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Aviation Insolvency: Implementing a 'Reverse CIRP' while Balancing Section 29A Concerns

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ABSTRACT

*The landmark decision of the National Company Law Appellate Tribunal (**NCLAT**) in Flat Buyers Association v Umang Realtech Pvt Ltd on "Reverse Corporate Insolvency Resolution Process" (**Reverse CIRP**) allowed the promoters of the corporate debtor itself to resolve the insolvency without third-party intervention, thereby addressing the distinctive challenges in real estate insolvencies. This decision provided a framework for sector-specific mechanisms under the Insolvency and Bankruptcy Code, 2016 (**IBC** or **Code**). Aviation insolvency cases such as State Bank of India v Jet Airways (India) Ltd highlight the limitations of the IBC's standardised framework for asset-heavy, operationally significant entities like airlines. Apart from maintaining vital slots, international aircraft leases and regulatory approvals, issues involving 'international air traffic rights' and route also pose certain unique challenges. Thus, this illustrates the limitations of a "one-size-fits-all" approach. Accordingly, this paper analyses how the NCLAT's deviation from the*

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conventional CIRP framework, allowing project-specific insolvency and qualified promoter participation, would address the unique challenges of aviation insolvencies. The sector is distinguished by high capital intensity, critical infrastructure, and public interest involvement. Thus, we contend that the principles underlying the 'reverse CIRP', such as asset-specific resolution, and continued operational viability, have material relevance. By drawing parallels between aviation and real estate, we explore how the aviation sector warrants the 'reverse CIRP'. Such an approach, however, highlights the inherent conflict with Section 29A. However, a blanket disqualification under Section 29A potentially undermines stakeholders' interests, as promoters in airlines often possess specialised knowledge and industry relationships important for a successful restructuring. Thus, this paper ultimately proposes a framework for adapting the 'reverse CIRP' concept while addressing the Section 29A concerns to create a more effective and equitable insolvency resolution mechanism for the aviation sector.

TABLE OF CONTENTS

I. INTRODUCTION

India has become the third-largest domestic aviation market in the world and is expected to overtake the United Kingdom (**UK**) to become the third-largest air passenger market by 2024.[1] It has also contributed to five percent (5%) of the entire GDP, thereby creating four (4) million jobs.[2] This aviation industry operates on marginal profits, and its survival further depends on the volume of business while operating without expecting high profits. The largest thing eroding this profit is fuel costs, which have been increasing due to the supply and demand prospects and the perceived risk of market disruptions caused by geopolitical tensions worldwide. Further, the high capital intensity, reliance on leased assets and dependency on regulatory approvals (such as airport slots and international traffic rights) increased the chances of airlines going bankrupt, which might lead to the lessors seeking to repossess aircraft (*Go First* and *Jet Airways* cases), instances of lapses in regulatory approvals, etc. This would lead to a cascading effect of public interest suffering due to reduced competition and connectivity. These failures in the functioning led to the insolvency of such airlines. As a result, these aviation insolvency cases require specialised restructuring methods. This is because, unlike retail or manufacturing, where asset liquidation can potentially be an option, aviation's operational-critical

[1] International Air Transport Association (**IATA**), 'IATA Launches 2024 World Air Transport Statistics Report' (*IATA*, 4 August 2025) <https://www.iata.org/en/pressroom/2025-releases/2025-08-04-01/> accessed 5 December 2025.

[2] India Brand Equity Foundation, 'Rise of the Indian Aviation Market' (*India Brand Equity Foundation*, 3 February 2023) <https://www.ibef.org/research/case-study/rise-of-the-indian-aviation-market> accessed 5 December 2025.

infrastructure requires a resolution model focusing on going-concern value in contrast to piecemeal asset disposition. In the case of aviation insolvencies, standard IBC mechanisms are found to be unsuitable since they do not deal with the time-sensitive manner in which aircraft assets depreciate, and operation certifications and route rights also erode quickly during lengthy moratoriums. In addition, India's existing system clashes with global practice under the Cape Town Convention,[3] favouring lessors' repossession rights and leading to legal doubts that ultimately translate into higher leasing costs for Indian carriers.

The National Company Law Tribunal (**NCLT**), by a pivotal development, in a landmark judgement in *Flat Buyers Association v Umang Realtech Pvt Ltd*,[4] has recognised sector-specific insolvency mechanisms where the creditors' rights have to be balanced with the need to preserve asset value, thus introducing the concept of reverse CIRP. This model allowed real estate developer promoters to contribute to revival restructuring, which differs from the IBC's default prohibition on defaulting management, thus safeguarding project completion and the interests of homebuyers. The ruling set the stage for specialised insolvency frameworks by prioritising continuity and sector-specific viability. Thus, this article discusses how India's insolvency system requires modification to deal with the aviation industry's specific operational and financial realities, suggesting a revised reverse CIRP approach. This

[3] Convention on International Interests in Mobile Equipment (Cape Town Convention) (opened for signature 16 November 2001, entered into force 1 March 2006).
[4] *Flat Buyers Association v Umang Realtech*, Company Appeal (AT) (Ins) No 926 of 2019.

approach will balance creditor rights and sector-specific factors required to deal with such asset-heavy insolvencies.

However, applying the reverse CIRP process to the aviation industry contradicts Section 29A IBC, "which prevents defaulting promoters from resuming control indirectly or directly". This is because Section 5(25),[5] defines a resolution applicant to be any person who submits the resolution plan to the resolution professional. Hence, this person can be a creditor, promoter, investor, or any person. However, the Code did not specify earlier the basis and criteria for selecting the resolution applicant. Hence, on 23 November 2017, IBBI came up with the ordinance, and on 19 January 2018,[6] an amendment Act was introduced, which brought Section 29A. Thus, this paper also contends that reverse CIRP's assumptions, including asset-specific solutions, stakeholder prioritisation and regulated promoter participation, could be applied to aviation insolvencies as long as safeguards are implemented to address Section 29A issues.

II. PRESERVING OPERATIONAL CONTINUITY THROUGH A SECTOR-SPECIFIC APPROACH

The Reverse CIRP model, first introduced in *Flat Buyers case*, was a response to the NCLAT's realisation that the IBC's blanket disqualification of promoters under Section 29A could negate value maximisation in industries such as real estate, where project completion depended on developer continuity. This reverse CIRP model moves towards "continuity value" rather than "liquidation value" in Indian

[5] Insolvency and Bankruptcy Code 2016, s 5(25) (**IBC**).
[6] The Insolvency and Bankruptcy Code (Second Amendment) Act 2018.

insolvency law. This is because conventional insolvency models are based on the assumption that assets have value regardless of management, while some sectors, such as aviation and real estate gain considerable value from the continuity of operations. Further, aviation is the next appropriate test case for this practical shift.

A. The "Continuity Premium" of Aviation Assets and Its Erosion Under Standard IBC Processes

The airport slots, which are allocated at the times of take-off and landing, are a rare and valuable commodity, especially in busy airports like Delhi and Mumbai. The value of these slots is inherently based on precedence[7] in the past ie, airlines that use their assigned slots regularly have priority rights to retain them in the next scheduling cycle. During insolvency proceedings, the imposition of moratoriums de facto freezes airline operations, inevitably leading to slot loss for non-use. This phenomenon is supported by the instances of Jet Airways, which went through full slot divestiture in its insolvency process, with such precious assets being later reassigned to rivals.[8] Likewise, Go First[9] experienced the loss of more than 7,000 slots, drastically reducing its chances of revival even before it

[7] Ministry of Civil Aviation, Government of India, 'Guidelines for Slot Allocation' (2013) <https://www.civilaviation.gov.in/sites/default/files/migration/moca_003128_0.pdf> accessed 5 December 2025.

[8] Rhik Kundu, 'SpiceJet Got a Majority of Airport Slots Vacated by Jet Airways in March-June' (*LiveMint,* 26 June 2019) <https://www.livemint.com/companies/news/spicejet-gets-43-new-slots-at-mumbai-delhi-airports-after-jet-s-grounding-1561551431248.html> accessed 5 December 2025.

[9] Anu Sharma, 'Go First May Lose Slots If Suspension Continues' (*LiveMint,* 8 May 2023) <https://www.livemint.com/companies/news/go-first-may-lose-slots-if-suspension-continues-11683483602648.html> accessed 5 December 2025.

achieved any success in financial restructuring initiatives. This is a classic case of a "continuity premium" in the aviation industry. Once the slots are lost, their recapture is prohibitively costly or outright impossible, greatly diminishing an airline's prospects for successful re-emergence after insolvency proceedings.

B. International Route Rights in Airline Insolvency

International route rights are key to an airline's value proposition and are regulated by bilateral air service agreements (**BASAs**) between countries. These agreements specifically require operational continuity as a condition for the retention of assigned route authorities.[10] The *Kingfisher Airlines* case[11] offers strong evidence of this trend as in the course of its own insolvency process, Kingfisher lost its valuable London and Hong Kong route authorities and strategic resources for which it took years of diplomatic manoeuvring to obtain. This was an administrative loss and a structural result of how route rights operate within regulatory systems. Further, the existing regulatory structure establishes a fundamental vulnerability: the Directorate General of Civil

[10] Jagriti Chandra, 'Doubling Airline Capacity on India-UAE Routes Will Help Indian Consumers Save $1.05 Billion: Report' (*The Hindu*, 19 March 2025) <https://www.thehindu.com/news/national/doubling-airline-capacity-on-india-uae-routes-will-help-indian-consumers-save-105-billion-report/article69350431.ece#> accessed 5 December 2025; Airport Coordination Limited, 'About ACL' (*Airport Coordination Limited,* 3 March 2025) <https://www.acl-uk.org/about-us/> accessed 5 December 2025; Network Thoughts, 'Understanding the India – UK Bilateral Air Services Agreement' (*NetworkThoughts*, 14 April 2023) <https://networkthoughts.com/2023/04/15/understanding-the-india-uk-bilateral-air-services-agreement/> accessed 5 December 2025.

[11] Bobbala Jyothirmai, 'Kingfisher: A Case Analysis of the Fallen Kingdom' (2020) 1 Int'l J Advanced Legal Res <https://ijalr.in/volume-1/issue-1/kingfisher-a-case-analysis-of-the-fallen-kingdom-by-bobbala-jyothirmai/> accessed 5 December 2025.

Aviation (**DGCA**)[12] has direct power to redistribute unused traffic rights to incumbents in operation. This redistribution process benefits the public good of preserving air connectivity and hastens the loss of the ailing[13] carrier's most precious intangible assets.

Furthermore, pilots, engineers, and cabin staff need airline-specific training and recurrent certification to sustain specialised and perishable skills. The IBC's long timelines break this continuum. For instance, Jet Airways' four-year insolvency had its 16,000 employees scatter irretrievably, and Go First's pilots moved *en masse* to rivals such as IndiGo and Air India. The consequence is a talent void that makes revival economically unfeasible, as the cost of rehiring and retraining exceeds the value of restructuring. Similarly, regulatory assets such as safety certifications, lease approvals (IDERA), and Air Operator Permits[14] sustain current operations. For instance, the DGCA requires minimum flying hours to maintain AOPs, which SpiceJet only just complied with during its 2022 insolvency by resuming flights in a rush. Once expired, such approvals are subject to bureaucratic reluctance to renew,

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[12] Association of Private Airport Operators, 'Civil Aviation Policy' <http://www.apaoindia.com/APAO%20Comments%20on%20Civil%20Aviation%20Policy.pdf> accessed 5 December 2025; Ministry of Civil, Government of India, 'Report of the Committee on a Road Map for the Civil Aviation Sector Part II' (October 2004) <https://www.civilaviation.gov.in/sites/default/files/migration/moca_000741.pdf> accessed 5 December 2025.

[13] Ministry of Civil Aviation, 'Guidelines for Publication/Sharing of Information Pertaining to Air Services Agreement Entered into by Republic of India' (2021) <https://www.civilaviation.gov.in/sites/default/files/2023-06/Guidelines.pdf> accessed 5 December 2025.

[14] Directorate General of Civil Aviation, 'Aircraft Rules 1937' <https://www.dgca.gov.in/digigov-portal/?dynamicPage=aircraftRules1937/1/0/viewDynamicRulesReq> accessed 6 April 2025.

discouraging prospective investors from favouring operational readiness over distressed assets. The crisis also extends to leased aircraft, representing 80% of India's fleet. The aircraft lessors,[15] which are accustomed to default tolerance in the Cape Town Convention's rapid repossession structures (also referred to as Alternative A), are paralysed by moratoriums in the IBC. Also, the Go First deadlock and resultant 15–20%[16] leasing cost escalation, according to the Aviation Working Group,[17] illustrates how legal uncertainty destroys market confidence. By alienating international lessors, the IBC risks individual airline resurrections and shrinks fleet availability for the industry as a whole. Thus, there arises a need to devise a sector-specific solution to such issues of operational continuity.

III. CASE FOR INTRODUCING REVERSE CIRP IN AVIATION INSOLVENCIES

The IBC created a creditor-in-control structure, but as the courts evolve through case law, this very structured, inflexible method of restructuring may pose challenges for asset-heavy industries. Through the court's creation of the reverse CIRP in real estate, the use of sector-specific restructuring vehicles has provided the ability to create added value. The next section explores the potential usefulness of a reverse CIRP

[15] *Accipiter Investments Aircraft 2 Ltd. v. Union of India*, W.P.(C) 6569/2023 <https://ibbi.gov.in/uploads/order/0cef8d314164c186f140ff4b32c64e70.pdf> accessed 5 December 2025.

[16] Centre for Aviation, 'Reports' <https://www.capaindia.com/reports> accessed 6 April 2025.

[17] Ministry of Civil Aviation, Government of India, 'Report of Working Group on Civil Aviation for Formulation of Twelfth Five Year Plan (2012-17)' (2012) <https://www.civilaviation.gov.in/sites/default/files/migration/moca_001320.pdf> accessed 5 December 2025.

framework in relation to the aviation industry, particularly as it pertains to asset valuation due to its close relationship with continuing operations as well as knowledge and skillset among employees, and ultimately its time-sensitive nature with regards to maintenance.

A. Expertise of the promoter of the corporate debtor in insolvency resolution

The airline industry heavily depends on specialised expertise in network planning, fleet strategy, regulatory compliance, financial engineering, crisis management, vendor relations, customer experience, and technical workforce management. These functions, which are usually under the control of company boards and promoters, are crucial to sustaining the asset value and continuity of operations in insolvency proceedings.

According to the IBC, the Committee of Creditors (**CoC**) constitutes only the financial creditors under Section 21 and are also provided with voting rights. The operational creditors can only become part of the CoC if they have at least ten percent (10%) of the total value of debt. However, no voting rights are provided to them.[18] Thus, the financial creditors effectively gain control and management of the corporate debtor's assets, with the CoC voting and making decisions on key operational issues. This framework raises a major issue in aviation insolvencies, where financial creditors own and control the functioning of crucial assets such as leased aircraft legally owned by secured operational creditors, ie, the lessors. Such situations may raise the probability of inefficient asset management, as the recovery interests of the financial creditors take precedence over operational continuity, making it difficult for the

[18] IBC, s 5(28).

corporate debtor to recover.[19] These suboptimal results usually stem from the disconnection between financial decision-making and operational expertise. Further, financial creditors are not interested in acquiring specialised aviation assets such as aircraft, route rights, or airport slots as they cannot extract value from such highly regulated specialist assets. However, under traditional CIRP, these financial creditors dominate the resolution process even though their secured interest over the operationally significant assets is comparatively small.

In such situations, reverse CIRP would enable promoters of these aviation companies to align their creditor's interests by giving immediate capital infusion to keep specialised aviation assets, such as the aircraft, out of the hands of financial creditors, who cannot use them. This structure would also not sacrifice the priority position of the financial creditors. The provision of reverse CIRP solves the same structural issue that arises in real estate insolvencies, where secured creditors have no interest in the underlying physical assets but dominate the resolution process.[20] Furthermore, the issue of operational control became especially contentious in the *Go Airlines* case.[21] Although the Delhi High Court instructed the DGCA to clear the deregistration of leased aircraft due to the terminations of leases before the imposition of the

[19] Insolvency Professional Agency of Institute of Cost Accountants of India, 'Corporate Insolvency Process of Jaypee Infratech' [2018] 8 <https://www.ipaicmai.in/IPANEW/UploadFiles/Other/Jaypee_Infratech_Casebook.pdf> accessed 5 December 2025.

[20] Janhavi Somvanshi and R Samyuktha, 'Reverse CIRP as an Emerging Solution to Real Estate Insolvency - Can It Be Accommodated in the Scheme of IBC?' [2022] SSRN Electronic Journal <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4316565> accessed 5 December 2025.

[21] *Go Airlines India Ltd v SMBC Aviation Capital Ltd & Ors*, Company Appeal (AT) (Insolvency) No 593 of 2023.

moratorium, the Court did not conclusively pass operational control to lessor. Even though the Ministry of Corporate Affairs exempted leased aircraft from the moratorium,[22] it did not explicitly allow control of the aircraft to operational creditors, creating a regulatory loophole that contradicts Cape Town Convention provisions.

In such situations, where operational control is required, company directors or promoters are the most suitable parties to possess operational control and provide the required capital under the oversight of the Insolvency Resolution Professional (**IRP**). Their experience in the industry is especially useful considering aviation's sector-specific difficulties. The structural burdens of high Aviation Turbine Fuel (**ATF**) prices (comprising almost forty percent (40%) of operating costs) and complex taxation (dual taxation under excise duty and Value Added Tax rather than Goods & Service Tax) have been one of the primary reasons for aviation insolvencies.[23] This demonstrates that aviation insolvencies typically result from external systemic pressures rather than mere poor management by the company board. Go First Airlines is evidence of this reality, where fuel price increases and rising airport fees severely impacted profit margins and cash reserves.[24]

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[22] Ministry of Corporate Affairs, 'Notification' (2023) <https://ibbi.gov.in/uploads/legalframwork/8273e42bb4de11d39f37ab81f96f93ec.pdf> accessed 5 December 2025.

[23] Press Trust of India, 'No Decision on Reduction in Tax on ATF to Bring down Prices: Report' (*Business Standard,* 25 May 2022) <https://www.business-standard.com/article/current-affairs/no-decision-on-reduction-in-tax-on-atf-to-bring-down-prices-report-122052501443_1.html> accessed 5 December 2025.

[24] Deepankar Sharma and others, 'An Analysis of Go First Airlines: A Case Study on Voluntary Insolvency Resolution in the Aviation Industry' (2024) 4(2) Journal of Informatics Education and Research 692.

Thus, the value maximisation of aviation assets needs financial inputs and specialised operating expertise. Aircraft need specific maintenance procedures, are required to fly under strict regulatory environments, and need specialised knowledge for route optimisation. Furthermore, aeroplanes and aviation are expensive to operate. They need continual reinvestment, or their value decreases rapidly. By permitting business owners (promoters) to put cash into a business, it not only precludes repossession but also takes advantage of promoters' established network of contacts to re-establish an aviation operation more quickly and more efficiently than if the operation had to be started over. However, the backdrop for cash infusions is not independent of the solution; thus, in the Commercial Real Estate (**CRE**) sector, under the Reverse CIRP, promoters can inject cash only with extreme judicial scrutiny (ie, there is a significant level of governmental oversight). Funds injected would need to be monitored by a resolution professional, and any use of those funds will be limited to the completion of the asset. The business owner would not regain total management control following an infusion of cash; rather, the cash would be treated strictly as project finance, with safeguards (ie, ring-fencing) to ensure no further cash diversion or defaults. Thus, it would seem that the "safeguard" strategy may also be an appropriate strategy for the reinvigoration of the aviation business after an insolvency event, allowing a balance of success potential against creditor protection. Moreover, tribunals have acknowledged such differential treatment of certain assets under the IBC.[25] In real estate insolvency proceedings, the NCLAT looked at and applied the reverse

[25] *Binani Industries Limited v Bank of Baroda*, Company Appeal (AT) (Insolvency) No 82 of 2018; *Swiss Ribbons Pvt Ltd v Union of India* (2019) 4 SCC 17.

CIRP model as part of the procedure that allows owners (or promoters) to continue to have control of the assets associated with their real estate project while using their own funds for completing the project. The courts used the Reverse CIRP model where there were no credible resolution applicants and where owners had to take the lead on financing so that the interests of homebuyers would be protected and many projects would be saved from liquidation and delivered to homebuyers in a timely manner.

B. Aircraft as Specialized Assets: The Argument for Reverse CIRP in Aviation

The airplane and associated aircraft infrastructure are specialized assets that closely resemble real property financing in essential ways. Those assets cannot be feasibly converted into use in a different industry and retain their foundational value only if they continue with their original function of offering aerial transportation. Globally accepted institutions such as the Cape Town Convention already recognise special legal treatment afforded to these kinds of specialised assets.[26] However, unlike property, which tends to increase in value over time, aviation assets depreciate quickly if not used. Non-functioning aircraft experience rapid depreciation, demand frequent expensive maintenance, need recertification as technical validations lapse, and are victimised by technological obsolescence.[27] Thus, this necessitates timely resolution by informed industry experts to maintain asset value.

[26] Cape Town Convention (n 3).
[27] Matthew C Dixon, 'The Maintenance Costs of Aging Aircraft: Insights from Commercial Aviation' (*RAND*, 30 November 2006) <https://www.rand.org/pubs/monographs/MG486.html> accessed 5 December 2025.

Further, the airline industry is based on very tight margins with few players, establishing a situation comparable to that warranting reverse CIRP in the real estate industry. A partly built real estate development maintains more value if completed by its initial developer, as does an airline generally preserves greater value as an ongoing operation in the hands of management familiar with its operating complexities. Airlines also encounter special difficulties in insolvency cases because of their categoric commitments, which general "haircut" methods cannot solve under traditional insolvency. For example, plane leasing, as with real estate properties, is usually subject to full implementation and cannot be complied with partially.[28] This will be in accordance with the rationale used in real estate, where some commitments are handled in a different way from financial obligations.[29] Further, the multi-stakeholder nature of the aviation industry also makes conventional insolvency strategies more challenging. The insolvent airline companies owe duties to aircraft lessors, airport authorities, and trained staff, making it essential that the management remain in continuity during restructuring. SpiceJet's turnaround is an interesting case study of promoter-driven restructuring.[30] By raising ₹3,736 crores via a qualified institutional

[28] Brown Rudnick, 'Survival Strategies for Airlines Facing Insolvency – Fallout from the Coronavirus (COVID-19) Pandemic' (*Brown Rudnick*, 17 March 2020) <https://brownrudnick.com/wp-content/uploads/2020/03/Survival-Strategies-for-Airlines-Facing-Insolvency-Fallout-from-the-Coronavirus-COVID-19-Pandemic.pdf> accessed 5 December 2025..

[29] Hiten Ratilal Abhani, 'Revolutionizing Corporate Insolvency Resolution in Real Estate: The Emergence of Reverse CIRP in India' [2024] The Resolution Professional 21 <https://www.iiipicai.in/wp-content/uploads/2024/05/21-27-Article-hiten-Abhani.pdf> accessed 5 December 2025.

[30] SB Mathur, Sudhakar Bokephode and DD Balsaraf, 'SpiceJet—Back from the Brink: A Case Study in Revival Strategy' in SB Mathur, Sudhakar Bokephode, and DD Balsaraf (eds), *Indian Business Case Studies Volume VI*, (OUP 2022).

placement, settling $155 million in court cases, and increasing their fleet, SpiceJet's promoters established the success of this strategy. Interestingly, promoter-led restructuring can overcome long creditor negotiation periods, such as the contrast between Jet Airways' long-lasting insolvency process[31] and SpiceJet's speedy turnaround. Therefore, with these similarities to real estate and the success of promoter-led restructuring in aviation, there is a compelling case for applying reverse CIRP mechanisms to the aviation sector. This would allow promoters to invest money and contribute to resolution plans for ailing airlines, simplifying insolvency.

C. Utilising Pre-Packaged Insolvency Framework for Reverse CIRP in Aviation

The Pre-Packaged Insolvency Resolution Process (**PPIRP**) under the IBC Amendment Act, 2021[32] offers a strong legislative platform for adopting Reverse CIRP in the aviation industry. The PPIRP framework developed reflects Parliament's acknowledgement that some situations require tailored insolvency solutions involving promoter engagement, especially when their industry know-how is instrumental in value retention. This framework of PPIRP makes a specific statutory distinction between honest and dishonest promoters by making ways for genuine management contributions. Section 54A[33] specifically allows promoters to file base resolution plans, setting out the principle that the

[31] Press Trust of India, 'Jet Airways Timeline: From Suspension to NCLT Order on Jalan Kalrock Consortium's Resolution Plan' (*The Indian Express,* 22 June 2021) <https://indianexpress.com/article/business/aviation/jet-airways-insolvency-resolution-journey-timeline-7370647/> accessed 5 December 2025.
[32] The Insolvency and Bankruptcy Code (Amendment) Ordinance 2021.
[33] IBC, s 53A.

exclusion of a promoter should be situation-specific and not blanket. This approach has already seen judicial endorsement, with courts affirming PPIRP as a valid alternative resolution avenue within the Code's goals.[34] Although PPIRP was initially conceived for MSMEs, its policy logic would be equally applicable to niche industries such as aviation, where business continuity and technical skills are crucial factors for asset protection.[35] The framework's focus on business continuity perfectly deals with aviation's specific challenges, where immobilised aircraft quickly depreciate, and special regulatory compliances require industry-specific skills. Further, PPIRP also provides strong creditor safeguards that can be adapted in aviation-focused reverse CIRP applications. Additionally, the requirement of CoC approval ensures that commercial prudence remains the guiding principle, while transparency provisions protect creditor interests without stifling promoters' input.[36] Therefore, such well-crafted checks and balances show how the involvement of promoters can be achieved without diluting the Code's creditor-oriented nature.

Furthermore, the development of the IBC through amendments such as PPIRP demonstrates the Code's flexibility to sectoral requirements. As PPIRP acknowledges that MSME insolvencies are advantaged by specialised treatment, aviation insolvencies also need strategies considering their distinctive operational realities. Thus, applying reverse

[34] *In re, Krrish Realtech (P) Ltd* Company Appeal (AT) (Insolvency) Nos 1008, 1009 & 1010 of 2021.
[35] Ministry of Corporate Affairs, Government of India, *Report of the Sub-Committee of the Insolvency Law Committee on Pre-Packaged Insolvency Resolution Process* (2020) <https://ibbi.gov.in/uploads/whatsnew/34f5c5b6fb00a97dc4ab752a798d9ce3.pdf> accessed 5 December 2025.
[36] ibid.

CIRP or PPIRP to aviation would be a natural extension of this movement towards flexible, sector-specific resolution mechanisms already made within the legislative framework.

D. An Integrated Model of Reverse CIRP for Implementation in Aviation Insolvency

The proposition to introduce the Reverse CIRP model for aircraft insolvency also presents a need for a stringent qualification system for re-entry to promoters, thus ensuring that only those possessing successful operation experience and fiscal discipline are eligible. Thus, these proposed models pair stringent governance safeguards with substantial capital investment and debt reorganisation, balancing economic revival and stakeholder safeguarding.

i. Qualification and Governance Framework

A proposed model for introducing the Reverse CIRP model in aviation insolvency would be through a thorough screening of the promoter's credit history, thus eliminating known wilful defaulters and in-depth analysis of past performance as managers. Further, only those promoters with proven operating experience and fiscal prudence would be eligible so that nefarious players cannot take advantage of the mechanism. This approach adopts a strict qualification test of the promoter for re-entry. Moreover, the governance would function by means of a gradual passing on of operating control, starting from joint control by promoters and a committee of creditors, with financial control vested in the creditors until certain performance thresholds are met.

ii. Capital Commitment framework

This model requires a high financial investment from re-entering promoters. It proposes that the promoters wishing to re-enter must contribute a minimum initial capital infusion of 15-20% of outstanding debt. Aside from initial infusion, promoters must give binding commitments for staged additional funding at specific operational milestones. These performance-based equity conversion mechanisms would enable promoters to increase their equity stake overtime against the financial milestones achieved, thus inducing alignment between promoter incentives and creditor recovery.

iii. Other Frameworks for Operational Continuity

A thorough asset preservation and an obligation to maintain critical assets to avoid value degradation will be suitable models for reverse CIRP. Thus, there is a need for a model that encompasses particular aircraft preservation standards, compliance with directives of airworthiness, and maintenance of certification requirements. A model providing a systematic framework for lease renegotiations and regulatory compliance management would benefit the airlines. This would ensure the preservation of route rights, slot allocations, and operating certificates essential to the airline's long-term sustainability. Further, in identifying aviation's multi-stakeholder environment, there is a need for a model that has strong provisions for protecting non-financial stakeholders. For instance, the airlines' requirement to retain a minimum of 70% of employees, specifically focusing on technical staff whose specialist knowledge is crucial for operational continuity, would serve as a prospective framework. Further, vendor and supplier

continuity agreements ensure the ongoing provision of critical services, favouring the framework of reverse CIRP in aviation insolvencies.

Additionally, the divisible nature of airline operations via route network segmentation, where individual routes act as independent operational units with individual regulatory approvals, slot assignments, and assigned aircraft, would help have a streamlined recovery process. It would allow focused intervention in profitable segments while allowing due restructuring of unprofitable routes. This segmentation approach makes it easier for creditors to classify by operating unit, realising that aircraft lessors, regional banks, and airport authorities usually have exposure in specific geographic segments but not necessarily the entire airline.

There are several successful international precedents emphasising operational continuity through promoter control. The United States Chapter 11 bankruptcy procedure,[37] which enables airlines to maintain control as "debtors-in-possession", has shown remarkable success with *Delta Air Lines* (2005)[38] and *American Airlines* (2011)[39] restructurings while holding on to operational control. In the same vein, the United

[37] United States Courts, 'Chapter 11 – Bankruptcy Basics' (United States Courts) <https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics> accessed 5 December 2025.
[38] United States Securities and Exchange Commission, 'Annual Report of Delta Air Lines Inc' (2005) <https://www.sec.gov/Archives/edgar/data/27904/000095014406002765/g00293e10vk.htm> accessed 5 December 2025.
[39] United States Securities and Exchange Commission, 'Emergence from Chapter 11' (AMR Corporation, 2013) <https://www.sec.gov/Archives/edgar/data/4515/000000620114000004/R11.htm> accessed 5 December 2025.

Kingdom's Company Voluntary Arrangements[40] set the framework for *Virgin Atlantic's* restructuring in 2020,[41] and Germany's Debtor-in-Possession model[42] financing enabled *Air Berlin* to continue operating throughout restructuring.[43]

The suggested Reverse CIRP model remedies aviation insolvency by aligning competing priority rights between the Cape Town Convention and IBC, as seen in the Jet Airways case, where legal disputes resulted in less-than-optimal recoveries for both classes of creditors. Further, compliance with Section 30(2)(b)[44] is strengthened by maintaining the essential asset base during CIRP, thus ensuring a higher liquidation value floor for financial creditors. *Finally*, these various models provide three economic benefits empirically: Improved asset value preservation by avoiding deterioration of aircraft that need constant maintenance; Faster resolution timelines by resolving immediate operational creditor needs that would otherwise stall restructuring proceedings; and Retention of regulatory approvals that expire during prolonged inactivity. Through these, we are trying to avoid situations like those seen in the Jet Airways CIRP, which lasted for more than two years, leading

[40] Government of United Kingdom, 'Company Voluntary Arrangements' <https://www.gov.uk/company-voluntary-arrangements#:~:text=If%20your%20limited%20company%20is,Individual%20Voluntary%20Arrangement%20(IVA)> accessed 5 December 2025.
[41] *In re Virgin Atlantic Airways Ltd.* [2020] EWHC 2376 (Ch).
[42] Hamiisi Junior Nsubuga, 'The Debtor-in-Possession Model in the EU Insolvency and Restructuring Framework – a Domino Effect?' (2021) <https://repository.mdx.ac.uk/download/dd22e7c3b74283ec8c7e6aa67ea819191bf95d4a51401e50b313ca08a17880b9/337483/DIP%20in%20the%20EU-%20final%20revised-accepted.pdf> accessed 5 December 2025.
[43] Case C-765/22 and C-772/22 *Luis Carlos vs. Air Berlin Luftverkehrs KG, Sucursal en Espana* [2024] ECLI:EU:C:2024:331.
[44] IBC, s 30(2)(b).

to the deterioration of the assets and resulting in liquidation. For such reasons, these structures particularly permit promoter fund infusion to operational creditors to avoid asset stripping while maintaining financial creditors' priority status within the payment waterfall. This presents a structured resolution that acknowledges the specific nexus between operational and financial creditors in the aviation industry.

IV. POSITION OF THE REVERSE CIRP NOT AS AN EXCEPTION TO SECTION 29A, BUT AS RECOGNITION OF A FUNDAMENTALLY DIFFERENT FORM OF VALUE THAT EXISTS BEYOND PHYSICAL ASSETS

The Reverse CIRP model is not only an exception to Section 29A's disqualifications of promoters but a paradigm shift in insolvency resolution - one attuned to aviation's unique value proposition ie, its continuity capital which is an intangible but vital class of assets that dissipates under traditional liquidation approaches. This is needed because, while traditional IBC proceedings are centred on recovering physical assets (aircraft, property, machinery), the aviation's enterprise value is disproportionately invested in operational ecosystems that must be perpetually sustained. Unlike factories where equipment retains value even when it is unused, aviation's technical workforce, such as pilots, engineers, requires continuous training to maintain certifications. The four (4) year grounding[45] of Jet Airways demonstrated how 16,000 person years of airline-specific expertise became unrecoverable which

[45] Economic Times, 'The Jet Case Study: What Exactly Happens When an Airline Drowns' (*The Economic Times,* 27 April 2019) <https://m.economictimes.com/industry/transportation/airlines-/-aviation/the-jet-case-study-what-exactly-happens-when-an-airline-drowns/articleshow/69068386.cms> accessed 5 December 2025.

was a total write-off of human capital that no balance sheet captures. Further, aircraft lessors advance credit repossession certainty (Alternative A to CTC), rather than physical collateral value. For instance, Go First's freeze on leases due to moratorium-led suspension deteriorated India's entire aviation credit system, which was attested by AWG's Report to be 15-20%[46] leasing premium increase which was a de facto tax on systemic distrust.

The Supreme Court, while upholding Section 29A, acknowledged that business failures may occur due to external factors beyond promoters' control. It mentioned that, *"*The prohibition under Section 29A is not absolute but contextual…The wisdom lies in balancing the interests of all stakeholders.*"*[47] Furthermore, a blanket disqualification of promoters under Section 29A of the IBC is constitutionally suspected under Article 14 of the Indian Constitution, ensuring equality before law and preventing arbitrariness of state action. The court has consistently held that Article 14 permits classification but prevents "class legislation" (*State of West Bengal v Anwar Ali Sarkar*[48]). Section 29A treats a promoter whose airline suffered insolvency on account of COVID-19 demand shocks (externality), fuel price fluctuations (macroeconomic risk), or diversion of funds for fraudulent purposes (wilful misconduct) equally despite materially different culpability. The second violation is the disproportionate effect. The Supreme Court in *Modern Dental*

[46] Deepak Patel, 'Global Aviation Leasing Body Downgrades India in Light of Go First Case' (*Business Standard*, 25 September 2023) <https://www.business-standard.com/india-news/unable-to-repossess-planes-from-go-first-awg-further-downgrades-india-123092501223_1.html> accessed 5 December 2025.
[47] *Swiss Ribbons Pvt Ltd v Union of India* [2019] 4 SCC 17.
[48] [1952] AIR 75.

College v State of Madhya Pradesh[49] held that restrictions must be proportionate to their intentions. Thus, preventing a backdoor re-entry of defaulting promoters is a valid aim, but excluding genuine entrepreneurs discourages entrepreneurship in infrastructure-based industries and forces sustainable businesses into bankruptcy for lack of sector-specific knowledge among third-party resolution applicants. Additionally, there has been a judicial acknowledgement of context failure. In *Swiss Ribbons Pvt Ltd v Union of India,*[50] the Supreme Court retained Section 29A but observed: "Business failures may happen due to extraneous causes. Parliament's sagacity is in striking a balance of interests." The *Flat Buyers Association* decision of the NCLAT implicitly recognised this by excluding real estate promoter exceptions.

To bring Section 29A in line with constitutional protections without compromising the integrity of the IBC, our proposal is that a three-tier mechanism for promoter inclusion must be introduced in resolution proceedings. In such a mechanism, wilful defaulters and fraudsters would be subject to absolute exclusion from eligibility to participate in reverse CIRP, with NCLT monitoring to ensure strict enforcement of this exclusion. Non-wilful defaulters would be permitted to participate subject to conditions, with an independent audit confirming their default's bona fide business nature and acceptance of personal liability undertakings as part of their revival proposals. Moreover, sector-critical sectors like aviation and infrastructure would be accorded priority for access to participate in the resolution of their companies, along with performance-based milestones to be achieved and escrow account

[49] [2016] 3 SCR 579.
[50] *Swiss Ribbon* (n 47).

arrangements to provide tangible protection for creditor interests during restructuring.

V. CONCLUSION

The recent aviation sector failures have starkly exposed the inherent limitations of India's one-size-fits-all insolvency regime. As illustrated through the cases of Jet Airways and Go First, the traditional CIRP methodology essentially is at odds with the working realities of airlines, where value is not predominantly kept in physical assets but in continuity-reliant intangibles that quickly depreciate amid suspended operations. This paper has shown that the "continuity premium" in aviation, consisting of route rights, airport slots, technical workforce certifications, and regulatory approvals is an inherently distinct category of value that liquidation-oriented insolvency paradigms cannot support. The Reverse CIRP model, initially developed in the context of real estate insolvencies, presents a promising alternative paradigm that recognises this difference by emphasising operational continuity over creditor control in some instances. Furthermore, foreign precedents from the US Chapter 11 process, UK Company Voluntary Arrangements, and Germany's Debtor-in-Possession model demonstrate how continuity of operations, made possible with controlled promoter participation, can result in extremely favourable outcomes in aviation insolvencies.

While the Section 29A disqualification provisions of the promoter are intended to achieve a reasonable objective of preventing fraudulent re-entries, indiscriminate application in different industry segments creates unintended implications that may arouse constitutional concerns under Article 14. To address these, we suggest a three-tier approach that is more

proportionate and discriminates between wilful defaulters and those facing genuine business failures, thus balancing creditor protection with value preservation. Thus, the economic benefits of such an approach, resulting in preservation of asset values, speedier resolution timelines, and maintenance of regulatory approvals, form a strong case for allowing selective exceptions to the otherwise prohibition on promoter participation.

By placing reverse CIRP not as an exception to Section 29A but as an acknowledgement of a fundamentally different form of value, Indian insolvency law can be made to address the particular challenges of continuity-dependent industries. It is consistent with the IBC's ultimate objectives of value maximisation and effective resolution and acknowledges the operational realities that define the aviation industry's insolvency environment. Thus, as India's aviation sector soars to new heights, can its insolvency framework afford to remain grounded in outdated approaches?