

Jet Airways Liquidation: Flight That Failed to Reclaim Skies

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I. INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 (I&B Code), was to facilitate the swift revival and resolution of distressed entities. However, its inability to cater to sector-specific insolvencies highlights that a one-size-fits-all approach is not always effective and the issue has surfaced up with and the application of standard, non-tailored timelines and provisions often leads to ineffective and redundant outcomes.¹

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¹ Javish Valecha & Ankita Anupriya Xalxo, 'Overview of The Insolvency and Bankruptcy Code, 2016 & The Accompanying Regulations' (2017) 3(4) JCIL. https://web.archive.org/web/20180409234832id_/http://jcil.lsyndicate.com/wp-content/uploads/2017/05/Overview-of-the-Insolvency-and-Bankruptcy-Code-2016-javish-Ankita.pdf> accessed on 26th January 2024.

The case of resolution of Jet Airways' insolvency is no different. Its failed resolution acted as a reality check on the shortcomings of I&B Code in dealing with the wants and complexities of airlines.¹ The cases of Go Air and Jet Airways underscore the pressing need for a tailored legal framework to deal with the distinctive business models of airlines, as the provisions under the I&B Code have clearly failed to meet the requirements of the aviation industry.² The lack of strict implementation of the I&B Code, particularly in ensuring the speedy resolution of cases, along with its failure to provide leeway in revising timelines to accommodate airline insolvencies, are some of the factors which highlights the shortcomings of the I&B Code.³

Furthermore, the intervention of the Supreme Court in a purely contractual and commercial dispute by ordering the liquidation of Jet Airways further reinforces the argument that, beyond a certain point, the I&B Code begins to falter and choke the entire resolution process.⁴ Therefore, the Supreme Court brought an end to the never-ending saga of the Jet Airways, following the failure of the successful resolution applicant to respect the timelines given under the Code and inject the required funds as outlined in the approved Resolution Plan.

¹ *ibid.*

² AlRawashdeh, S.Z.Y., 2021. The Insolvency and Bankruptcy Code: A Brief Review. *Asian Journal of Law and Governance*, 3(3), pp.15-18. <<https://myjms.mohe.gov.my/index.php/ajlg/article/view/15063>> accessed on 26th January 2024.

³ Roopam Dadhich and Rutwik Rao, 'Analyzing the Law on Airline Insolvency in India' (*The Contemporary Law Forum*, 13 March 2021) <<https://tclf.in/2021/03/13/analysing-the-law-on-airline-insolvency-in-india/>> accessed on 31st January 2024.

⁴ V S Kaveri & Dipali Krishnakumar, 'The Insolvency and Bankruptcy Code, 2016: Understanding the Resolution Process' (2018) 39(2) *Vinimaya NIBM*.

This paper explores the issue's inception and what went wrong after the Resolution Plan was approved. The authors further aim to highlight the present regime governing airline insolvencies, the issues faced in resolving them, and suggestive measures for improvement.

II. THE LEGISLATIVE HISTORY OF JET AIRWAYS

A. *Inception and Growth*

Naresh Goyal established Jet Airways on 1 April 1992, under the name Jet Air (Private) Limited. At first, the company served as an Indian sales representative for foreign airlines. Subsequently, the airline began operations on 5 May 1993, as an air taxi operator as per the guidelines of the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994, which signalled the liberalization of Indian aviation. This Act allowed private carriers to enter the market, ending the government's monopoly in the aviation sector.⁵

By taking advantage of favourable laws like the Open Skies Policy of the 1990s, Jet Airways swiftly increased both its domestic and international presence. It was renowned for its first-rate services and was India's top full-service airline by the middle of the 2000s. It entered the low-cost carrier market by purchasing Air Sahara for ₹1,450 crores in 2007 and

⁵ Purnima Sarkar & Animesh Chandra, 'A Case Analysis on the Downfall of Jet Airways Ltd', International Journal of Emerging Technologies and Innovative Research (www.jetir.org), ISSN:2349-5162, Vol.7, Issue 7, page no.1529-1531, July-2020 <<http://www.jetir.org/papers/JETIR2007188.pdf>> accessed on 14th December 2024.

by renaming it as JetLite. However, the airline's finances were stressed as a result of this acquisition and its ambitious expansion.⁶

B. Challenges and Decline

By 2010, low-cost airlines like IndiGo and SpiceJet, which benefited from cost-effective business practices, started to pose a serious threat to Jet Airways. Despite maintaining its premium status, Jet Airways battled with high operating costs, especially fuel prices, which were made worse by India's high aviation turbine fuel (ATF) taxes.

Liquidity was briefly improved in 2013 when Jet Airways sold a 24% interest to Etihad Airways for \$379 million. However, their growing debt was the result of poor financial management and a failure to adjust to shifting market conditions. By 2019, Jet Airways owed substantial amounts to its financial creditors, lessors, and workers during insolvency procedures, its acknowledged claims totalling more than \$92 billion.⁷

C. Suspension of Operations and Insolvency Proceedings

The year 2019 marked the beginning of Jet Airways' decline, as the airline struggled to secure sufficient funds to sustain its operations. To obtain emergency funding of INR 400 crores, Jet Airways approached its primary banker, the State Bank of India (SBI). However, SBI declined to extend further financial assistance and instead filed an application under

⁶ Sukalp Sharma, 'Jet Airways liquidation: Story of rise and fall of what used to be India's largest, best airline' (*Indian Express*, 7 November 2024) <https://indianexpress.com/article/business/aviation/jet-airways-liquidation-story-india-airline-9658686/> accessed on 14th December 2024.

⁷ Javish (n 1).

Section 7 of the I&B Code to initiate insolvency proceedings.⁸ Jet Airways formally ceased operations on 17 April, 2019. Subsequently, on 20 June 2019, the case was admitted by the Mumbai Bench of the National Company Law Tribunal (NCLT), appointing Ashish Chhawchharia as the Interim Resolution Professional (IRP).⁹

To solicit expressions of interest from possible resolution seekers, a public notification was released in July 2019. But it was only in October 2020, after several rounds, did the Committee of Creditors (CoC) approved a resolution plan put forth by the Jalan-Kalrock Consortium (Consortium) by a majority vote. Several steps for restructuring were suggested in the proposal, which was eventually approved by the NCLT in June 2021. As per the Resolution Plan approved by the CoC, the Consortium was supposed to inject initial funds of INR 350 Crores into the business to give it a kickstart along with a Performance Bank Guarantee of INR 150 Crores. The Consortium successfully deposited the Performance Bank Guarantee of INR 150 Crores.

As per the Resolution Plan, the Consortium had promised to implement the plan within ninety (90) days of the approval with a maximum extension of 180 days from the “effective date” to fulfil the conditions precedent. The Effective date was fixed on the ninetieth (90th) day from the Plan Approval Date. However, the Consortium regularly failed to

⁸ Sharma, S., (2024) “Jet Airways liquidation: Story of rise and fall of what used to be India’s largest, best airline” *The Indian Express* <<https://indianexpress.com/article/business/aviation/jet-airways-liquidation-story-india-airline-9658686/#:~:text=After%20mounting%20losses%20for%20over,airline%20needed%20to%20stay%20operational>> accessed on 27th January 2024.

⁹ *State Bank of India and Ors. v Jet Airways (India) Ltd.*, [2019] CP (IB) No. 2205/MB (NCLT, Mumbai).

infuse the required funds and did not meet the deadlines even after seeking an extension and exclusion thrice.¹⁰

Furthermore, following the resolution of dues payable to workmen and employees, the NCLT, through its order dated 13 January 2023, held that all the conditions precedent had been duly complied with. Consequently, the Effective Date was deemed to be 20 May 2023. Therefore, the Consortium was required to furnish the first tranche of INR 350 crores by 15 May 2023. However, the Consortium again sought extension on the pretext of exclusion of time which ultimately pushed the previous date of 15 May 2023 to 31 August 2023.¹¹

The Consortium appealed before the National Company Law Appellate Tribunal (NCLAT) by filing an Adjustment Application seeking adjustment of Performance Bank Guarantee (PBG) of INR 150 crores against the part payment of INR 350 crores. This was allowed by the NCLAT and an extension of two (2) months was further granted to infuse the remaining 200 crores. The SBI and other creditors from the Committee appealed this order before the Supreme Court objecting to the same. The Supreme Court agreed with the view of the creditors that the amount of PBG could not have been allowed to be adjusted, as its infusion was a mandatory condition under the Resolution Plan and refused to adjust the PBG against the part payment of INR 350 crores. Therefore, the Consortium/SRA was directed to infuse INR 150 Crores by 31 August 2024. The Court also indicated that in the event of failure

¹⁰ *State Bank of India and Ors. v. Jet Airways (India) Ltd.*, [2024] MANU/SC/1182.

¹¹ *Ibid.*

to comply with the terms of the plan, the consequences under the Resolution Plan shall follow.¹²

The Consortium again failed to deposit the amount by 31 August 2024. In contrast, the NCLAT vide order dated 31 March 2024, held that the Consortium had fulfilled all the condition precedents and therefore, they can adjust the Performance Bank Guarantee towards the remaining payment from INR 350 crores.¹³

The aforementioned order was challenged before the Supreme Court, wherein the Court passed the order for the liquidation of Jet Airways. The Supreme Court refused to adjust the Performance Bank Guarantee against the part payment of INR 350 crores and held that the NCLAT had erred in its observation by allowing such an adjustment. It further emphasized that the timely implementation of a resolution plan is one of the pillars of the I&B Code, and therefore, its implementation cannot be postponed indefinitely. The Court prioritized timely liquidation over an endless resolution process, considering that the plan was approved five years ago with bleak chances of implementation.¹⁴

¹² Ayushi Jain 'An Analysis of Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016' (2021) *National Law School of Indian University, Bangalore: Dissertation* <<http://oldopac.nls.ac.in:8081/xmlui/handle/123456789/860>> accessed on 14th December 2024.

¹³ *State Bank of India* (n 11).

¹⁴ Dhananjay Kumar & Abhishek Mukherjee, 'Jet, Set and Grounded – Supreme Court orders liquidation of Jet Airways' (*Cyril Amarchand Mangaldas Blogs*, 12 November 2024) <<https://corporate.cyrilamarchandblogs.com/2024/11/jet-set-and-grounded-supreme-court-orders-liquidation-of-jet-airways/>> accessed on 14th December 2024.

III. HURDLES IN IMPLEMENTATION OF THE RESOLUTION PLAN

Major legal challenges were caused in the successful implementation of the CoC approved Resolution Plan of the Jet Airways due to the following issues:

A. *Employee Claims*

The Approved Resolution Plan failed to account for the statutory claims including provident fund,¹⁵ and gratuity¹⁶ which is in direct violation of Section 30(2)(e) of the I&B Code. Section 30 of the I&B Code deals with the submission of the resolution plan by the resolution applicant. It further lays down that the resolution plan submitted by the resolution applicant must comply with the requirements of Section 30(2). One of such requirements mentioned in Section 30(2)(e) states that the resolution plan must not contravene the provisions of the law for the time being in force.¹⁷ However, in the case of *Jet Airways*, the approved resolution plan failed to account for the provident fund and gratuity dues of the workmen, which is in direct contravention to the provisions of EPF Act, 1952 and Gratuity Act, 1972 as these acts are social welfare legislations and I&B Code does not have overriding effect on the same. The NCLAT vide order dated 21 October 2022, ruled that the workmen and employees are entitled to payment of their Provident fund and Gratuity in full and the Consortium being the Successful Resolution

¹⁵ The Employees' Provident Fund and Miscellaneous Provisions Act 1952.

¹⁶ The Payment of Gratuity Act 1972.

¹⁷ The Insolvency and Bankruptcy Code 2016, s 30(2)(e).

Applicant is liable to pay these dues.¹⁸ This is further supported by Section 36(4)(a) of the I&B Code which categorically states that all the sums i.e., the provident fund, pension fund and the gratuity fund, due to any workmen or employee shall not form part of the liquidation estate assets and shall not be used for recovery in the liquidation.¹⁹ The aforesaid provision clearly depicts that any sums due to the workmen from aforementioned funds cannot form part of the liquidation estate and therefore, the same cannot be used for recovery in liquidation. The aforesaid contributed to significant delay in the implementation of the Resolution Plan as there were repeated litigations by various factions of the workmen and employees.

B. Operational Creditors

Citing violations of Section 30(2)(b) of the I&B Code, the creditors, including the Department of State Tax and the Regional Provident Fund Commissioner, contested the distribution of fixed payments of ₹15,000 per creditor, regardless of claim amounts.²⁰ Section 30(2)(b) of the I&B Code deals with the payment of debts to the operational creditors. The provision further states that the payment to be made to the operational creditor should not be less than the amount to be paid to such creditors in the event of liquidation under Section 53 and the same should not be less than the amount to be distributed in accordance with the order of priority in sub-section (7) of section 53. The operational creditors of the

¹⁸ *Jet Aircraft Maintenance Engineers Welfare Association and Ors. v. Ashish Chhawchharia, RP of Jet Airways (India) Ltd. and Ors.*, [2023] Company Appeal (AT) (Insolvency) No.1705 (NCLAT, New Delhi).

¹⁹ The Insolvency and Bankruptcy Code 2016, s 36(4)(a).

²⁰ The Insolvency and Bankruptcy Code 2016, s 30(2)(b).

jet airways claimed that the distribution of fixed payments of INR 15,000 per creditor, had no basis and should be calculated as per the provision of Section 30(2)(b) of the I&B Code.

C. Labor Law Violations

It was claimed that by neglecting to provide layoff compensation, the Approved Resolution Plan's demerger of workers into Airjet Ground Services Limited (AGSL) violated Sections 25N and 25FF of the Industrial Disputes Act, 1947. Despite these disagreements, the NCLT maintained the Resolution Plan and ordered the Jalan-Kalrock Consortium to pay its employee dues.

D. Delayed Revival and Continued Uncertainty

Despite the approval of the Resolution Plan, the plan's execution was delayed because of disagreements among parties, unpaid dues, and arguments over statutory authorization. While some employees were demerged into AGSL and their dues transferred, others who were kept on for the Asset Protection Team were offered reinstatement on new conditions.²¹

IV. LEGAL CHALLENGES IN RESOLVING AVIATION SECTOR INSOLVENCIES

This part deals with the overall major legal complexities faced by the airline sector insolvencies in comparison to those in other sectors. There are a number of factors which are dealt in detail below:

²¹ Dhananjay Kumar (n 11).

A. *Moratorium under Section 14 of I&B Code*

Although the I&B Code lacks specific provisions tailored to the aviation sector, it nonetheless governs insolvency in the sector.²² This highlights a major flaw in applying uniform provisions across all sectors, particularly Section 14 of the I&B Code, but its generalized application significantly impacts the rights of aircraft lessors. During the moratorium imposed under this section, recovery actions by lessors, including repossession of leased aircraft, are prohibited.

It is widely known that the Aviation Industry primarily operates on a leasing model, with the majority of aircraft being leased by operators. In India, companies like Jet Airways and others have extensively leased aircraft from offshore lessors. However, the conditions imposed by Section 14 do not provide an easy exit option for the lessors which in turn creates a major hurdle in achieving a swift resolution. This acted as a major impediment in attracting aircraft financing and investment in India, thereby failing to inspire confidence among foreign investors.²³

Globally, aircraft financing is governed by the Cape Town Convention and Protocol. India has been a signatory to the Convention since 2008; however, it is yet to pass the Cape Town Convention Bill, 2018.²⁴ The

²² Roopam Dadhich and Rutwik Rao, 'Analyzing the Law on Airline Insolvency in India' (*The Contemporary Law Forum*, 13 March 2021) <<https://tclf.in/2021/03/13/analysing-the-law-on-airline-insolvency-in-india/>> accessed on 31st January 2024.

²³ *ibid.*

²⁴ Richard Williams and others, 'Did the Indian Courts Go First in giving the Cape Town Convention Prevalence in India?' (*Watson Farley & Williams: Insights*, 14 June 2024) <<https://www.wfw.com/articles/did-the-indian-courts-go-first-in-giving-the-cape-town-convention-prevalence-in-india/>> accessed on 14th December 2024.

Convention allows the lessor to take possession of the aircraft if there is a default in payment by the operator and the same is not cleared within two months. In case of default, the Lessor can get the aircraft deregistered from the registration authorities.

Nevertheless, the Ministry of Corporate Affairs provided some relief to lessors by issuing the Notification dated 3 October 2023, wherein the Central Government while using its powers under Section 14(3) (a) of the I&B Code, has kept the “*transactions, arrangements or agreements, under the Convention and the Protocol, relating to aircraft, aircraft engines, airframes and helicopters,*”²⁵ out of the purview of Section 14(1) of the I&B Code. This has provided solace to the aircraft lessors and promoted ease of doing business by giving an option of way out in case of insolvency of the Airline operator.

B. Time-Sensitive Resolution

The need of the hour is that the Resolution should be achieved and implemented in a timely manner to prevent further loss of goodwill, retain customer confidence, and stop the migration of skilled personnel. The complete business model of airlines relies heavily upon timely flight schedules, operations being managed effectively, and aircrafts being maintained properly.²⁶

²⁵ The Ministry of Corporate Affairs, *Notification No. S.O. 4321(E) 03.10.2023*.

²⁶ Arundhati Barman Roy & Bhoomi Shah, ‘Cape Town Convention and Insolvency in the Aviation Industry: A Global Study’ (2021) 8(1) RFMLR RGNUL

<https://www.rfmlr.com/_files/ugd/ofaob3_358ddo8099ff40178039411c592db9f5.pdf> accessed on 14th December 2024.

Delayed Resolutions will only result in a deterioration of assets, loss of qualified personnel, and a lack of maintenance of services as the staff gets significantly reduced during insolvency proceedings. It can also affect the ability of the airline to keep the licenses updated and to maintain safety and security standards, which are crucial under the Directorate General of Civil Aviation (DGCA) regulations.²⁷ Delays in resolution can have severe implications for the airline's business and significantly reduce its chances of successful rehabilitation.²⁸

C. Maintenance of Aircrafts

Till the time the aircrafts remain in the possession of the Corporate Debtor, it is the duty of the Interim Resolution Professional (IRP) to maintain and preserve the aircrafts in accordance with the terms of the lease agreement. A major problem faced by the lessors is that parts of the grounded aircrafts have been going missing.²⁹ Further, the IRP must ensure compliance with the Aircraft Rules, 1937, and other statutory provisions while preserving the value of the Corporate Debtor's assets during the resolution process. The IRP should ensure that the airline continues to adhere to the DGCA's Regulations. Therefore, it is crucial that the IRP should have the required knowledge of the business model

²⁷ Ibid.

²⁸ Shon Gadgil, Bindu Ronald, and Lasya Vyakaranam, 'Timely resolution of cases under the insolvency and bankruptcy code' (2019) 6(6) Journal of Critical Reviews 156.

²⁹ Shah, A. & Chaturvedi, A., (2023) 'Go First lessor seeks replacement of parts "robbed" from grounded planes in India' *Reuters*. <<https://www.reuters.com/business/aerospace-defense/go-first-lessor-seeks-replacement-parts-robbed-grounded-planes-india-2023-09-06/>> accessed on 14th December 2024.

to equip him to keep the business operational and ensure the safety of assets.

V. SUGGESTIVE MEASURES

A. *Speedy Resolution*

There should be strict adherence to the timelines prescribed under the Act. This is the prerogative of the NCLTs and NCLAT, to ensure that parties are not attempting to prolong litigation. It is essential that speedy and timely resolution should be reached because the organisation which is under the Corporate Insolvency Resolution Process (CIRP) does not have effective leadership. Without strong leadership, operations cannot be sustained for long, ultimately causing the organization to falter. Prolonged delays increase the likelihood of liquidation. Further, with each passing day, the value of the assets depreciates, leading to a lower liquidation value.³⁰

B. *Strict Adherence to the Code*

It is crucial that the I&B Code be amended as needed to address the emerging challenges which became apparent with each new case. These amendments would enhance the Code's implementation, improve its effectiveness, and lead to better outcomes. However, any new provisions or amendments will be ineffective unless the existing provisions, along with the prescribed timelines, are strictly adhered to. Along with the incorporation of modifications, it is equally important that there should

³⁰ Department of Economic Affairs, *The Report of the Bankruptcy Law Reforms Committee* (Ministry of Finance, 2015).

be strict adherence to the existing provisions.³¹ Delay in approval and implementation of resolution plans undermine the very essence of the I&B Code.

C. Provision of Monitoring Committee

The current regime does not provide for any monitoring by an independent authority during the stages of approval of Resolution Plan, leading to several oversights of the mandatory provisions of the Code by the CoC. A monitoring committee should be established to ensure that all provisions of the Code are prima facie followed in the resolution plan before it is approved by the CoC. This would substantially reduce the number of litigations. A provision should be introduced to appoint a Monitoring Committee alongside the CoC to ensure that the Resolution Plan approved by the CoC complies with the mandatory requirements of a plan as envisaged under the Code. Additionally, the Monitoring Committee should include personnel with technical expertise relevant to the Corporate Debtor's business to ensure that the approved plan is commercially viable and practical for implementation. This approach would ensure that resolution plans are tailored to address sector-specific insolvencies effectively.

D. Implementation of Resolution Plan in a time - bound manner

There should be strict timelines for the implementation of the approved resolution plan. The NCLTs and NCLAT should use their inherent powers to extend the timelines very cautiously and in rare circumstances

³¹ *State Bank of India* (n 7).

especially in cases of approved resolution plan.³² Repeated extensions also result in violating the integrity of the wisdom of committee of creditors as the plan has been approved by them after due considerations.³³ Apart from the implementation of the Resolution Plan, it is equally important to consider the option of liquidation at the right time to get the maximum value of the Corporate Debtor.

E. Collective Efforts from the Lenders and Successful Resolution Applicant

For the successful implementation of a plan, it is crucial that lenders avoid filing frivolous claims that fall outside the scope of the approved plan. Such claims can significantly disrupt the smooth execution of the plan and can lead to unnecessary delays in the overall resolution process. Similarly, the Successful Resolution Applicant (SRA) has a duty to come up with such a plan that genuinely addresses the concerns of the creditors and supports their rehabilitation. The role of the SRA is pivotal in ensuring that the resolution process leads to a fair and viable outcome for all stakeholders, particularly the creditors who have suffered financial losses due to the distressed situation of the company.³⁴

VI. CONCLUSION

The Jet Airways Liquidation Case has brought to light important issues in the effective implementation of the provisions of the I&B Code. It has highlighted concerns regarding the ability of Tribunals to handle the

³² Richard Williams (n 17).

³³ *State Bank of India* (n 7).

³⁴ *State Bank of India* (n 7).

complexities involved in high-stakes insolvency matters, along with their struggle to manage the technicalities of sector-specific insolvencies, which further contributes to delays. The litigation surrounding Jet Airways has served as an eye-opener in many aspects, highlighting the urgent need to develop an ecosystem that continuously strengthens insolvency laws along with the effective implementation of the existing provisions.

This case has demonstrated how market dynamics, financial management, and regulatory compliance are intricately interconnected. The prolonged disagreements and delays underscore systemic challenges in balancing creditor interests with legislative requirements, even though the Jalan-Kalrock resolution plan showed potential for revival. Speedy and timely resolution is the essence of the I&B Code, which should be given paramount importance.