

## LAW & POLICY UPDATE



### GO AIR: BREAKTHROUGH ON THE HORIZON?

On May 10, 2023, the National Company Law Tribunal, New Delhi (**NCLT**) admitted the application of Go Airlines (India) Limited (**Company**), the third largest airline company in India by passenger market share, in 2022<sup>1</sup>, under Section 10 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) and declared a moratorium for the Company.

NCLT appointed Mr. Abhilash Lal, the Company's own nomination, as the Interim Resolution Professional (**IRP**) and directed him to take charge of the Corporate Insolvency Resolution Process (**CIRP**) with immediate effect. Subsequently, on the challenge of the NCLT's order by aircraft lessors, such as SMBC Aviation Capital, GY Aviation Lease and SFV Aircraft Holdings, the Principal Bench of the National Company Law Appellate Tribunal (**NCLAT**) on May 22, 2023 upheld the NCLT's decision to initiate the CIRP and allowed the aircraft lessors to file appropriate applications in the NCLT under Section 65 of the IBC for a declaration with regard to applicability of the moratorium on the aircraft leases which were terminated before the initiation of the CIRP.

The Company states that the cause of their financial distress is the inherently defective engines supplied by Pratt & Whitney (**P&W**), which caused its aircraft to be grounded. After various attempts by the Company to amicably resolve the issue and P&W refusing to repair or replace the engines, the Company filed an emergency arbitration against P&W administered by the Singapore International Arbitration Centre (**SIAC**), for which awards had been passed for supply of serviceable engines for its Airbus A320neo aircrafts, which awards, as per the Company, have not been complied with. Enforcement proceedings against P&W have been initiated in Delaware, USA as well as other relevant jurisdictions.

#### Key aspects of the moratorium

The Company has claimed that it has a total of 54 aircrafts, as its main assets, out of which 28 are grounded due to failure to repair/provide replacement engines by P&W. Due to the aforementioned non-compliance and default of P&W, it had to suspend operations from May 3, 2023 onwards. As per the application by the Company to the NCLT, it had committed a default of INR 2,660 crore (USD 321 million approx.) towards aircraft lessors and INR 1,202 (USD 145 million approx.) crore towards its vendors. The Company had claimed that it will lose all its assets if protection under the moratorium under the IBC is not provided, on an immediate basis, to which the NCLT granted a moratorium in terms of Section 14(1) (a), (b), (c) & (d) of the IBC and imposed the following prohibitions:

- The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including the execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.
- Transferring, encumbering, alienating, or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein.

#### Authors



**Soumya De Mallik**  
Partner



**Prithviraj Chauhan**  
Principal Associate



**Taha Abdur Razzack**  
Associate

<sup>1</sup> <https://www.bqprime.com/business/air-passenger-traffic-jumps-to-nearly-three-year-high-in-december>

- Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
- The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor.

This is in line with the prayer of the Wadia Group owned Company, to shield itself from adverse action by its lessors and lenders and to preserve its assets and keep the Company as a going concern in the larger public interest. Saving invaluable time is one of the many advantages that the Company has gained by way of voluntary initiation of the CIRP under Section 10 of IBC, as there is no requirement of issuing notice to the creditors. This avoids inordinate delays in the conclusion of the proceedings, which may result in the erosion of the value of the assets and defeat the very purpose of value maximization and revival of the Company, contrary to the core objectives of the IBC.

### What may lie ahead?

Although the NCLT has directed the IRP to ensure that retrenchment of employees is not resorted to as a matter of course, the future of employees remains grim, with salary payments behind schedule and uncertainty regarding the operations. Pilots have urged the Central Government to reduce the notice period of 12 months to resign as required per DGCA's norms. The Company has also offered retention allowances and incentives to its pilots and employees to prevent a staff exodus.<sup>2</sup>

Adding to its list of regulatory woes, the DGCA, on May 25, 2023, directed the Company to submit a 'comprehensive restructuring/revival plan for a sustainable revival of operations' in 30 days, and make available details of operational aircraft, pilots and other trained personnel required for maintenance arrangements, as well as funding being raised and arrangements with lessors and vendors.<sup>3</sup> The DGCA will conduct audits to ensure preparedness, for which the Company has requested the availability of its pilots and employees

The Resolution Plan to be submitted in the CIRP may include the following:

- Infusion of capital by the Wadia Group and potential investors who may step in as a 'White Knight'
- Seeking help of its flagship companies, by the Wadia Group, as can be seen by the recent provisioning of INR 1,866 crore (USD 225 million approx.) by Bombay Burmah Trading Corporation Limited (**BBTCL**) in respect to its investments made in the Company and other related financial obligations.<sup>4</sup>
- Private equity, stressed asset investors and special situation funds roped in to provide much needed capital in exchange for equity and can be used in the settlement with the Committee of Creditors (**CoC**).
- Central Government's Emergency Credit Line Guarantee Scheme (**ECLGS**), which may be utilized by the IRP as an immediate measure.
- Corporate guarantees, by the Wadia Group, from its flagship companies to satisfy its financial obligations to its lenders or, as a last resort, may sell a significant stake by induction of a new partner or completely exit the Company, resulting in change of ownership and control.

All these options, however, are subject to the decisions of the CoC and the Resolution Plan so approved.

The Company is facing legal proceedings by the lessors of its aircraft in multiple forums, including the Delhi High Court where the aircraft lessors have filed a writ petition to direct the Directorate General of Civil Aviation (**DGCA**) to de-register its aircraft. This is because the moratorium effectively prevents aircraft lessors from repossessing its aircraft even if the Company has not met its financial obligations. The suspended board of the Company has filed caveats before the Supreme Court of India against the NCLAT's order, indicating that the matter may very well reach the Apex Court.

The Company's voluntary insolvency plea has thrown up challenging issues under various legislations in the already competitive airlines business. Going forward, the Company may expect regulatory obstacles as it defends itself against show cause notices and audits from the DGCA which is seeking revival plans from the airline for resumption of its operations. Additionally, it faces obstacles from aircraft lessors who are working towards repossessing their aircrafts, and other competing airlines who wish to acquire the Company's assets. Stakeholders remain in eager anticipation of the outcome of the CIRP and whether the Company can be effectively restructured or, reminiscent of the fate of Jet Airways, Kingfisher Airlines and Air Deccan, is heading towards winding up.

<sup>2</sup> <https://www.livemint.com/companies/news/go-airlines-offers-its-pilots-retention-allowance-of-rs1-lakh-a-month-rs50-000-to-first-officers-11685363823560.html>

<sup>3</sup> <https://www.thehindu.com/news/national/dgca-asks-go-first-to-submit-a-revival-plan-within-30-days/article66892499.ece>

<sup>4</sup> <https://www.livemint.com/companies/news/wadia-group-holding-co-makes-provisions-on-investment-in-go-air-11685346287659.html>

