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Collision Course or Clear Skies?: Realigning the IBC and the Cape Town Convention through India's Aircraft Objects Act 2025

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ABSTRACT

*Frequent insolvencies in India's aviation sector have exposed a critical conflict between the nation's debtor-centric insolvency framework and the rights of international aircraft lessors. The imposition of a moratorium under the Insolvency and Bankruptcy Code, 2016 (**IBC**), has created significant uncertainty by impeding the timely repossession of aircraft, thereby increasing financing costs and risk for foreign investors. To alleviate these issues, India's ratification of the Cape Town Convention (**CTC**) via the new Protection of Interests in Aircraft Objects Act, 2025 (**AoA**) presents a transformative solution. The AoA domesticates an international treaty framework designed to secure creditors' interests in high-value aircraft assets, enabling swift remedies in cases of default. It holds immense potential to streamline aircraft repossession by creating a clear, time-bound process that overrides the IBC's moratorium. In light of this, the paper critically explores the integration of the AoA into India's legal system, focusing on the resulting tensions and harmonisation challenges. The premise is an analysis of the new legislation as an "Indianised CTC", a selective*

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*adoption of the convention tailored to India's domestic priorities. This Act emerges as a holistic remedy for the specific infirmities of the aviation insolvency regime, in contrast to previous ad-hoc judicial or regulatory measures. The paper further addresses the need for legislative consistency to ensure regulatory compliance. Judicial pronouncements and legislative provisions are analysed for issues relating to creditor priorities, the role of the Irrevocable Deregistration and Export Request Authorisation (**IDERA**), jurisdictional shifts, and enforcement mechanisms. Ultimately, it accentuates that the new framework's success is contingent on coherent implementation and harmonisation with domestic law to rectify legal and operational hurdles in cross-border aviation finance.*

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I. INTRODUCTION

The National Company Law Tribunal (**NCLT**) has ordered the liquidation of GoFirst Airlines following a unanimous decision of the Committee of Creditors (**CoC**) on January 20, 2025,[1] which was later upheld by the National Company Law Appellate (**NCLAT**) Tribunal in April 2025.[2] Consequently, GoFirst joins the long list of over fifteen airlines that have entered insolvency proceedings in the past two decades, from Kingfisher Airlines to Jet Airways.[3] It signals not just the fragility of the Indian aviation sector, but also the issues inherent in the aviation insolvency framework. In India, an airline's collapse is not limited to financial plight. The real issue arises when it becomes entangled with the moratorium period enforced under Section 14 of the IBC, which prevents the aircraft lessors from gaining possession until the Corporate Insolvency Resolution Period (**CIRP**) expires.[4]

The IBC inherently characterises India's insolvency regime as debtor-friendly. The existence of Section 14 is one such example. In *Swiss Ribbons Pvt Ltd v. Union of India*, the Supreme Court ruled that the primary object of the IBC is not the recovery of debt, but the revitalisation of companies and the continuation of the corporate debtor as a going

[1] *Shailendra Ajmera v. Go Airlines (India) Ltd., 2025 SCC OnLine NCLT 3.*
[2] SN Thyagarajan, 'NCLAT Upholds Go First Liquidation but Leaves Open Narrow Window for Revival' (*Bar and Bench*, 4 April 2025) <https://www.barandbench.com/news/litigation/nclat-upholds-go-first-liquidation-but-leaves-open-narrow-window-for-revival> accessed 2 May 2026.
[3] Thejas Velaga and Aastha Gupta, 'Airline Insolvency in India: Balancing Interests Between the Insolvency and Bankruptcy Code and the Cape Town Convention' (2024) 17 *NUJS Law Review* 61, 65.
[4] Insolvency and Bankruptcy Code, 2016, No. 31 of 2016, s 14.

concern.[5] While such an approach favours the debtors, it often leads to ignorance of the interests of the creditors, more particularly, in the present case, the lessors' interests in asset-heavy but lease-dependent sectors such as aviation. Lessors find themselves unable to repossess their aircraft from the corporate debtor even after termination of their lease arrangements. This is the pressing issue behind this paper. For example, in GoFirst's insolvency, several lessors invoked their IDERA to deregister and export their aircraft. However, the Directorate General for Civil Aviation (**DGCA**) refused their plea due to the imposition of a moratorium, leaving their interests stranded.[6]

Additionally, the problem gets exacerbated as India, despite signing the Convention on International Interests in Mobile Equipment[7] (**Cape Town Convention/CTC**) and the Aircraft Protocol in 2008,[8] never ratified them.[9] Although, by virtue of a notification dated October 3, 2023, the Central Government created an exception to the application of the moratorium on aircraft objects and related arrangements.[10] This step

[5] *Swiss Ribbons Pvt Ltd v. Union of India,* AIR 2019 SC 739.
[6] Sukalp Sharma, 'Lessors Move to Seize Go First Aircraft: How Does the IDERA Process Work?' (*The Indian Express*, 5 May 2023) <https://indianexpress.com/article/explained/explained-economics/lessors-seize-go-first-aircraft-idera-process-8593853/> accessed 2 May 2026.
[7] Convention on International Interests in Mobile Equipment (adopted 16 November 2001, entered into force 1 March 2006) 2307 UNTS 285.
[8] Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (adopted 16 November 2001, entered into force 1 March 2006) 2367 UNTS 561.
[9] Tanay Dubey, 'India's Commitment to the Cape Town Convention: A Recent MCA Notification' (*IndiaCorpLaw*, 8 October 2023) <https://indiacorplaw.in/2023/10/08/indias-commitment-to-the-cape-town-convention-a-recent-mca-notification/> accessed 2 May 2026.
[10] Ministry of Corporate Affairs, 'Notification No GSR 790(E), Companies (Incorporation) Third Amendment Rules 2023' (*Gazette of India*, Extraordinary, Part II, 21 October 2023).

was hurriedly prompted due to the issues evident in GoFirst insolvency crisis.[11] Such a step required a more legislative approach that has now materialised in the form of the Protection of Interests in Aircraft Objects Act, 2025 (**Aircraft Objects Act/AoA/the Act**), which formally gives effect to the CTC and the Aircraft Protocol in India.[12]

The Act aims to integrate the provisions of the CTC into Indian law. It, *inter alia,* enables the creation and registration of international interests in aircraft and provides a menu of remedies to the creditors in case of default, positing itself as a creditor-friendly framework. Under the Act, India accedes to the Alternative A Protocol, which provides possession to the aircraft lessor within 60 days of the initiation of the CIRP process.[13] This appears to be a welcome step for the international aircraft lessors. Importantly, the Act contains a non-obstante clause, meaning the Act holds overriding effect over other laws, such as the IBC.[14] This inclusion aims to resolve the infirmities previously highlighted in the aviation insolvency regime, but can potentially lead to more conflicts. However, India has not adopted the Convention wholesale. It has selectively incorporated provisions, retaining certain domestic priorities such as employee wage liens, repairer's liens, and tax-related charges,[15] which may still outrank registered international interests. These changes have culminated in the Act not being a replica of the Convention, however, an

[11] Arushita Singh, 'Moratorium Exemption to Aircraft Deals: A Welcome Move By The Government' (*CBCL,* 29 December 2023) <https://cbcl.nliu.ac.in/insolvency-law/moratorium-exemption-to-aircraft-deals-a-welcome-move-by-the-government/>accessed 2 May 2026.
[12] Protection of Interests in Aircraft Objects Act 2025 (India) No 17 of 2025, Preamble.
[13] ibid, s 6.
[14] ibid s 9.
[15] ibid.

'Indianised CTC', catering to the existing problems in the aviation insolvency regime in India.

This paper is structured as follows. Part I traces the trajectory of airline insolvencies in India, from Kingfisher to Go First, explaining how repeated failures exposed the incompatibility between the IBC's debtor-centric moratorium and lessor rights. Part II examines the Cape Town Convention as a key part of India's aviation finance regime, explaining its framework of international interests and its place within muicipal law. It also considers relevant judicial decisions on taxation and treaty interpretation that influence the fiscal and regulatory position of lessors.. Part III analyses the Protection of Interests in Aircraft Objects Act, 2025 as an *'Indianised CTC'*, highlighting its legislative framework, selective adoption of treaty provisions, and recognition of IDERA rights, while balancing creditor protections against domestic priorities. Part IV addresses the intersections between the Act and the IBC, focusing on the *'any insolvency regime'* clause, the narrowing of International Institute for the Unification of Private Law (**UNIDROIT**) principles, and the vesting of jurisdiction in High Courts, revealing how reforms aimed at certainty may themselves generate interpretive tensions. Part V assesses the long-term implications of India's CTC regime while examining drafting ambiguities and CTC amongst the growing trend of wet leasing. The paper concludes on a hopeful note that coherence and harmonisation remain decisive for the framework's success.

II. STRUCTURING CAPITAL IN THE SKIES: THE INDIAN AVIATION FINANCING ECOSYSTEM

India's aviation market has been proliferating and is the 5th largest aviation market globally.[16] The Government is also at the forefront of increasing domestic passenger footfall with schemes like *Ude Desh Ka Aam Nagrik* (**UDAN**)[17], which has helped further the rise of new regional entrants like FlyBig, Fly91 and Star Air, taking the total number of airlines operating in India to 85[18]. Alongside this, the Government has also pushed for the development of greenfield airports and major airport expansion projects across the country to cater to the growing demand[19].

The peculiarity in the Indian aviation market is that around 85% of the total aircraft operating in India are leased,[20] and this expanding system requires a robust financial leasing ecosystem in the country as well as a transparent framework for cross-border transactions, as almost all of the lessors and the manufacturing companies of these aircraft, which are

[16] India Emerges as World's 5th Biggest Aviation Market in 2024' (*News on Air*, 5 August 2025) <https://www.newsonair.gov.in/india-emerges-as-worlds-5th-biggest-aviation-market-in-2024/> accessed 2 May 2026.

[17] Press Information Bureau, 'UDAN Scheme – Connecting India, One Flight at a Time' (Ministry of Civil Aviation, 26 April 2025) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2124459&reg=3&lang=1> accessed 2 May 2026.

[18] 'Indian Aviation Market Data' (*OAG*, August 2025) <https://www.oag.com/indian-aviation-data> accessed 2 May 2026.

[19] Department-Related Parliamentary Standing Committee on Transport, Tourism and Culture, *Report No 350: Development of Greenfield and Brownfield Airports and Issues Pertaining to Civil Enclaves in Defence Airports* (Rajya Sabha Secretariat, 24 July 2023) <https://sansad.in/getFile/rsnew/Committee_site/Committee_File/ReportFile/20/173/350_2023_7_11.pdf?source=rajyasabha> accessed 2 May 2026.

[20] 'Aircraft Leasing in India: Ready to Take Off, (*PwC India* 2021) <https://www.pwc.in/assets/pdfs/research-insights/2021/aircraft-leasing-in-india-ready-to-take-off.pdf> accessed 02 May 2026.

leased, are outside India's jurisdiction. Given this scenario, it becomes imperative that India develop a robust aviation financing ecosystem. This Part begins by analysing the broader framework of aircraft financing, and then turning to newer judicial developments on subject matters, though not confined strictly to aviation, demonstrate how wider developments in this instance, taxation and beneficial ownership, shape the leasing ecosystem. This is followed by an examination of leasing structures, particularly dry and wet leases and their intersection with financing practices after India's ratification of the CTC. Finally, the section assesses policy initiatives such as the GIFT City leasing hub, underscoring that India's framework remains fragmented, a patchwork of international obligations and domestic rules that will be critically evaluated in Part V.

A. The Cape Town Convention in International Aviation Finance, Parallels in India

The primary statute post ratification for aviation financing in India is the CTC, through the AoA. It lays down the general principles governing asset-based financing. Its application, however, is not universal across all equipment categories; rather, it becomes operative in respect of a specific class of equipment only upon the coming into force of a Protocol tailored to that category. The CTC is primarily based on the idea of *'international interests'*. An international interest is an interest held by a creditor in a uniquely identifiable object and may arise in three specific instances: *firstly*, when it is granted by a chargor under a security agreement.[21] This security arrangement allows a creditor to take an

[21] Convention on International Interests in Mobile Equipment (n 7) art 2(2)(a).

interest in an aircraft to secure obligations which are either through ownership transfer, a charge, or a lien.[22] The second instance is where it vests in a conditional seller under a title reservation agreement.[23] This sells an aircraft but delays ownership transfer until conditions are met, and alternatively, ownership vests in a lessor under a lease, granting the lessee possession or control for payment. For an international interest to be constituted, the agreement must be in writing, create or provide for the interest, relate to an object over which the chargor, conditional seller, or lessor has power of disposition, and identify the object in accordance with the applicable Protocol[24]. In the case of a security agreement, the secured obligations must be determinable, though not stated as a fixed sum.[25] The CTC therefore operates as an inward-looking mechanism, applying its own definitions even where domestic law characterises an agreement differently. For instance, if an Irish owner leases an aircraft to an Indian airline with an option to purchase at the end of the term for a nominal sum, as in a typical financial lease, Indian law might view it as a disguised sale with a security interest. Yet, under the Convention, it remains a leasing agreement, entitled to its protections.[26] Importantly, such contracts must not overlap with existing *'international interests,'* as in final payments, title-transfer conditions, or purchase options under a lease, where the sale effectively takes place.[27]

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[22] Convention on International Interests in Mobile Equipment (n 7) art 1(ii).
[23] Convention on International Interests in Mobile Equipment (n 7) art 2(2)(b).
[24] Convention on International Interests in Mobile Equipment (n 7) art 7.
[25] Convention on International Interests in Mobile Equipment (n 7) arts 1(nn), 7(a)–(d), Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (n 8) arts V(1)(a)–(c), VII.
[26] Roy Goode, *Cape Town Convention and Its Protocols: Official Commentary* (rev ed, UNIDROIT 2014) para 2.51.
[27] *ibid.*

Undoubtedly, the greatest controversy surrounding the absence of the CTC has concerned its treatment of *'defaults'*. All remedies under the Convention, except for insolvency remedies, depend on the occurrence of a default. Article 11 allows the debtor and creditor to agree in writing on what events count as a default or trigger the rights and remedies in Articles 8 to 10, which deal with final recovery and disposition of aircraft objects and Article 13, which covers advance relief while matters are being decided.[28] Since financing and leasing agreements already define defaults, they rarely need modification. Under Article 11, no materiality threshold applies, and any agreed event, from internal risks to external factors like tax changes, can trigger remedies.[29] Article 42 of the CTC allows parties to select a forum for dispute resolution, either exclusively or non-exclusively, even if unrelated to the subject matter.[30] Aligning jurisdiction with governing law ensures predictability. Under Article 43, limited jurisdiction exists where the aircraft object is situated. [31]In India, Section 8 of the AoA designates High Courts as competent authorities. This will be dealt with in detail in Part IV in an elaborate fashion.

B. Interpreting Recent Judicial Pronouncements in Shaping India's Aviation Ecosystem

Therefore, it is now established that the Cape Town Convention constitutes a significant component of the aviation ecosystem following its ratification in April 2025. However, as noted in the preceding

[28] Convention on International Interests in Mobile Equipment (n 7) arts 8–11, 13.
[29] VIKRANT PACHNANDA, A GUIDE TO INDIA'S AVIATION LAW (Thomson Reuters 2023).
[30] Convention on International Interests in Mobile Equipment (n 7) art 42.
[31] Convention on International Interests in Mobile Equipment (n 7) art 43.

paragraphs, the concept of the Dispute Resolution Mechanism is pervasive, extending beyond the CTC to the broader framework of aviation financing. This section examines recent developments that, while not directly linked to the CTC, illuminate the wider contours of aviation financing through key instruments, including taxation.

A key aspect of India's aviation finance framework is the tax-treaty treatment of financing receipts, as interest from these leasing transactions acts as a major revenue source for lessors. A key pillar in this context is the protection given to these lessors in the form of *Double Taxation Avoidance Agreement (***DTAA***),* which plays a crucial role in determining whether such income is taxable in India or exempt under treaty provisions. This was notably tested recently by the Delhi Income Tax Appellate Tribunal (**ITAT**), which addressed how such provisions apply to aviation-finance receipts.[32] The main dispute arose over whether the income that was earned by *Celestial Aviation*, an Irish group entity leasing aircraft to Indian airlines, was entitled to a tax exemption on its interest income from Indian airline companies. The key was interpreting Article 11(3)(c) of the India-Ireland DTAA, which grants a tax exemption to interest derived by a resident of a contracting state *'carrying on business as a bank or similar enterprise*' in the ordinary course of its business.[33] Celestial Aviation argued it was not a bank, since it neither took public deposits nor lent to the public. It claimed the interest was

[32] *Celestial Aviation Trading 15 Ltd. v. Asstt. CIT, International Taxation,* (2025) 176 taxmann.com 902.

[33] Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains (India–Ireland) (adopted 6 November 2000, entered into force 26 December 2001) *Gazette of India*, Extraordinary, Part II, s 3(ii), 20 February 2002.

connected to an Indian Permanent Establishment(**PE**), taxable as business income under Article 7 of the DTAA.

The ITAT held that DTAAs should be interpreted not by strict municipal law definitions but by their purposive context and international norms, and sided with Celestial,[34] the right to tax under Article 11 lies exclusively with Ireland and not India, which provides a useful framework for interpreting and construing Article 11 of the India-Ireland DTAA. It ruled that aircraft leasing, which involves structured lending and financing, is a '*banking-like'* activity. Moreover, the phrase *'similar enterprise*' was already broad enough to include the assessee, as it was engaged in this business in the ordinary course. The ruling stabilises India's tax regime for foreign lessors, aligns it with global standards, and reduces risk, encouraging direct airline financing.

The Mumbai ITAT bench also soon followed suit in *Sky High Leasing Company Ltd. v. ACIT,*[35] which was also an interpretation of the India-Ireland DTAA. The core of this dispute revolved around a simple yet profound question: Can a global anti-abuse measure like the Multilateral Instrument (**MLI**) be applied to an existing tax treaty without a specific domestic notification?[36] The lessor was *SkyHigh*, which had leased three aircraft to *IndiGo*. The Assistant Commissioner of Income Tax (**ACIT)**

[34] DC Agrawal, 'ITAT Delhi Clarifies Scope of Article 11(3)(c) in India–Ireland DTAA' *Celestial Aviation Trading 15 Ltd* [2025] 177 Taxmann International Taxation (18 August 2025).
[35] *Sky High Leasing Company Ltd. v. ACIT,* (2025) 177 taxmann.com 579 (Mumbai - Trib.).
[36] Vijay Gupta, 'MLI Provisions Unenforceable Sans Separate Notification: ITAT Mumbai' (*Taxguru*, 22 July 2024) <https://taxguru.in/income-tax/mli-provisions-unenforceable-sans-separate-notification-itat-mumbai.html> accessed 2 May 2026.

sought to use the Principal Purpose Test (**PPT**) from the MLI to deny DTAA benefits to the lessor, arguing that separate notifications of the India-Ireland DTAA and the Multilateral Instrument (**MLI**)under Section 90(1) meant the MLI automatically modified the DTAA, citing the *'synthesised text'* as evidence. The ITAT rejected this reasoning and held that a separate, specific notification under Section 90(1) is essential to give effect to the MLI's modifications for a particular DTAA. The ITAT relied heavily on the precedent set by the Hon'ble Supreme Court in *Assessing Officer (I.T.) v. Nestlé SA,*[37] which held that a tax treaty or any subsequent modification is not self-executing and cannot be enforced domestically without a specific government notification incorporating it into Indian law[38]. The Tribunal emphasised that the *'synthesised text'* is merely an explanatory aid and has no binding legal force.[39] The Mumbai and Delhi ITAT rulings highlight the friction between the government's restrictive stance, particularly on MLI provisions and *'place of business'* and the facilitation of India's aviation finance ecosystem.

III. INDIANISING THE CAPE TOWN CONVENTION: THE AIRCRAFT OBJECTS ACT IN FOCUS

The AoA gives official recognition to the CTC and its Aircraft Protocol, making India recognise the international principles envisaged in them.

[37] *Assessing Officer (I.T.) v. Nestlé SA,* (2023) 458 ITR 756.
[38] Amod Khare and others, 'MLI Provisions Unenforceable Without Separate Notification: Mumbai ITAT Rejects Tax Authority's Attempt to Deny DTAA Benefit Using Principal Purpose Test' (*Alvarez & Marsal*, 29 August 2025) <https://www.alvarezandmarsal.com/insights/mli-provisions-unenforceable-without-separate-notification-mumbai-itat-rejects-tax-authority-s-attempt-to-deny-dtaa-benefit-using-principal-purpose-test> accessed 2 May 2026.
[39] 'ITAT Rules PPT Inapplicable Without MLI Notification' (*Taxmann*, 29 August 2025) <https://www.taxmann.com/post/blog/itat-rules-ppt-inapplicable-without-mli-notification> accessed 2 May 2026.

Perhaps the most unique feature of the Act is that its recognition comes with certain reservations by India. Therefore, the act is labelled as *'Indianised'* CTC, where an attempt has been made to incorporate the interests of the aircraft lessors, whose interests have long been ignored under the IBC. At the same time, it attempts to address the long-standing tussle between the IBC and the CTC. In this regard, this Part undertakes a closer analysis of the Aircraft Objects Act. It begins by analysing its legislative framework and key provisions. It then turns to the selective adoption of the Convention and Protocol, examining both the departures and their rationale. Finally, it considers the implications of this selective adoption for insolvency proceedings under the IBC, with particular focus on lessor rights, creditor priorities, and cross-border enforcement.

A. Legislative Framework and Key Provisions

i. Preamble and the Definitional Clause

The Preamble of the Act sets out the legislative intent of the AoA, where the twin-fold objectives of the Act are apparent where one being to secure the creditors and lessors' interests in high-value aircraft assets, and second, to give domestic effect to India's international obligations under the CTC and the Aircraft Protocol.[40] The underlying sections aim to operationalise this very intent. For instance, under Section 3 of the Act, the Convention and Protocol shall have the force of law in India, subject to the declarations deposited by the Government.[41] The preamble also includes the phrase '*any matter incidental thereto'*. The reason behind such inclusion is not merely to transplant the Convention and Protocol

[40] Protection of Interests in Aircraft Objects Act, 2025, (n 12) Preamble.
[41] Protection of Interests in Aircraft Objects Act, 2025, (n 12) s 3.

into Indian law, but also to regulate related questions that arise in their application within the domestic framework.

At the outset, a glance at the definition clause reveals that the Act derives primarily from the CTC and the Aircraft Protocol itself, instead of carving out separate domestic definitions. For instance, terms like *'aircraft objects', 'international interest', 'creditor', 'debtor',* and *'declared default'* all flow directly from these two frameworks.[42] While definitions of the terms *'creditor'* and *'debtor'* have been mentioned in other Indian legislations,[43] the Act diverges from referencing any Indian legislation and, therefore, gives primacy to the Convention and the Protocol. This can be perceived as a wiser step, as it will prevent any definitional ambiguity in future, particularly in cross-border transactions.

ii. IDERA in Focus

In Part II, it was noted that the Act incorporates the CTC's conception of '*international interests'* covering security agreements, conditional sales, and leases and accords them priority once registered in the International Registry. In this backdrop, the IDERA mechanism is relevant. Section 7 of the Act addresses this matter. IDERA empowers a lessor or secured creditor, once designated as the IDERA-holder with the DGCA, to unilaterally seek deregistration and export of the aircraft if the debtor defaults.[44] In theory, this makes repossession swift and less dependent on domestic litigation. However, under IBC, this mechanism has been

[42] Protection of Interests in Aircraft Objects Act, 2025, (n 12) s 2.
[43] Insolvency Bankruptcy Code, 2016, No. 31 of 2016, §3(8), §3(10).
[44] Dean N Gerber and David R Walton, 'De-Registration and Export Remedies under the Cape Town Convention' (2014) 3 Cape Town Convention Journal 49, 54.

marred by conflicts with two of the most notable cases on this aspect. In *Awas 39423 Ireland Ltd. v. DGCA*[45] (***Awas Ireland***), the Delhi High Court clearly demarcated deregistration as a *'ministerial act'*, giving lessors the confidence that repossession could be achieved swiftly. However, the introduction of the IBC in 2016 altered this balance. In aviation, where most aircraft are leased, insolvency rules often block lessors from reclaiming their planes, giving tribunals the power to override their rights. This power creates a *chilling effect* on the international lessors to contract with Indian airlines. The GoFirst case shows how lessors, even with IDERAs, lost out when a moratorium took priority over their claims.[46] The Resolution Professional (**RP**) argued that since the aircraft were in the possession of the airline at the commencement of CIRP, having an operating lease structure, they fell squarely within Section 14(1)(d), even though ownership remained with the lessors. This interpretation meant that IDERA, a device designed to guarantee repossession regardless of insolvency, was subordinated to the Code's debtor-centric approach. The Delhi High Court's observations in *Accipiter Investments Aircraft v. Union of India*[47] (***Accipiter Investments***) further exposed the fault line. Lessors relied on Rule 30(7) of the Aircraft Rules,[48] which states that the DGCA *'shall'* deregister an aircraft within five working days of an IDERA request. Yet, the Court

[45] *AWAS 39423 Ireland Ltd. & Ors. v. Directorate General of Civil Aviation & Anr.,* 2015 SCC OnLine Del 8177.

[46] Adv Nivedi Dutta and Sankalp Mirani, 'Go First Case Analysis and the Current Complexities in IBC and Arbitration' (*IBC Laws*, 29 April 2025) <https://ibclaw.in/go-first-case-analysis-and-the-current-complexities-in-ibc-and-arbitration-by-adv-nivedi-dutta-and-sankalp-mirani/> accessed 2 May 2026.

[47] *Accipiter Investments Aircraft Ltd v Union of India & Anr,* (2024) SCC OnLine Del 3125.

[48] Aircraft Rules, 1937, Gazette of India, pt. I, sec. 3, r 30(7) (Ind.).

could not ignore Section 238 of the IBC, which grants the Code an overriding effect '*notwithstanding anything inconsistent therewith contained in any other law*'. In practice, the High Court refrained from compelling deregistration, recognising that insolvency proceedings fell within the NCLT's exclusive jurisdiction under Section 63. This led to a decline in India's aviation credit index.[49] Nevertheless, the overriding effect of the Act may provide some relief. However, a detailed discussion on this part is carried out in the upcoming section.

iii. Debt, Default and Jurisdiction: New Dimensions

Sections 5 and 6 of the Act impose respective procedural obligations upon the debtor and the creditor.[50] Earlier in the IBC, such obligations were the responsibility of the RP. In practice, the provision ensures that lessors and financiers have an auditable, contemporaneous record of payment defaults, which becomes crucial in lease-heavy aviation cases where disputes over arrears have been a recurring feature. On the creditor's side, Section 5(2) imposes a notice obligation, i.e., remedies under the Convention or Protocol cannot be exercised unless default has been formally declared and notified to the registry authority. It can lead to avoiding the multiplicity of proceedings of the same matter before different courts or tribunals.

Section 7 of the Act departs significantly from the earlier settled practice[51]. Post IBC, the financial creditor or the corporate debtor could

[49] Rohit Kapoor, 'Airline Insolvency in India & Ratification of the Cape Town Convention', *(IBC LAWS* 4 April 2025) <https://ibclaw.in/airline-insolvency-in-india-ratification-of-cape-town-convention-by-rohit-kapoor-judicial-member-nclt-fmr-senior-advocate/>accessed 2 May 2026.
[50] Protection of Interests in Aircraft Objects Act, 2025, (n 13) ss 5-6.
[51] Protection of Interests in Aircraft Objects Act, 2025, (n 13) s 7.

file for insolvency before the NCLT. However, this Act entrusts adjudicatory jurisdiction to the High Courts, excluding the NCLT/NCLAT. There could be numerous reasons for this shift. Majorly, the heavy backlog of cases faced by these two tribunals is uncontested. Past experiences have also highlighted this issue. For instance, although the set timeline under IBC for such cases is 330 days,[52] in Jet Airways case, the matter crossed even beyond this time period, which even hampered the cross-border matter in the Netherlands. Additionally, unlike the NCLT, which is a creature of statute with limited powers, the High Courts have writ jurisdiction under Articles 226 and 227, enabling them to issue directions to regulators like the DGCA.[53] The *Awas case* might have been the inspiration to give the jurisdictional power to the High Courts, as the order ruling the deregistration to be a *'ministerial'* act was passed by the Delhi High Court itself. A cross-border look also reveals that the decision is a welcome step. Singapore has also formally declared under Article 53 of the Convention that the High Court of the Republic of Singapore is the relevant court for CTC matters.[54] Under the UK regime as well, such matters are heard by the Commercial Courts after orders of the Civil Aviation Authority.[55]

[52] Insolvency and Bankruptcy Code, 2016, No 31 of 2016, s 12(3).
[53] *Accipiter Investments Aircraft Ltd v Union of India & Anr, (2024) SCC OnLine Del 3125.*
[54] *'Declarations Deposited under the Cape Town Convention on International Interests in Mobile Equipment Relating to Article 53' (UNIDROIT) <https://www.unidroit.org/instruments/security-interests/cape-town-convention/depositary/declarations-arranged-by-article-deposited-under-the-cape-town-convention-on-international-interests-in-mobile-equipment-4/article-53/> accessed 2 May 2026.*
[55] *ibid.*

B. Selective Adoption of the CTC and the Protocol

The phrase '*Indianised CTC*' is indicative that although the provisions of the CTC and the concerned protocol have been ratified by India by virtue of Article 253 of the Constitution,[56] India makes certain declarations as per Section 3 of the AoA. India has only acceded to some provisions of the CTC given after the sections in the Act. *Firstly*, India has formally adopted Alternative A, which provides a two-month waiting period for insolvency, thereby giving creditors a time-bound route to possession if defaults are not cured. It has not adopted Alternative B or the more robust interim remedies that several creditor lobbies favour. This reduces the risk involved in financing aircraft and, in turn, lowers the cost of aircraft leases.[57] This is a conscious balance between rescue space for the debtor and the RP and certainty for asset financiers and lessors. Alternative A has been consistently observed as the global market standard, with countries like Dubai, Singapore and Australia adopting Alternative A and accommodating a breathing space in insolvency.[58] The government's post-Go First policy signalling and the October 3, 2023, MCA notification exempting CTC aircraft from IBC moratorium effects show the same balancing instinct.[59]

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[56] INDIA CONST art 253.
[57] Jason Kilborn, 'Thou Canst Not Fly High with Borrowed Wings: Airline Finance and Bankruptcy Code Section 1110' (1999) 8 George Mason Law Review 63, 64.
[58] UNIDROIT, Note No. 53.
[59] Ministry of Corporate Affairs, 'Notification No GSR 790(E), Companies (Incorporation) Third Amendment Rules 2023' (*Gazette of India*, Extraordinary, Part II, 21 October 2023).

Under Schedule III of the AoA[60], India has reserved special powers to elevate specified non-consensual domestic liens, namely, employee wage liens, tax/airport/air navigation service provider (**ANSP**) charge liens, and repairers' liens over registered international interests, both inside and outside insolvency. The problem of non-payment of wages is not new. When Kingfisher Airlines or Jet Airways went bankrupt, many employees faced difficulties in receiving their entitled remuneration.[61] Employee wage liens ensure that workers, particularly airline staff such as pilots, engineers, and ground crew, are not left without recourse when a carrier collapses. This is certainly a welcome step in a highly volatile job market such as India, where, owing to the sheer size of the available workforce, employee rights, particularly with respect to the non-payment of wages, are often neglected or overlooked. In many cases, employees are compelled to shift to other airlines while their previous dues remain unsettled. By securing employee claims, the framework may help avert scenarios such as the ongoing strike by Air Canada employees[62] or similar incidents in the past where prolonged labour disputes ultimately culminated in the cessation of airline operations. Taxes and airport/ANSP charges like landing, parking, and navigation fees are compulsory exactions funding regulatory functions and are non-negotiable. Repairers' liens protect MRO providers who ensure

[60] Protection of Interests in Aircraft Objects Act, 2025, (n 13) Sch. 3.
[61] Manju V, 'Kingfisher Airlines Employees Raise Unpaid Salary Issue in Open Letter to PM' (*The Times of India*, 19 June 2018) <https://timesofindia.indiatimes.com/business/india-business/kingfisher-airlines-employees-raise-unpaid-salary-issue-in-open-letter-to-pm/articleshow/64648967.cms> accessed 2 May 2026.
[62] Leyland Cecco, 'Flight attendant union leaders 'ready to go to jail' as Air Canada strike outlawed', (*The Guardian,* Aug. 18, 2025) <https://www.theguardian.com/world/2025/aug/18/air-canada-flight-attendants-strike-illegal> accessed 2 May 2026.

airworthiness; without priority, they may withhold credit or services, endangering aviation safety. This lien becomes even more necessary in light of the recent unfortunate AI-171 tragedy at Ahmedabad.[63] The same is also regulated and approved under the Convention as it expressly confers power on the Contracting States to insulate certain non-consensual claims from being displaced by the *'first-to-register*' rule of Article 29.[64]

However, such reservations must have been based on certain evidence as to why some provisions of the CTC were not incorporated; therefore, the genesis of the term '*Indianised CTC*'. Although there is no explicit evidence in this regard, a closer look at the background of the issue provides a clear picture. First evidence arose from the *Awas Ireland* case, which effectively restricted the authority of the DGCA once an IDERA invoked his rights. Second evidence can be attributed to the shift in the position of the *Awas Ireland* case brought by the GoFirst insolvency matter, where the RP and the NCLT both read Section 14 literally, since the aircraft were physically with Go First at the commencement of CIRP, they were caught by the stay, even though the lessors retained ownership and had exercised IDERA rights. Most importantly, attention could be paid to the *Accipiter Investments* case that laid bare the statutory fault-line. Rule 30(7) of the Aircraft Rules states that the DGCA *shall* deregister an aircraft within five working days of a valid IDERA request.[65] Lessors argued this created a mandatory, time-bound

[63] 'How Air India plane crashed in Ahmedabad: Final moments of AI171' (*The Hindu* 14 July 2025) <https://www.thehindu.com/news/national/final-moments-before-ahmedabad-air-india-plane-crash/article69803943.ece> accessed on 2 May 2026.
[64] Convention on International Interests in Mobile Equipment (n 7) art 29.
[65] Aircraft Rules 1937 (India) r 30(7).

obligation. The Delhi High Court, however, stopped short of enforcing it once insolvency had intervened, noting that Section 238 of the IBC gives it an overriding effect *'notwithstanding anything inconsistent therewith contained in any other law*'.

Besides these jurisprudential deadlocks, the non-adoption of certain provisions also paints the picture of subtle evidence. India opted for Alternative A, instead of Alternative B, as the latter requires the debtor or insolvency administrator to give the court a choice either to cure defaults or preserve the aircraft's value, meaning thereby it is more creditor-aggressive and often reduces judicial discretion.[66] It reflects that while India honours CTC's creditor-protection ethos, it does so within its own judicial and institutional framework. In effect, the AoA internalises CTC rules into Indian law but resists the idea of ceding control to foreign insolvency regimes or opening the door to foreign courts exercising supervisory authority over Indian airlines. Comparatively, this model mirrors the exceptionalist carve-outs seen in other CTC jurisdictions. In the UK, the Corporate Insolvency and Governance Act 2020 (**CIGA**) introduced broad restrictions on '*ipso facto*' termination clauses but carved out an exemption for aircraft finance contracts,[67] thus preserving CTC repossession rights. These examples illustrate how Contracting States tailor the Convention's remedial machinery to their domestic institutional structures.

[66] Thejas Velaga, (n 3).
[67] Corporate Insolvency and Governance Act 2020 (UK) c 12.

IV. THE INSOLVENCY CONUNDRUM: INTERSECTIONS OF THE AOA AND THE IBC

There is no doubt that this newly enacted legislation will inevitably conflict with the IBC, and this point was also raised by both the parties during the GoFirst case at the Delhi High Court. The Court held that Section 238 of the IBC overrides other laws only in cases of direct inconsistency. It distinguished third-party owned assets from the debtor's estate, clarifying that aircraft leased under the Cape Town Convention fall outside the Section 14 moratorium This position was reinforced by the 2023 notification of the Ministry of Corporate Affairs, which expressly excludes aircraft objects from insolvency restrictions. Accordingly, the Convention's "Alternative A" regime provides a distinct repossession mechanism, preserving certainty for lessors within India's insolvency framework. The provisions of the AoA point out that India's declarations have transformed the CTC into an '*Indianised CTC*' and make clear that the UNIDROIT principles no longer apply to cases governed by the AoA. This section will particularly deal with the possible frictions that may arise when the AoA interacts with IBC and with the broader framework of international insolvency cooperation. A careful perusal reveals two focal points. First, the Act's express reference to remedies *under 'any insolvency law for the time being in force'* raises the question of whether creditors may look beyond Indian law to foreign insolvency regimes. Second, on the international plane, India's selective adoption of the CTC and Protocol necessarily dilutes the role of UNIDROIT principles in guiding cross-border enforcement.

A. The 'Any Insolvency Regime' Clause: Choice Beyond India?

Section 6 of the AoA employs one of the most important phrases, '*for remedies on insolvency under any law for the time being in force*', of the whole legislation.[68] The provision incorporates Article XI of the Aircraft Protocol, *mutatis mutandis*, meaning that only the relevant part is changed, keeping the basic form unchanged, subject to three conditions.[69] The provision is meant to cover all insolvency laws, including the IBC, Companies Act winding-up, and any future laws, to ensure aircraft repossession isn't blocked. Like Alternative A of the Protocol, it makes clear that if the default isn't cured within two months, repossession can't be delayed. This, as seen in the GoFirst case, closes the gap that previously let moratoriums stall aircraft remedies. Therefore, once the Cape Town Convention and Protocol apply, the moratorium under Section 14 of the IBC cannot be used to block repossession of aircraft. In the GoFirst case, the Delhi High Court directed the DGCA to complete deregistration within five days in cases where IDERA is invoked and the CTC framework is triggered.[70]

Importantly, the provision itself clarifies the ambiguity regarding whether Indian insolvency law or a foreign insolvency law will apply. Section 6(a) of the Act can be used as a yardstick to resolve ambiguity, as it clarifies that the relevant insolvency law must be an Indian one, not a

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[68] Protection of Interests in Aircraft Objects Act, 2025, No. 17 of 2025, s 6.

[69] *'Mutatis Mutandis' (LexisNexis, Glossary) <https://www.lexisnexis.co.uk/legal/glossary/mutatis-mutandis> accessed 2 May 2026.*

[70] Bhavini Mishra, 'Deregister Go First Aircraft in Five Days, Delhi High Court Tells DGCA' (*Business Standard*, 26 April 2024) <https://www.business-standard.com/india-news/delhi-hc-tells-aviation-regulator-to-deregister-go-first-aircraft-in-5-days-124042601281_1.html> accessed 2 May 2026.

foreign regime. *Sans* such a safeguard, creditors might have attempted to argue that the AoA and India's Alternative A declaration could be triggered by insolvency processes initiated abroad, thereby undermining both predictability and sovereignty. This design aligns directly with Article XXX (4) of the Aircraft Protocol, which stipulates that "*the courts of the Contracting State in which the debtor is situated shall apply Article XI*."[71] By requiring the debtor to be India-based, Section 6(a) designates India as the '*primary insolvency jurisdiction*' for its airlines and ensures that Alternative A operates exclusively through Indian insolvency laws. This provision likely stems from the Jet Airways insolvency, where an ad-hoc cross-border protocol exposed the risks of parallel proceedings without clear law. Section 6(a) now fixes this by preventing jurisdictional overlap, and Article XXX (4) pushes foreign courts in other CTC States to avoid conflicting actions. This aligns with Article 4 of the Protocol, which defines the location of a debtor.[72] Articles 42 and 43 of CTC permit contractual choice of forum and grant jurisdiction to the courts where the object is located or where interim relief is sought.[73] This means that although parties may approach foreign courts for interim relief, Alternative A's substantive insolvency remedies remain tied to India as the debtor's primary jurisdiction. Under Article XXX (4) of the Protocol, when India is the debtor's primary insolvency

[71] Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (n 8) art XXX(4).
[72] Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (n 8) art IV.
[73] Convention on International Interests in Mobile Equipment (n 7) arts 42–43.

jurisdiction, courts in other Contracting States must apply Article XI in line with India's declaration.[74]

However, clause (c) of the provision also deserves a closer analysis as it risks undermining the very certainty that the Act was enacted to provide. By making Alternative A remedies mandatory, the Act created a uniform pathway insulated from IBC delays. Allowing parties to contractually opt out, however, risks reintroducing uncertainty, particularly if debtors use refinancing negotiations to weaken creditors' rights, for instance, a distressed Indian carrier might push lessors to exclude Section 6 protections in return for continued operations or state-backed guarantees. Such exclusions could again subject repossession to the IBC moratorium, reviving the difficulties seen in Go First. While one might argue that market discipline prevents this since lessors rarely agree to exclusions, this assumes equal bargaining power, which parties do not always possess. Unless regulators or courts bar opt-outs for IDERA holders, this provision may remain a latent loophole.

B. The Non-Applicability of UNIDROIT Principles

India lacks a comprehensive legislation recognising cross-border insolvency. As this paper has stressed, the Jet Airways case prompted the NCLAT to recognise a mutual ad-hoc insolvency protocol between India and the Netherlands, leading many scholars to argue that the same must

[74] Ankit Sinha and others, 'Insolvency Beyond Indian Borders under the Aircraft Objects Act: A Possible Take Off?' (*Chambers and Partners*, 1 August 2025) <https://chambers.com/articles/insolvency-beyond-indian-borders-under-the-aircraft-objects-act-a-possible-take-off-2> accessed 2 May 2026.

be materialised in the form of dedicated legislation.[75] The Insolvency Law Committee had recommended back in 2018 that India should adopt the Model Law on Insolvency, but that has not been implemented yet[76]. To situate this within the broader international architecture, two institutional frameworks are important: UNIDROIT and the United Nations Commission on International Trade Law (**UNCITRAL**).[77] These two frameworks have significantly contributed towards the development of insolvency law, both within the nation and in cross-border cases. This section specifically examines UNIDROIT's stance on the matter. The Model Law on Insolvency, although an authoritative source for insolvency law, has been subject to considerable debate; therefore, given the surrounding ambiguities, the article solely focuses on the UNIDROIT principles.

One of the earliest references made with regard to the UNIDROIT principles was in the case of *Re Swissair Schweizerische Luftverkehrs AG*[78]*,* one of the earliest large-scale airline insolvencies. In this case, the lessors sought repossession of several aircraft, invoking Article XI Alternative A of the Protocol. The Swiss insolvency administrator attempted to delay repossession, arguing that Swiss domestic insolvency

[75] Debaranjan Goswami and Andrew Godwin, 'India's Journey towards Cross-Border Insolvency Law Reform' (2024) 19 Asian Journal of Comparative Law 197, 215.
[76] Insolvency Law Committee, Ministry of Corporate Affairs, *Report of the Insolvency Law Committee on Cross Border Insolvency* (Government of India, October 2018) <https://ibbi.gov.in/ILRReport2603_03042018.pdf> accessed 2 May 2026.
[77] 'UNCITRAL Model Law on Cross-Border Insolvency' (*UNCITRAL*) <https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency> accessed 2 May 2026.
[78] Re Swissair Schweizerische Luftverkehrs-Aktiengesellschaft [2009] EWHC 2099 (Ch).

law required a stay period to assess the financial rehabilitation prospects of the airline. The Zurich Commercial Court, however, maintained the supremacy of the CTC and held that Switzerland's declaration under Article XXX (3) meant that Article XI Alternative A applied automatically in insolvency situations. Crucially, the court stressed that the Convention and Protocol obligations had priority over conflicting provisions of Swiss domestic law. Therefore, once the *'waiting period'* under Alternative A expired without full cure or assurance, the debtor was required to surrender the aircraft.

Subsequently, the Irish High Court in 2019 adjudicated *UniCredit Global Leasing Export GmbH v. Business Aviation Ltd. & Aviareto Ltd.,*[79] a case that made major reference to the UNIDROIT principles. This dispute arose not from repossession per se, but from the validity and effect of registrations made in the International Registry, which UNIDROIT administers through Aviareto, its registrar based in Ireland. UniCredit, a German lessor, had financed aircraft and registered its international interests. A rival claim emerged when another party sought to register a competing interest, raising the issue of whether the International Registry functioned as a mere record-keeping system or as a mechanism conferring substantive legal priority. The Irish High Court firmly rejected the argument that registration lacked legal effect in the absence of further domestic recognitions. Justice Kelly held that the International Registry is central to the lies at the heart of the Cape Town Convention's design, creating a notice-based priority regime that is directly binding on Contracting States. Registered interests, once perfected, enjoy an *erga*

[79] *UniCredit Global Leasing Export GmbH v. Business Aviation Ltd. & Aviareto Ltd.*, (2019) IEHC 139.

omnes effect and override subsequent or unregistered claims, including those raised in insolvency.

However, as mentioned in Part III, India has not incorporated the CTC wholesale; it has selectively incorporated certain provisions by way of declarations. For instance, Article 39 of the Third Schedule of the AoA carves out three categories of non-consensual claims which retain priority over registered international interests even in insolvency.[80] Therefore, the applicability of the UNIDROIT cases is also limited, as these UNIDROIT decisions are not directly transplantable in India without adjustment[81]. Indian courts will have to interpret the AoA as giving statutory primacy to these domestic claims even if the foreign case law provides absolute primacy to the registry claims. However, such a stance raises the impending question of whether the UNIDROIT law is completely ousted. The answer to this question is not straightforward, but rather nuanced. These authorities will continue to play a crucial role and have a persuasive value. Nevertheless, the AoA's declarations change the concrete priorities, procedures and forum rules that Indian courts must apply, meaning the practical effect of UNIDROIT decisions can be narrowed in India. The above two cases may guide textual interpretation, but when a UNIDROIT decision assumes an unconditional Article 29 priority[82], Indian law yields a different outcome on priority issues.

[80] Protection of Interests in Aircraft Objects Act, 2025, (n 13) Sch 2.
[81] Jeffrey Wool, White Paper No. 1 on the Interpretation of the Protection of Interests in Aircraft Objects Act, 2025 (Aviation Working Grp. Apr. 2025), https://awg.aero/wp-content/uploads/2025/04/AWG-White-Paper-limited-version-interpretation-only.pdf.
[82] Convention on International Interests in Mobile Equipment (n 7) art 29.

Likewise, parties may invoke Swissair's rejection of moratoria in India, but only within the limits imposed by India's declaration.

V. SUSTAINING FLIGHT: CTC AND INDIA'S AVIATION ECOSYSTEM IN THE LONG RUN?

A. The Cape Town Convention and India's Expanding Aviation Needs

i. Teething problems with the AoA

The vesting of jurisdiction to High Courts under the Act forecloses the possibility of parties resorting to alternative dispute resolution mechanisms (**ADR**). In actual commercial realities, the rise of arbitration and mediation has assumed primacy because of their efficiency, expertise, and capacity for swift resolution.[83] The Indian Courts, by contrast, are grappled with structural constraints, overburdened dockets, delays, and limited subject-matter expertise.[84] For an asset as perishable in value as an aircraft, delay results in devaluation and undermines the security of financiers. An overseas investor, faced with such uncertainty, would be reluctant to commit capital. If the legislative design is to attract investment, it must create space for ADR so that rights are enforced with speed and certainty.[85]

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[83] Law Reform Commission, *Report on Alternative Dispute Resolution: Mediation and Conciliation* (LRC 98–2010) <https://www.lawreform.ie/_fileupload/reports/r98adr.pdf> accessed 2 May 2026.

[84] Kartikeya Singh, 'Justice on Hold: India's Courts Are Clogged' (*The Hindu*, 30 July 2025) <https://www.thehindu.com/data/justice-on-hold-indias-courts-are-clogged/article69868953.ece> accessed 2 May 2026.

[85] Sandeepa Bhat B, 'Protection of Interests in Aircraft Objects Act 2025: Indian Skies Are Still Murky' (2025) 5(I) Lex ad Coelum 11, 15.

As previously mentioned in this paper, Section 9(1) of the AoA serves as a non-obstante clause, giving the Act precedence over other laws in circumstances of inconsistency, in accordance with India's international responsibilities under the CTC system. Surprisingly, the next sub-section states that the Act is intended to supplement, not replace, the previous legislation. This conflicting drafting creates interpretative confusion and risks jeopardising the regime's effective execution. The application of Section 9(2) would further subject the remedies available to overseas financiers in the Indian aviation sector to the operation of other domestic laws.[86] Moreover, further statutory clearances, including the peculiar Goods and Services Tax under the Central GST Act 2017,[87] and airport-related dues under the AAI Regulations 2003,[88]create additional impediments to the realisation of secured interests. The cumulative effect is to place overseas financiers in a position of regulatory uncertainty, which runs contrary to the object of fostering confidence in cross-border aviation financing. Similar to India's declaration under Article 39(1)(b)[89], Section 9(3) gives the Central Government, its agencies, public service providers, and intergovernmental organisations the authority to detain or seize aircraft for outstanding debts. However, by going beyond *'State entities',* the provision wanders from the

[86] Companies Act 2013 (India) s 13.
[87] Central Goods and Services Tax Act 2017 (India).
[88] Airports Authority of India (Contract) Regulations 2003 (India), Notification No AAI/PERS/EDPA/Reg/2002 (*Gazette of India*, Extraordinary, Part III, s 4, 1 April 2003).
[89] Convention on International Interests in Mobile Equipment (adopted 16 November 2001, entered into force 1 March 2006) 2307 UNTS 285, art 39(1)(b).

Convention and runs the risk of giving private actors coercive power, an ambiguity that diminishes legal certainty and invites possible abuse.[90]

ii. Existing Statutes: Harmonisation needed?

In this backdrop, even subordinate or indirect legislation warrants careful consideration. In a significant development, the Ministry of Civil Aviation has released draft rules to replace the long-standing Aircraft Rules, 1937. While still open for public consultation, certain provisions raise concerns for the aircraft leasing and financing sector.[91] Rule 30(7) of the 1937 Rules mandated that the registration of an aircraft under the CTC and Protocol shall be cancelled by the Central Government within five working days. In contrast, Rule 44(2) of the Draft Rules provides that such cancellation may be carried out by the Central Government within the same timeframe. Regressively, the shift from shall to may converts the DGCA's duty into a matter of discretion. This reflects a familiar paradox: progress in implementing the CTC Act is tempered by the allowance for discretionary deregistration under IDERA.

Further, Aircraft finance transactions frequently necessitate that promoters or parent companies extend personal or corporate guarantees. In India, however, such guarantees in foreign exchange are stringently regulated and subject to numerous restrictions. Consequently, every transaction must be carefully scrutinised to ensure that the Indian party providing the guarantee is legally empowered to do

[90] Sandeepa Bhat B, n 83.
[91] Daashish Anand, 'India's Draft Aircraft Rules: What They Say and Why They Matter?' (*Live Mint*, 16 June 2025) <https://www.livemint.com/industry/indian-aircraft-rules-2025-draft-aviation-rules-india-india-aviation-policy-explainer-11752662507658.html> accessed 2 May 2026.

so and that the guarantee is enforceable if called upon. In this context, the Reserve Bank of India has released a draft of the Foreign Exchange Management (Guarantees) Regulations, 2025,[92] intended to supersede the Regulations of 2000, under the FEMA[93] which now have been finalised and notified as the Foreign Exchange Management (Guarantees) Regulations, 2026 (FEMA 8(R)/2026-RB.[94]A concrete illustration of the Regulations' benefit to lessors lies in the expansion of the automatic route for cross-border guarantees. Under the earlier regime embodied in the Foreign Exchange Management (Guarantees) Regulations, 2000, guarantees issued by Indian residents in favour of non-residents, including foreign aircraft lessors or their financiers; were either subject to prior approval of the Reserve Bank of India or confined to narrowly defined permissible categories. This resulted in material transactional uncertainty. In leasing structures, where a foreign lessor required a corporate or promoter guarantee from an Indian airline's parent or sponsor as credit support, doubts frequently arose as to whether such guarantees were validly issued under foreign exchange law, and consequently, whether they would be enforceable upon invocation. The draft Regulations address this deficiency by substantially widening the scope of guarantees permitted under the automatic route, subject to compliance with the FEMA. These Regulations have removed the need for case-specific regulatory approval and aim to replace it with a rule-

92 *'Frequently Asked Questions' (Reserve Bank of India) <https://www.rbi.org.in/commonman/english/scripts/FAQs.aspx?SID=6> accessed 2 May 2026.*

93 Foreign Exchange Management (Guarantees) Regulations 2000 (India), Notification No FEMA 8/2000-RB (*Gazette of India*, Part II, s 3(i), 3 May 2000).

94 Foreign Exchange Management (Guarantees) Regulations, 2026, No. FEMA 8(R)/2026-RB.

based permissive framework. Promoter or parent guarantees, often required for lease execution, can now be structured within a clearly authorised regulatory framework. This enhances the reliability of credit support, improves enforceability upon invocation, and reduces counterparty credit risk in India-facing aircraft leasing transactions.

VI. SUGGESTIONS AND CONCLUSION

The ratification of the CTC was a much-needed move to avoid earlier insolvency problems. An emerging trend in India's aviation sector is the increasing reliance on wet leasing. In aviation, a wet lease is an arrangement in which an airline or aircraft operator supplies another carrier or entity with not only the aircraft but also the crew, maintenance, and insurance.[95] Indian carriers, which have aspirations to cater to the growing international passenger footfall, have often resorted to these wet leases. IndiGo, in recent times, has had agreements with Turkish Airlines and Norse Atlantic Airways to have on board wide-body aircrafts.[96] A wet lease in India offers a cost-efficient package, including type-rated pilots and full maintenance, but comes with its own challenges. Wet leases can take advantage of the CTC's creditor protections and international registration mechanisms, but ultimately the framework is better suited to dry leases, which more frequently involve asset recovery and the safeguarding of title across jurisdictions.[97] The growing reliance on wet

[95] 'Wet Lease' (*GlobeAir*) <https://www.globeair.com/g/wet-lease> accessed 2 May 2026.
[96] Ameya Joshi, 'Surprise! IndiGo Is Wet Leasing Widebodies' (*Livemint*, 6 February 2025) <https://www.livemint.com/news/surprise-indigo-is-wet-leasing-widebodies-11738832155636.html> accessed 2 May 2026.
[97] Legal Advisory Panel of the Aviation Working Group, *Practitioners' Guide to the Cape Town Convention and the Aircraft Protocol* (Aviation Working Group, September 2015).

leasing in India underscores the need for a carefully balanced regulatory approach. Effective implementation of the CTC would allow India to tap into Enhanced Equipment Trust Certificates and other competitively priced financing instruments that were previously inaccessible. The AoA is also a welcome step in the right direction. Before ratification, Indian airlines bore 8-10% higher leasing costs due to legal uncertainties.[98] The new Act is expected to ease financing, lower costs, and enhance investor security, while also reducing government exposure and ultimately delivering benefits to passengers through more competitive pricing and improved services.

This paper highlights the need for a nuanced understanding of the CTC and its application within India's legal framework. The interaction between domestic law and the Convention continues to create uncertainty, particularly due to India's selective declarations and the limited applicability of UNIDROIT principles. It formalises India's global commitments and addresses weaknesses exposed by recent airline failures. However, its effectiveness will depend on more than legislative text. Without clear rules, well-trained adjudicators, and consistent regulatory enforcement, India risks having a sophisticated statute undermined by poor implementation. To unlock the full potential of the CTC, including reduced financing costs, access to global capital, and greater investor confidence, India must embrace a creditor-friendly, predictable policy approach. Only a coherent and consistent framework can ensure that the aviation sector remains competitive, resilient, and

[98] Nidhi Sharma, 'Lower Leasing Costs, Greater Investor Trust: India's Aircraft Objects Act Explained' (*Aviation Jeta*, 15 July 2025) <https://aviationjeta.com/lower-leasing-costs-greater-investor-trust-indias-aircraft-objects-act-explained/> accessed 2 May 2026.

capable of sustaining long-term growth. Additionally, India must shift from a bargaining, restrictive tax mindset to a harmonised, creditor-friendly framework that supports aviation financing growth.