



**INSOLVENCY
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ILA-AWG DRAFT GUIDELINES AND BEST PRACTICES IN INSOLVENCY PROCESS OF CORPORATE ENTERPRISES HAVING AIRCRAFT OBJECTS

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ILA-AWG DRAFT GUIDELINES AND BEST PRACTICES

IN

INSOLVENCY PROCESS OF CORPORATE ENTERPRISES HAVING AIRCRAFT OBJECTS

I. Background

1. The Insolvency and Bankruptcy Code (IBC) was enacted in 2016 to consolidate the legislative framework for insolvency and bankruptcy of corporate entities, partnerships and individuals. To implement IBC, a comprehensive ecosystem of institutions and stakeholders was established. The IBC has rapidly evolved in the short span of ten years. Its implementation has, however, not been free of challenges. The initial journey of IBC was characterised by numerous unprecedented twists and turns from the very first day, requiring a high speed of responsiveness to adapt to and surmount the implementation challenges. The government responded with zeal; many significant legislative changes were made to address the difficulties encountered while implementing the provisions of IBC and from the changes in the economic environment. The insolvency regulator – Insolvency and Bankruptcy Board of India (IBBI) also made prompt suitable changes in the regulatory framework to plug the gaps and make the insolvency resolution and liquidation process efficient and transparent. The Supreme Court of India delivered numerous landmark judgments to explain the main objectives of IBC, settle contentious issues, delineate key legal principles and resolve grey areas with alacrity, establishing the key bedrock of IBC principles. The year after year witnessed consolidation of the new insolvency and bankruptcy regime. The outcomes and impact of IBC show that IBC has proved to be a transformative legislation in resolving stressed assets and improving the credit culture in India. Till March 2026, a total of 8,987 enterprises were admitted to IBC, with 7,102 reaching closure. Of the closed cases, 4,099 (around 58%) were successfully rescued, 3,003 were sent into liquidation.

2. In the ten years of IBC, enterprises from various sectors of economy have undergone insolvency resolution exposing many sector-specific legal and procedural challenges, particularly in real estate, mining, power, telecom, aviation and other sectors. The insolvency of Jet Airways and Go First Airlines flagged many critical legal issues involved in insolvency resolution of an aviation enterprise. In 2019, Jet Airways, once a thriving airline, was admitted into insolvency by the Adjudicating Authority¹, on an application filed by the State Bank of India, a financial creditor of the airline. The insolvency process of Jet Airways raised complex issues involving cross-border insolvency issues and sale of aircraft objects. In 2023, Go First Airlines filed for insolvency and was admitted into insolvency process by the

¹ The IBC established Adjudicating Authority to oversee the insolvency and liquidation. The jurisdiction of Adjudicating Authority has been vested in the National Company Law Tribunal established under the Companies Act, 2013.

Adjudicating Authority. The moratorium under Section 14 of the IBC ordered by the Adjudicating Authority in the case of Go First Airlines prevented the lessors of aircraft(s) leased to the airlines from deregistering or repossessing aircraft. The moratorium created a tension with the *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* signed by India at Cape Town on 16 November 2001 (Cape Town Convention) and led to extensive litigation relating to possession of aircrafts.

3. On 16 April 2025, the Government of India notified *The Protection of Interests in Aircraft Objects Act, 2025* (the Aircraft Act), to implement the *Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* signed at Cape Town on 16 November 2001 (Cape Town Convention). The Aircraft Act provides a legal framework for the creation, registration, and enforcement of international interests in aircraft objects such as airframes, engines, and helicopters, thereby enhancing legal certainty and improving access to global financing. The Aircraft Act became effective from 1 May 2025. In the meantime, the Notification dated 3 October 2023 (under Section 14(3) of the IBC)² issued by the Ministry of Corporate Affairs, Government of India, and the judgment of the High Court of Delhi in *Accipiter Investments Aircraft 2 Ltd. v. Union of India*, 2024 SCC OnLine Del 3125³ provided some relief to the lessors of aircrafts.

4. The Insolvency Law Academy (ILA) and the Aviation Working Group (AWG) hosted a roundtable on 10 June 2025 in New Delhi (1st Roundtable) to discuss the issues arising from the Aircraft Act on aviation cases under the IBC. The 1st Roundtable was attended by global experts and members of the Indian legal and insolvency industry. The participants of the 1st Roundtable applauded the legislative recognition of Cape Town Convention by enactment of the Aircraft Act. It was, however, noted that the success of the Aircraft Act will depend on the drafting of a robust subordinate legislation⁴ and effective implementation of the Aircraft Act. It was decided that the AWG and ILA shall continue to cooperate and assist the policy makers and market to address these concerns.

5. On 30 January 2026, the Ministry of Civil Aviation, Government of India notified the *Protection of Interests in Aircraft Objects Rules, 2026* (Aircraft Rules), which provides the procedural architecture and a number of substantive rules for the implementation of the Aircraft Act. The ILA and AWG convened another roundtable on 24 February 2026 (2nd Roundtable) to deliberate the issues arising from the Aircraft Rules and discuss the way forward. In the 2nd Roundtable, the participants agreed that certainty and predictability in insolvency proceedings are fundamental to an efficient insolvency system. In particular, in

²By way of this Notification, the Indian Government notified that Section 14 (1) of IBC shall not apply to transactions, arrangements or agreements, under the Convention and the Protocol, relating to aircraft, aircraft engines, airframes and helicopters.

³By way of this judgement, the High Court of Delhi held that the Notification is retrospective and makes it clear that aircraft, aircraft engines and airframes are excluded from the purview of Section 14 of the IBC.

⁴ Rules under the Aircraft Act were yet to be framed at the time of the 1st Roundtable.

cases involving insolvency of airlines, predictability and certainty is of paramount importance as it has a direct bearing on the cost of leasing and financing of aircrafts which, in turn, impacts the cost of services in the airline industry and ticket prices to the traveling public. There was a broad consensus that the Aircraft Act and Aircraft Rules address the concerns of aircraft lessors and rights of parties under the Cape Town Convention. The participants however, suggested that ILA and AWG formulate guidelines and best practice for the benefit of members of insolvency industry and stakeholders, to guide them on application of the Aircraft Act and Aircraft Rules in insolvency of enterprises having aircraft objects. It was further suggested that ILA and AWG hold educational programmes to disseminate the best practices.

II. Approach to Formulation of Best Practices Guidelines

6. Following the recommendations of the 2nd Roundtable, the ILA and AWG formed a joint working group to prepare the guidelines and best practices. The draft was discussed in a roundtable of the stakeholders held on [insert date] (3rd Roundtable). Based on the suggestions and feedback, ILA and AWG have finalised as the '*Guidelines and Best Practices in Insolvency Process of Corporate Enterprises having Aircraft Objects*' set out in Part III.

7. In insolvency, predictability and certainty are of paramount importance. They have a direct bearing on the outcome of process, its cost, and the price discovery. In insolvency of enterprises having aircraft objects, it also has a bearing on access to credit and the cost of leasing and financing of aircrafts in the aviation sector, which has a direct impact on the cost of services to the consumers in the airline industry besides the cost of insolvency process and ability to maximise the value of assets of the debtor. The Guidelines and Best Practice in Part III are aimed at providing practical guidance to the members of the insolvency industry and stakeholders on application of the Aircraft Act and Aircraft Rules to enterprises having aircraft objects facing corporate insolvency resolution process (CIRP) under the IBC. Doing so will in equal measure: (a) provide statutory clarity and procedural predictability, thereby saving time and resources and reducing costly litigation; (b) enhance the prospects of a successful reorganization or workout of entity having aircraft object(s); and (c) facilitate financing and leasing to the aviation industry, thereby reducing the likelihood of insolvency in the first instance.

8. In formulating these Guidelines and Best Practices, ILA and AWG have been guided by the objects of the IBC and the Aircraft Act, and established jurisprudence and principles of interpretation of statutes.

Harmonious Construction of the IBC and CTC Act

9. One of the primary rules of interpretation of statutes is harmonious construction. This rule is based on the presumption that the legislature did not intend to create conflict between

the two statutes it has enacted. It is a well-established principle of law that interpretation of statutes should be in a manner that gives effect to enactments to the extent such reconciliation is reasonably possible, keeping in view of the intents and purpose of both the statutes.⁵

10. Both, the IBC and the Aircraft Act have been enacted by the Parliament to serve crucial objectives. The IBC was enacted in 2016 as, “*An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.*” The IBC establishes a coherent, creditor-driven, and time-bound mechanism for the resolution of financial distress and insolvency, corporate revival and value maximisation.

11. The Aircraft Act was enacted in 2025 as, “*An Act to provide for protection of interests in aircraft objects and to implement the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment signed at Cape Town on 16th November, 2001 and for matters connected therewith or incidental thereto.*” The Aircraft Act was enacted by the legislature for protection of interest in ‘aircraft objects’⁶; its enactment marks a significant development in India’s efforts to implement the Cape Town Convention and Aircraft Protocol. Section 6⁷ of the Aircraft Act provides that, “*The provisions of Article XI of the Protocol, subject to the declaration deposited by India, shall apply, mutatis mutandis, for remedies on insolvency under any law for the time being in force*” (which included the IBC). In the Aircraft Act, India has opted for Alternative A as per Form No. 23 (General Declaration under Article XXX(3) in respect of Article XI of the Cape Town Convention), according to which, the insolvency administrator or the debtor, as applicable, shall, subject to conditions stipulated under the Cape Town Convention, give possession of the aircraft object to the creditor⁸ (as defined under the Aircraft Act) no later than the earlier of (i) the end of the ‘waiting period’⁹; and (ii) the date on which a creditor would be entitled to possession of the aircraft object if the Aircraft Act did not apply. As per Rule 11 of the Aircraft Rules, India has opted for two months as the waiting period, within which maximum

⁵ *State Bank of India v. Union of India*, 2026 INSC 153

⁶ “Aircraft objects” shall have the meaning assigned to it in Article I (2)(c) of the Cape Town Convention, that is the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment signed at Cape Town on 16 November, 2001.

⁷ S6. Remedies on insolvency.—*The provisions of Article XI of the Protocol, subject to the declaration deposited by India, shall apply, mutatis mutandis, for remedies on insolvency under any law for the time being in force: Provided that— (a) the debtor of the agreement is a— (i) body corporate or firm, incorporated or registered in India; or (ii) person, domiciled in or has his principal place of business in India; (b) the international interest of the agreement has been registered in accordance with the Convention and Protocol; and (c) the debtor and creditor have not by written agreement excluded the application of this section*

⁸ A “creditor” shall have the meaning assigned to it in Article 1(i) of the Cape Town Convention.

⁹ “Waiting period” shall have the meaning as referred to in Rule 11 of the Aircraft Rules.

period, a creditor shall be able to possess the aircraft object or a debtor shall cure the relevant default, upon occurrence of an insolvency related event. The recognition of Alternative A provides an alternate remedy mechanism for lessors that becomes operative when a lessee enters into “insolvency proceedings” under IBC.

12. Notably, the non obstante clauses in the Aircraft Act - Section 9(1)¹⁰ confirms that in the case of any inconsistency between a provision of Aircraft Act and any other law, the Aircraft Act shall prevail “to the extent of such inconsistency” and Section 9 (2)¹¹ confirms that the Aircraft Act is in addition to, and not in derogation of, other laws.

13. This reinforces that the Aircraft Act works with the IBC, not in replacement of it.

Therefore, the IBC and the Aircraft Act (read together with the Aircraft Rules) have to be given a harmonious construction so as to give effect to the intent and purpose of both statutes. In the case such construction is not possible in view of intent and purpose of statutes, the Aircraft Act will prevail, to the extent of such inconsistency.

A. Areas where the IBC Applies Unaffected by the Aircraft Act and Aircraft Rules

14. Save as set out in Section B below, the Aircraft Act does not impact any provision of the IBC and the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 (CIRP Regulations) in any way. Hence, the provisions of IBC and CIRP Regulations, including the following provisions, shall apply fully to an insolvency of a company that has an ‘aircraft object’:

- (a) **Eligibility and initiation of insolvency**— Provisions governing eligibility to initiate CIRP, thresholds of default, admission and withdrawal procedures (Sections 4–11, 12A of the IBC, and related rules and regulations).
- (b) **Resolution Professional Framework** — Provisions governing the appointment, replacement, duties, and general powers of the Interim Resolution Professional (IRP) and Resolution Professional (RP) (Sections 15–30 of the IBC and relevant CIRP Regulations).
- (c) **Committee of Creditors (CoC)**— Constitution, powers, and decision-making of the CoC (Sections 21–24, 27-28, 30 of the IBC and CIRP Regulations), including voting thresholds for resolution plan approval, apply without modification.
- (d) **Claims Process** — Provisions relating to information utilities, submission and collation of claims (Sections 13, 18, 25, 215–217 of the IBC), and the CIRP Regulations governing the claims process, apply without modification. Creditors

¹⁰ Section 9(1) of the CTC Act provides that “In the case of any inconsistency between a provision of this Act and any other law for the time being in force, the provisions of this Act shall prevail to the extent of such inconsistency.”

¹¹ Section 9(2) of the CTC Act provides that “Save as otherwise provided in this Act, the provisions of this Act shall be in addition to, and not in derogation of any other law for the time being in force”.

with ‘international interests’ (under the Aircraft Act) in aircraft objects should file claims in the IBC proceedings in the ordinary course.

- (e) **Resolution Plan** — Provisions governing the preparation, approval, and implementation of a resolution plan (Sections 25, 29A, 30–31, 32A of the IBC) apply fully, subject only to the prohibition on involuntary modification of creditor rights with international interests recognised by the Aircraft Act.
- (f) **Liquidation** — Provisions governing liquidation (Chapter III of Part II of the IBC) apply unaffected.
- (g) **Avoidance of transactions, fraudulent and wrongful trading transactions** — Provisions relating to preferential, undervalued, extortionate credit, and fraudulent and wrongful trading transactions (Sections 43–51, 66 of the IBC) apply without modification.
- (h) **Jurisdiction of Adjudicating Authority** — The jurisdiction of the Adjudicating Authority under IBC is unaffected in respect of the insolvency proceedings of the debtor, save that Adjudicating Authority will not have the jurisdiction to decide matters over which the jurisdictional High Court under the Aircraft Act has jurisdiction including the jurisdiction (if any) to extend the waiting period beyond two calendar months.¹² Remedies available under the Aircraft Act including remedies relating to deregistration, repossession, export, and preservation of aircraft objects, and maintenance of the aircraft objects and its value in accordance with the lease or security agreement, would fall within the jurisdiction of the relevant High Court. In addition, the writ jurisdiction of the High Courts under Articles 226 and 227 of the Constitution of India remains unaffected, and the discretionary remedy under the said Articles, against government authorities (like Director General of Civil Aviation) can be sought where circumstances so warrant.

B. *Areas where the Aircraft Act shall prevail over IBC*

15. The provisions of Aircraft Act and Aircraft Rules, as the case may be, shall prevail over the IBC and CIRP Regulations, as the case may be, in the following four areas in relation to protection of aircraft objects and rights of creditors under the Aircraft Act, to the extent they are inconsistent:

- (i) Applicability of moratorium to aircraft object;
- (ii) Preservation and maintenance of aircraft object and its value in accordance with the lease or security agreement;
- (iii) Maintain records of dues on an aircraft object; and
- (iv) Involuntary modification of rights of creditors under Aircraft Act.

¹²Section 8 of the Aircraft Act.

16. While both IBC and Aircraft Act contain non-obstante clauses¹³, Aircraft Act and Rules shall have an overriding effect in the aforesaid areas based on the *lex posterior* and *lex specialis* principles as hereinafter explained briefly.

(a) *Lex specialis (generalia specialibus non derogant)*: The Aircraft Act, read with the Aircraft Rules, is a more specific law with respect to aircraft objects, where debtor is in insolvency, than the IBC, which is a general insolvency statute dealing with insolvency of corporate persons. Section 6 of the Aircraft and Rule 11 of the Aircraft Rules specifically address the effect of IBC on insolvency proceedings on aircraft objects. This makes the Aircraft Act a special law governing aircraft objects where debtor is in insolvency, and the IBC a general law of insolvency — with the result that the Aircraft Act prevails over IBC, including over subsequently enacted IBC amendments of a general character in as much the areas covered in Guidelines 1 to 4 in Part III. Where it is evident that one enactment is intended to function as a special law governing a defined subject, while the other is a general law operating in a broader or overlapping domain, the general provision must give way to the special provision.¹⁴

(b) *Lex posterior*: The Aircraft Act (2025) is later in time than the IBC (2016). Where two special statutes contain non-obstante clauses, the later statute ordinarily prevails because it represents the most recent expression of legislative intent.¹⁵

17. Where there is a conflict between *lex posterior* and *lex specialis* principles (as would arise if a later amendment in the IBC conflicts with the Aircraft Act), the Aircraft Act as *lex specialis* prevails: specificity of subject matter takes precedence over chronology, unless the legislative intention was to override the special enactment by way of subsequent legislation. The IBC was amended on 26 May 2026 (IBC Amendment) after the Aircraft Act was enacted in 2025. Nothing in the IBC Amendment, however, manifests an intent by the Parliament to override the Aircraft Act or any provision thereof. Accordingly, the Aircraft Act, which specifically deals with impact of insolvency on aircraft objects continues to prevail, to the extent of inconsistency, over the IBC including the IBC Amendment.

18. These Guidelines and Best Practices have been prepared in consultation with the market experts. The Guidelines and Best Practices may be modified based on future developments particularly after the rules and regulations for creditor-initiated insolvency resolution process (CIIRP) (as included by way insertion of Chapter IV-A in the IBC by way of the IBC Amendment) are issued or notified.

¹³Section 9(1) of the Aircraft Act gives an overriding effect to the Aircraft Act over other laws to the extent of such inconsistency. Section 238 of the IBC gives overriding effect to the provisions of the IBC over any other laws.

¹⁴ *State Bank of India v. Union of India*, 2026 INSC 153

¹⁵ *Solidaire India Ltd. v. Fairgrowth Financial Services Ltd.*, (2001) 3 SCC 71; *Sarwan Singh v. Kasturi Lal*, (1977) 1 SCC 750.

Part III

Guidelines and Best Practices

Guideline No. 1: Applicability of Moratorium to Aircraft Object

19. Section 14(1) of the IBC provides that at the time of admission of a debtor into insolvency, a “moratorium” shall be ordered during which no action may be taken against the debtor, including recovery of assets in its possession or occupation. Section 14(4) of the IBC provides that the order of moratorium shall have effect from the date of such order (which is the same as the insolvency commencement date) until the completion of the CIRP (which means when the Adjudicating Authority approves a resolution plan or orders liquidation), a period that can extend to 330 days or beyond. Paragraph 2 of Article XI (supra) requires that in case of insolvency related event, that is, where the debtor being lessee of an aircraft is admitted into insolvency resolution process, the insolvency administrator shall give possession of the aircraft object to the creditor ((as defined under the Aircraft Act) “*no later than the earlier of*” (a) the end of the waiting period; and (b) the date on which the creditor (as defined under the Aircraft Act) would be entitled to possession of the aircraft object if the Article did not apply. Rule 11(1)¹⁶ of the Aircraft Rules specifies the waiting period and states that where a debtor is subject to corporate insolvency under the IBC: (a) the moratorium under Section 14 of the IBC shall commence on the ‘insolvency commencement date’; and (b) shall expire at the end of two calendar months from insolvency commencement date, and such period will be called the ‘the waiting period’.

20. Rule 11(2) of Aircraft Rules specifies that no remedy of creditor (as defined under the Aircraft Act) shall be prevented or restricted after the expiry of the waiting period. Rule 11(4)

¹⁶ R. 11. Procedure during the ‘waiting period’ in case of insolvency. —

(1) Where a debtor is subject to corporate insolvency or bankruptcy proceedings under the Code, the moratorium under section 14 of the Code shall commence on the insolvency commencement date and shall expire at the end of two calendar months, and be called the ‘waiting period’ under these rules.

(2) No remedy recognised under the Convention or Protocol shall be prevented or restricted after the expiry of the waiting period.

(3) During the waiting period, the resolution professional, shall, — (a) preserve the aircraft object and maintain its value in accordance with the underlying contract between a creditor and a debtor, and (b) provide creditor with access to the aircraft object, and all technical and maintenance records relating to, and information on the physical security of, that aircraft object.

(4) The debtor or the resolution professional, as the case may be, may retain possession of the aircraft object if, before the expiry of the waiting period, all defaults other than those arising from the initiation of insolvency proceedings have been cured, and the resolution professional has agreed to perform all future obligations under the lease or security agreement with the creditor.

(5) At the end of the waiting period, upon receipt of an application from the creditor for exercising a remedy under clause (1) of Article IX of the Protocol, the registry authority shall take appropriate action in accordance with the provisions of the Bharatiya Vayuyan Adhiniyam, 2024 or the rules made thereunder.

(6) An agreement between the debtor and creditor, shall not be modified without the consent of that creditor: Provided that sub-rule (6) shall not be construed to affect the authority, if any, of the resolution professional under the Code to terminate the agreement.

(7) Clause (a) of sub-rule (3) shall not preclude the use of the aircraft object under arrangements designed to preserve the aircraft object and maintain its value.

provides that the insolvency professional may retain possession of the aircraft object if, before the expiry of waiting period, all defaults other than those arising from the initiation of insolvency proceedings have been cured and the insolvency professional has agreed to perform all future obligations under the lease.

21. A harmonious reading of the provisions of the Aircraft Act and the Aircraft Rules, and the IBC and CIRP Regulations, makes it clear that:

- (i) The RP (which includes the IRP) shall give possession of the aircraft object to the lessor/creditor no later than the end of two calendar months from insolvency commencement date. Continuation of moratorium thereafter shall have no effect on aircraft object.
- (ii) After the expiry of this (waiting) period, a creditor (as defined under the Aircraft Act) shall be free to exercise its remedies (including deregistration, repossession, and export of the aircraft object by making a request to the registry authority in accordance with Rule 11(5) of the Aircraft Rules.
- (iii) If the lease or similar arrangement in respect of aircraft object has been terminated by the lessor/creditor (as defined under the Aircraft Act) prior to the insolvency commencement date, such lessor/creditor shall be entitled to take possession of the aircraft object even prior to the end of the waiting period. In such cases, the RP is required to give possession of the aircraft object to the lessor/creditor no later than the date on which the creditor would be entitled to possession of the aircraft object irrespective whether the waiting period has ended or not.
- (iv) The RP may retain possession of the aircraft object if, before the expiry of the waiting period, all defaults other than those arising from the initiation of insolvency proceedings have been cured, and the RP has agreed to perform all future obligations under the lease or security agreement with the lessor/creditor. The moratorium shall not prevent performance by RP of all future obligations under the lease or security agreement with the lessor/creditor (as defined under the Aircraft Act) including making of payments during the moratorium period for curing defaults.

22. The 'waiting period' provided in Rule 11 of Aircraft Rules is short and leaves no margin for procedural delay. The following practical steps are best practice to ensure compliance with the Aircraft Act and Aircraft Rules.

- (a) *Immediate identification:* Upon commencement of the waiting period, the RP shall promptly identify and list all aircraft objects in the corporate debtor's possession, together with the corresponding creditors (as defined under the Aircraft Act), details of all interests registered in the 'International Registry', and the terms of all applicable lease agreements or other arrangements.

- (b) *Notification to creditors:* Within 3 business days of commencement of the waiting period, the RP shall notify all identified ‘creditors’ (as defined under the Aircraft Act), in writing of: (i) the commencement and expected expiry of the waiting period; (ii) the applicable Aircraft Act and Aircraft Rules obligations; and (iii) the identity and contact details of the RP.
- (c) *Preservation arrangements:* Within 7 days of commencement of the waiting period, the RP shall enter into (if necessary for the preservation and maintenance of the aircraft object) or confirm all arrangements (relating to the preservation and maintenance of the aircraft object) — including with maintenance, repair, and overhaul providers, insurers, and ground handlers — necessary to maintain each aircraft object throughout the waiting period in accordance with its applicable maintenance program and insurance requirements.
- (d) *Notice of intent to retain:* If the RP intends to retain possession of an aircraft object beyond the waiting period, written notice shall be given to the relevant ‘creditor’ (as defined under the Aircraft Act), not less than 14 days before expiry, specifying: (i) all defaults proposed to be cured and the amounts and dates of cure; (ii) an undertaking to perform all future obligations under the relevant lease agreement or other arrangement; and (iii) evidence satisfactory to such ‘creditor’ that all such defaults will be cured (if not already cured).
- (e) *Retention at expiry:* In case the RP has given a notice of intent to retain, before the expiry of the waiting period, the RP shall provide evidence satisfactory to such creditor that all such defaults have been cured.
- (f) *Return at expiry:* In case no notice of intent to retain has been given or if the RP is unable to comply with all conditions of Rule 11(4) of the Aircraft Rules, at the expiry of the waiting period, the RP shall give possession of each aircraft object to the relevant creditor.
- (g) *Possession by creditor:* Upon the expiry of the two month waiting period and upon the failure of the RP to cure the defaults and defects, the creditor is entitled to exercise the remedies available under the Aircraft Act in respect of the aircraft object by making a request to the registry authority in accordance with Rule 11(5) of the Aircraft Rules and without seeking any prior approval, leave, or direction from the Adjudicating Authority. At the end of the waiting period, the creditor (as defined under the Aircraft Act), would be required to issue a formal written demand to the RP and the corporate debtor to hand over peaceful possession of the aircraft object together with all associated technical records.
- (h) *Applications in Adjudicating Authority:* Where the Adjudicating Authority has jurisdiction to decide such Applications and without prejudice to objections on the

maintainability of such an Application being taken by the creditor, any application filed before Adjudicating Authority that could affect the rights of a ‘creditor’ with an ‘international interest’ in an aircraft object, or the commencement or duration of the waiting period, should be listed and determined on an urgent basis so that the RP and the creditor can press for an early decision on such applications.

Guideline No. 2: Preservation and Maintenance of Aircraft Object and its value

23. Sections 20 and 25 of the IBC casts a general duty on the RP to manage the debtor as a going concern and generally preserve and protect the debtor’s assets. Rule 11(3) of the Aircraft Rules imposes an express mandatory obligation on the RP to preserve and maintain the value of the aircraft object during the waiting period in accordance with its underlying contract. Rule 11(4) further imposes an implied mandatory obligation on the RP to preserve and maintain the value of the aircraft object if he undertakes to perform obligations under the lease or security agreement with the lessor/creditor (as defined under the Aircraft Act), which also include preserve and maintain the value of the aircraft object.

24. The duties cast on the IRP by Rules 11(3) and (4) of the Aircraft Act set in from the date and time an insolvency professional is appointed as IRP by the Adjudicating Authority. Subsequently, in the first CoC meeting, the CoC either confirms the appointment of the IRP as the RP or decides to appoint another insolvency professional as the RP.

25. Preservation and maintenance of an aircraft object would involve certain expense. Regulation 31B of the CIRP Regulations requires the IRP to place before the CoC, all insolvency resolution process costs incurred till the date of the first CoC meeting, along with the justification for incurring such costs, for approval of the CoC. After the first meeting of the CoC, all insolvency resolution process costs shall be incurred only with the prior approval of the CoC. For such purpose, in each meeting of the CoC, the RP shall place the operational status of the corporate debtor and shall seek its approval for all insolvency resolution process costs proposed to be incurred until the next CoC meeting.¹⁷

26. Any expense incurred by the IRP or RP on preserving and maintaining aircraft objects would constitute CIRP costs within the meaning of the IBC and CIRP Regulations¹⁸. Regulation 33(4) of CIRP Regulations provides that the amount of expenses ratified by the CoC shall be treated as CIRP costs.¹⁹

27. Given the minimum time required by the IRP for collation and verification of claims, constitution of the CoC and calling of the meeting of the CoC, the first CoC meeting would not typically be conducted until at least 30 days after the insolvency commencement date. In many cases, due to stay by a higher court, it may not be feasible to hold a meeting of CoC

¹⁷ See, Regulation 31B of CIRP Regulations.

¹⁸ Please see Section 5(13) of IBC.

¹⁹ See, Regulation 33(4) of CIRP Regulations.

even after 30 days. It is possible that in some cases, the debtor may not have adequate cash or cash flow to meet preservation expenditure.

28. **A harmonious reading of the provisions of the Aircraft Act and the Aircraft Rules, and the IBC and CIRP Regulations, makes it clear that the Aircraft Act, read with Rule 11(3) of the Aircraft Rules, creates a mandatory statutory obligation on the RP (including the IRP) to take necessary measures for preservation and maintenance of aircraft objects and its value in accordance with the terms of the lease or security agreement, from the insolvency commencement date and such obligation continues till the IRP or RP (as applicable) continues to hold possession of the aircraft object in accordance with Guideline No. 1.**
29. **Such duty cast by Rule 11(3) has to be read into as part of duties of the IRP and RP under Sections 20 and 25 of the IBC.**
30. **There is no margin for error in complying with the obligation to preserve and maintain aircraft objects under the Aircraft Act and Aircraft Rules.**
31. **As per the provisions of the IBC and CIRP Regulations, as applicable on date, the IRP does not need prior approval of the CoC to incur costs on preservation and maintenance of aircraft prior to the first meeting of the CoC, which is a mandatory duty cast by Sections 20 and 25 of the IBC read with Rule 11(3) of the Aircraft Rules to maintain and preserve aircraft objects.**
32. **The costs incurred by the IRP can be approved/ ratified by the CoC, in accordance with CIRP Regulations, as and when an agenda for ratification is placed before the CoC by the IRP.**
33. **Waiting for the first CoC meeting to be held so that CoC approval can be obtained for incurring costs on preservation and maintenance of aircraft object shall not only defeat the very objective of the Aircraft Act and Rules 11(3) and (4) of Aircraft Rules, it will also amount to failure by the IRP to perform its mandatory duty to preserve and maintain aircraft objects. It will also amount to violation of the provisions of the Aircraft Act and Rules 11(3) and (4) of Aircraft Rules casting an obligation to maintain and preserve aircraft objects.**
34. However, as mentioned above, IRP and RP are required to place all costs before the CoC for its approval. In order to ensure that the IRP and RP adhere to the duties under Section 18, Section 25 of the IBC read with Rule 11(3) and Rule 11(4) of the Aircraft Rules, the IRP and RP (as relevant) should, in each meeting of the CoC, ensure that all costs which are required to preserve and maintain the aircraft objects and its value are meticulously recorded and placed before the CoC for their approval.

Best Practice

35. The following practical steps are best practice to ensure compliance with the applicable provisions of the IBC and CIRP Regulations.
- (a) If there is adequate bank balance or cash flow in the debtor to meet costs of preservation and maintenance of aircraft objects, the IRP shall forthwith, on his appointment, take appropriate steps for preservation and maintenance of aircraft objects in accordance with the lease or any similar arrangement, as required by Sections 20 and 25 of the IBC read with Rule 11(3) of the Aircraft Rules.
 - (b) The IRP shall not wait for prior approval of CoC to incur costs on preservation and maintenance of aircraft objects.
 - (c) The IRP/ RP shall act in good faith and apply duty of care expected of an insolvency professional and act diligently while taking steps for preservation and maintenance of aircraft objects including on making expenditure.
 - (d) The IRP/ RP shall maintain meticulous record and documentation of all costs and expense incurred on preservation carefully and meticulously.
 - (e) The IRP shall seek ratification of all costs incurred by him, at the first CoC meeting held after costs are incurred and shall further seek approval of ongoing/future expenditure.
 - (f) The CoC shall not unreasonably withhold ratification/approval of costs.
 - (g) Where adequate bank balance or cash flow does not exist to meet the cost of preservation and maintenance of aircraft objects in accordance with the lease or any similar arrangement, the IRP should place before CoC in its first meeting agenda item to decide that members of the CoC shall contribute costs, on interim basis, to meet expenditure of maintenance and preservation costs or handover the aircraft object to the creditor (as defined in the Aircraft Act).
 - (h) The CoC shall direct the IRP/ RP to raise interim finance to meet the cost of maintenance and preservation where the contribution by members of the CoC is not adequate to meet the cost of maintenance and preservation.
 - (i) The IBBI may consider formulating suitable guidelines to guide the Insolvency Professionals and CoC in such matters.

Guideline No. 3: Maintain Records of Dues on an Aircraft Object

36. Rule 7 of the Aircraft Rules provides that any debtor operating an aircraft object, where that aircraft object is subject to an international interest, shall electronically maintain records of dues arising from, related to or owed in regard to the ownership or use by the owner or operator of the aircraft object and submit to the registry authority. It further provides that the debtor shall periodically maintain and submit the dues, as provided in Appendix- 'A' to the rules, with the registry authority, and such maintenance and submission shall be maintained and submitted not later than the 5th day of the calendar month following the end of each quarter and shall continue to be maintained and submitted as long as that aircraft object remains registered in India under the provisions of Bharatiya Vayuyan Adhinyam, 2024 or any rules made thereunder. The information under this rule shall be submitted in Form-II appended to the AircraftRules in the Information System.
37. On admission of a corporate debtor into insolvency pursuant to Sections 7, 9 or 10 of the IBC, as the case may be, the board of directors of the debtor is suspended and the management of the debtor reports to the RP.²⁰ IBC further requires the RP to comply with all applicable laws as far as possible.²¹
38. **A harmonious reading of the provisions of the Aircraft Act and the Aircraft Rules, and the IBC and CIRP Regulations, makes it clear that the Aircraft Act, read with Rule 11(3) of the Aircraft Rules, creates a mandatory statutory obligation on the RP (including the IRP) to:**
- (i) Continue to maintain, electronically, records of dues arising from, related to or owed in regard to the ownership or use by the owner or operator of the aircraft object, as provided in Appendix- 'A' to the Aircraft Rules, in addition to other relevant records required to be kept by the RP in the course of his duties;
 - (ii) Submit to the registry authority the record and information in Form-II appended to the AircraftRules, not later than the 5th day of the calendar month following the end of each quarter'
 - (iii) Continue to maintain and submit the record and information as long as that aircraft object continues to be in possession of the debtor in accordance with Guideline No. 1.

Guideline No. 4: No Involuntary Modification of Creditor Rights with an International Interest under a Resolution Plan

²⁰ See, Section 17(1) (b) of the IBC.

²¹ See, Section 17(2) (e) of the IBC.

39. A resolution applicant who submits a resolution plan for insolvency resolution of the debtor under Section 30(1) of the IBC may propose any measure in the resolution plan as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including measures provided under Regulation 37 of the CIRP Regulations which may include determination of lease, restructuring, rescheduling or modifications of debt, claims and satisfaction of charges, etc. Such resolution plan may be approved by the CoC by majority vote under Section 30(4) of the IBC. If such resolution plan is approved by the Adjudicating Authority under Section 31 of the IBC it becomes binding on debtor, shareholders, creditors, guarantor, government, stakeholders and others.
40. Section 9(1) of the Aircraft Act, read with the Rule 11(6) of Aircraft Rules, prohibits any modification of the rights of a creditor (as defined in the Aircraft Act) holding a registered 'international interest' in an aircraft object without the consent of that 'creditor'.
41. The IBC provides that the resolution plan must be in compliance with the provisions of Section 30 (2) of the IBC. The IBC further provides that the RP shall examine that resolution plans received by him confirm with the provisions of Section 30(2) of the IBC and present to the CoC for its approval such resolution plans which confirm the conditions referred to in Section 30 (2). Sub-section (2)(e) provides that the RP shall examine that a resolution plan does not contravene any of the provisions of the law for the time being in force.
42. A harmonious reading of the provisions of the Aircraft Act and the IBC makes it clear that the RP is duty bound to examine:
- (i) Any resolution plan received by him does not seek any modification of the rights of a creditor (as defined in the Aircraft Act) holding a registered international interest in an aircraft object without the consent of that 'creditor'. If such modification is sought by resolution applicant without consent of lessor/creditor, the RP shall note that such resolution plan is non-compliant of Section 30(2)(e) of the IBC and not place such plan for approval of CoC under Section 30(3) of the IBC.
 - (ii) Place such plan (along with the other compliant and non-compliant plans before the CoC), as a non-compliant plan with details of non-compliance, as required by Regulation 39(1) of CIRP Regulations.

Guideline No. 5: Termination of Contracts during CIRP

43. Termination of a contract or lease by a counterparty during the CIRP is not *per se* prohibited, provided such termination is carried out in accordance with the terms of the contract/lease. While the IBC generally restricts invocation of ipso facto clause and

termination of contracts during CIRP solely on the basis of insolvency where such termination may lead to corporate death²², this principle does not prevent a creditor from exercising contractual and statutory remedies that are otherwise valid. Accordingly, termination by a creditor in exercise of rights available under the Aircraft Act, including remedies relating to repossession, deregistration, and export, is generally permissible once the creditor's (as defined in the Aircraft Act) international interest has crystallised and the waiting period has expired, and such termination is not based solely on the commencement of insolvency proceedings.

44. **A harmonious reading of the provisions of the Aircraft Act and the IBC makes it clear that** in the context of lease termination, following shall apply:

- (a) *Termination prior to insolvency* – if creditor becomes entitled to possession, then RP (including the IRP) must return the aircraft under Para 2 (b) of Article XI;
- (b) *Termination during or after waiting period on grounds other than insolvency commencement* – while there is no restriction on termination (provided it is done in accordance with the terms of the lease), in case of termination of lease by a creditor during the waiting period, the 2 calendar month moratorium will still apply and the debtor/ RP can retain the aircraft after the end of the waiting period under Rule 11 (4) if: (A) it cures all defaults (other than default arising on account of insolvency commencement); (B) and RP has agreed to perform all future obligations under the lease or security agreement with the creditor (“**Retention Conditions**”). As a corollary, termination after the waiting period can take place in case the Retention Conditions are not met, i.e. if there are defaults or failure to perform obligations under the relevant contract. Further, Rule 11(3) of the Aircraft Rules imposes an obligation on the RP to preserve and maintain the value of the aircraft object and provide creditor with access to the aircraft object, and relevant records during the waiting period. In case there is a failure to comply with such obligations, the RP shall not be entitled to retain the aircraft object during the waiting period.
- (c) *Termination during or after the waiting period on grounds of insolvency commencement* – no restriction *per se* under IBC to terminate solely on grounds of insolvency. However, under Rule 11 (4), the debtor has been permitted to retain the aircraft object if it has met the Retention Conditions before the expiry of the waiting period, i.e. cured all defaults “*other than those arising from the initiation of insolvency proceedings*” and agreed to perform all future obligations. As a corollary, termination solely on the grounds of insolvency initiation may not be permitted if Retention Conditions are met.

Part IV

²²Gujarat Urja Vikas Nigam Limited Vs Mr. Amit Gupta & Ors. [2021 7 SCC 209]

Application and Dissemination

45. All stakeholders including the insolvency professionals and members of the CoC are encouraged to follow the Guidelines and Best Practices in all IBC proceedings where an entity having aircraft object(s) is the debtor.
46. The Insolvency Professionals' Association, Indian Banks Association and industry associations are requested to widely disseminate and build awareness of the Guidelines and Best Practices among their members.
47. The IBBI is requested to form suitable regulations and guidance notes to incorporate the Guidelines and Best Practices in the CIRP Regulations.