secure the interests of creditors.

In addition to the primary recommendations, the incorporation of specialized aviation insolvency practitioners, pre-packaged arrangements, and priority for essential service providers would enhance the effectiveness of the proposed reforms¹⁶. The establishment of a transparent, accountable, and internationally aligned framework will further bolster the industry's competitiveness and stability in the global market.

¹⁶ Akshaya Kamalnath & Hitoishi Sarkar, *supra* note 12

Moreover, recognizing the unique needs of the aviation industry, such as the high cost of assets and the necessity for flexibility, will ensure that the insolvency legislation can adeptly adapt to changing circumstances in the dynamic aviation landscape¹⁷. Emphasizing data sharing, early warning systems, and post-insolvency support will foster a proactive approach towards identifying and mitigating financial distress, thereby promoting a healthier aviation ecosystem.

Ultimately, by implementing these comprehensive measures, policymakers can lay the groundwork for a more resilient and robust aviation industry capable of weathering financial challenges while continuing to serve the needs of passengers, employees, and stakeholders alike. In the face of uncertainty and market fluctuations, an agile and well-structured insolvency framework will be a vital tool for safeguarding the aviation industry's future prosperity.

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¹⁷ Ralf Jörg Vogler & Ulrich Steppeler, *supra* note 17