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ANALYSIS OF MORATORIUM UNDER CORPORATE INSOLVENCY RESOLUTION PROCESS: A COMPARATIVE STUDY OF INDIA AND UNITED KINGDOM

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Abstract

A moratorium denotes a temporary suspension of legal action against a corporate debtor till the resolution plan is accepted or rejected by the Adjudicating Authority. This 'calm period' suggested by the Bankruptcy Law Reforms Committee aligns with the objectives of the Code such as maximisation of value of assets, promote entrepreneurship, ensure availability of credit and balance the interest of all stakeholders while giving a chance to the debtor's firm to survive as a going concern. Considering the existence of overlapping forums such as NCLT, NCDRC, RERA, DRT, RBI, SEBI and interests of diverse category of creditors like financial, operational, secured, unsecured and decree-holders, moratorium has facilitated uniform resolution. Additionally, it has given time to the corporate debtor and creditors to formulate a resolution plan and explore potential investment. While section 74 of the Code imposes punishment for contravention of moratorium, certain judicial interpretations have held its non-applicability on criminal proceedings, constitutional cases and on a personal guarantor to the corporate debtor.

Whereas, the automatic application of moratorium under the Code makes it a stagnant feature leading to impediments in the smooth conduct of the insolvency resolution process. The cases pertaining to real estate particularly have been fraught with delays, jeopardizing the rights of homebuyers, obstruction for homebuyers in obtaining possession of the flat and inability of other homebuyers to initiate application under RERA and NCDRC. While application of moratorium in airline insolvencies such as the Go Air case has led to incapacity of lessors in obtaining repossession of aircrafts, inability to terminate lease agreements and use of CIRP as a tool to avoid litigation.

Although, UK and Indian insolvency laws have similar objectives of providing a cooling period to the debtor to explore resolution options, the UK Corporate Insolvency and Governance Act, 2020 provides for implementation of a pre-insolvency and a restricted time moratorium before the start of formal insolvency proceeding which affords protection to the corporate debtor by allowing it to rehabilitate the company before the start of formal insolvency proceeding.

Therefore, the authors with the help of doctrinal analysis will discuss the features of a moratorium under the CIRP and its effect on real estate and airline insolvencies. The thematic analysis of the paper would revolve around eight themes first, introduction. Second, effect of moratorium on corporate insolvency resolution process, third, conundrum surrounding applicability of moratorium in real estate insolvency, fourthly, impact of moratorium on lessor rights in airline insolvency, fifth, features of a detached moratorium under United Kingdom's insolvency law, sixth, Comparative analysis of moratorium between India and UK, Seventh, a conclusion and eight, way forward for better implementation of moratorium for the benefit of all stakeholders.

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Keywords: Moratorium, IBC, CIRP, CIGA, 2020, RERA, CTC

Introduction

The Insolvency and Bankruptcy Code, 2016[3] (IBC) does not define the term 'moratorium'. It is a legally permitted extension of time for fulfilling a commitment or paying a debt. In other words, it can be stated that a moratorium is an authorized period of time during which an act is delayed. In general, moratorium also refers to the amount of time permitted prior to the start of loan repayment or interest payments.[4] It can be defined as a court order that allows a debtor to temporarily halt payments.[5] After an application for initiation of Corporate Insolvency Resolution Process (CIRP) is admitted under sections 7, 9, or 10, the National Company Law Tribunal (NCLT) shall declare the application of a moratorium and state the reasons for the same. According to section 14(4) of the Code, the moratorium takes effect from the date it is issued i.e. the day the NCLT accepts the application submitted for initiation of CIRP.

The objective of laying down a mandatory moratorium is to enable creditor-driven resolution by preventing depletion of corporate debtor's assets and to facilitate the CIRP by suspending any pending litigating and preventing enforcement of security interests.[6] Accordingly, the IBC under proviso to section 14 (4) prescribes for such a shadow period on any existing or future proceeding till the time the resolution plan is approved by the Adjudicating Authority or when the liquidation order is passed. In other words, the duration of entire CIRP i.e., a maximum of 330 days is the total time period of a moratorium.

This enables all categories of creditors to receive claims as per the approved resolution plan or in case of liquidation, according to the waterfall mechanism provided u/s 53 of the IBC, 2016. The creditor in control approach allows creditors to finalize a resolution plan, hear rival plans and appoint an Insolvency Resolution Professional (IRP) to manage the corporate debtor's assets. This procedure which runs parallel to the CIRP which enables the debtor to get relief from making payments due during the CIRP so that at the end if the company is revived or goes into liquidation the amount can be given finally.

Further, the non-obstante clause provided under section 238 of the Code, supersedes the provisions of other laws by giving overriding effect to the Code. It nullifies the provisions in any law relating to enforcement of security interests, foreclosure of assets, taking over possession of assets which are either under possession or ownership of the corporate debtor.

In the last few years, the bar imposed by section 14 on homebuyer's applications under Real Estate (Regulation and Development) Act, 2016 (RERA) has led to a quandary between IBC and RERA. Homebuyers though included in the category of financial creditors u/s 5 (8) of the IBC[7] are unable to obtain the desired relief due to the prolonged delays of CIRP and lack of funds with the corporate debtor. The plight of homebuyers is aggravated due to the fact that IBC does not offer a creditor specific resolution for them and since the moratorium is in force, they are unable to get the possession of the flat. Similar issues also exist for banks and financial institutions where they are unable to enforce security interest under the Securitisation and Asset Reconstruction and Enforcement of Security Interest Act, 2002 (SARFAESI) or Recovery of Debts and Bankruptcy Act, 1993 (RDB) during the moratorium period.

Recently, the provision of compulsory moratorium u/s 14 (1) (d) of the Code, has also affected the rights of aircraft lessors or owners when an airline company goes into insolvency. Since all aircrafts are usually taken on lease from the lessor or owner, the initiation of moratorium disables them from claiming the ownership. In this regard, the Convention on International Interests

3. The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).
4. Nat'l Hydroelectric Power Corp. v. Chairman, Punjab State Elec. Bd., Appeal No. 130 of 2006 (APTEL Sept. 14, 2006) (India).
5. Andhra Pradesh Farmers Agricultural Debts (Moratorium) Act, 2004, § 3(f), No. 10, Acts of Andhra Pradesh State Legislature, 2004 (India).
6. Bankruptcy Law Reforms Comm., Report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design ¶ 6.4.1 (2015) (India), https://ibbi.gov.in/BLRCReportVol1_04112015.pdf.(last visited July 15, 2025).
7. Insolvency and Bankruptcy Code (Second Amendment) Act, No. 26 of 2018, Acts of Parliament, 2018 (India).

in Mobile Equipment[8] known as the Cape Town Convention, 2001(CTC) allows the lessors to take possession of leased aircraft within 60 days of the initiation of insolvency process[9]. While India is a signatory to the CTC, 2001, it did not ratify the Convention and after the enactment of IBC in the year 2016, the latter superseded the obligation under International Law. Resultantly, to avoid criticism of Indian Insolvency regime and high costs of lease agreements and escalation of travel costs for consumers, the Ministry of Corporate Affairs amended the Code amended the Code in 2023 and exempted the application of moratorium to airline insolvencies.

Keeping this in view, it can be opined that a rigid application of moratorium is leading to inconsistencies amongst creditors and conundrum between laws under the Indian insolvency framework. A standalone and restricted moratorium like the one implemented in the United Kingdom (UK) can enable all creditors achieve resolution smoothly. Additionally, the authors suggest introduction of Company Voluntary Arrangements (CVAs) and cross-class cram down provisions as implemented under the Corporate Insolvency and Governance Act, 2020 (CIGA) for swift insolvency resolution.

Effect of Moratorium on Corporate Insolvency Resolution Process

As soon as the Moratorium under section 14 of the Code is imposed following are the effects of it:

Prohibition of Suits

The foremost effect of application of moratorium under the Code is a stay on pending suits or proceedings against the corporate debtor. The restriction under this clause applies upon execution of judgment, decree or order passed by any court, tribunal or arbitration authority. Some legal principles relating to Moratorium established by courts are:

1. Any moratorium already imposed by a State Government Authority is superseded by a moratorium proclaimed under the Code as held in M/s Innoventive Industries Limited v. ICICI Bank.[10]
2. In Alchemist Asset Reconstruction Company v. Hotel Gaudavan[11], the Supreme Court laid down that no arbitration proceedings could go on during the application of moratorium.
3. In Power Grid Corp. of India Ltd. v. Jyoti Structures Ltd.,[12], the Supreme Court ruled that section 14(1)(a) of the code does not forbid the continuation of procedures under section 34 of the Arbitration Act if they do not jeopardise, reduce, dissipate, or negatively damage the assets of the corporate debtor.
4. A writ petition pending before the Supreme Court under Article 32 or before the High Court under 226 of the Indian Constitution would be exempted from the impact of the moratorium.[13]
5. Moratorium would not apply to the cases where the counter claim has been filed and it will be seen from case-to-case basis as per the situation and the facts of the case where such case arises and generally the moratorium cannot be applied upon them.[14]
6. It does not apply to prosecution under section 138[15] of the Negotiable Instruments Act,1881[16].
7. For criminal proceedings under the Prevention of Money Laundering Act of 2002, a moratorium is not applicable. The NCLT ruled that any criminal action conducted in connection with the

8. Convention on International Interests in Mobile Equipment, opened for signature Nov. 16, 2001, 2307 U.N.T.S. 285.
9. *Id*, art. XI (2) Alternative A, opened for signature Nov. 16, 2001, 2307 U.N.T.S. 285.
10. (2018) 1 SCC 407 (India).
11. (2018) 16 SCC 94 (India).
12. 2017 SCC OnLine Del 12189 (India).
13. Canara Bank v. Deccan Chronicle Holdings Ltd., Comp. App. (AT) (Insolvency) No. 147 of 2017 (NCLAT Sept. 14, 2017) (India).
14. SSMP Indus. Ltd. v. Perkan Food Processors Pvt. Ltd., 2019 SCC OnLine Del 9339 (India);
15. Negotiable Instruments Act, No. 26 of 1881, § 138, Acts of Parliament, 1881 (India)
16. Ajay Kumar Bishnoi v. Tap Eng'g, 2020 SCC OnLine Mad 22579 (India).

criminal proceeding is not subject to Section 14 of the Code.[17]

Prohibition on transfer of assets by Corporate Debtor

Under the provision of section of 14 (1) (b) of the Code, once the CIRP has commenced, and moratorium is in place, the assets of the corporate debtor cannot be sold or leased.

Prohibition of Enforcement of Security Interest under the (SARFAESI)[18]

Once the CIRP has commenced, the NCLT shall order prohibition of –

h. Any action of Foreclosure;

i. Recovery;

j. Enforcement of any Security Interest.

Which has been created by the CD in respect of any property under the SARFAESI Act, 2002. The NCLAT held that SARFAESI proceedings cannot be continued against the corporate debtor once CIRP starts and the moratorium is ordered including execution of judgments or decrees.[19]

Prohibition of recovery of property possessed by the Corporate Debtor[20]

The Supreme Court in the case of *Srei Infrastructure Fin. Ltd. v. Sundresh Bhatt*, RP for Sterling Biotech Ltd.,[21] held that once the CIRP has been initiated, and a property not owned by the CD is possessed by him then the owner cannot give notice for eviction till the moratorium is in application unless the lease period ends, if the lease period ends then the CD does not have a right to renewal of such property[22]. The word "occupied" refers exclusively to the actual physical possession of the property and does not apply to rights or interests formed in property.[23]

Commencement of CIRP cannot be used as a ground to cancel licence, etc.

In this context, the explanation to section 14 (1) provides for a non-obstante clause that even if there is anything inconsistent provided under any other law, the license, registration or similar right or grant shall not be suspended or revoked due to insolvency provided there is no default in paying current dues of using the licence or grant during moratorium period. However, as regards the pre-CIRP dues are concerned, such authority is not permitted to demand the same throughout the duration of the moratorium, this also applies for the demands from the Government[24] and Regulatory Authorities.

The supply of essential goods and services to the Corporate Debtor

An exception to application of moratorium provided u/s 14 (2) and (2A) is supply of essential goods and services. Since the company must continue as a going concern, it is obligatory for the IRP to ensure that essential goods and services such as raw materials etc. are supplied to the company during his control. It also includes insurance policies and any amount to be payable as an instalment, which is also the duty of the IRP[25].

Moratorium not applicable on certain transactions and on surety[26]

Further, application of moratorium has been exempted on transactions or agreements which are notified by the central government or any financial sector regulator. This is to enable the government to ensure the implementation of contracts entered into before the

17. Varrsana Ispat Ltd. v. Deputy Dir., Directorate of Enforcement, Comp. App. (AT) (Insolvency) No. 493 of 2018 (NCLAT May 2, 2019) (India).
18. The Insolvency and Bankruptcy Code, 2016, § 14(1)(c), No. 31, Acts of Parliament, 2016 (India).
19. Indian Overseas Bank v. RCM Infrastructure Ltd., (2022) 8 SCC 516 (India).
20. Insolvency and Bankruptcy Code; No. 31 of 2016, § 14(1)(d), Acts of Parliament, 2016 (India).
21. 2019 SCC OnLine NCLAT 1018 (India)
22. Embassy Prop. Devs. Pvt. Ltd. v. State of Karnataka, (2020) 13 SCC 308 (India).
23. Rajendra K. Bhutta v. Maharashtra Hous. & Area Dev. Auth., (2020) 13 SCC 208 (India).
24. Union of India v. Videocon Indus. Ltd., 2019 SCC OnLine NCLAT 475 (India).
25. Shyam Pradhan v. Anand Chandra Swain, 2020 SCC OnLine NCLAT 126 (India).
26. Insolvency and Bankruptcy Code, No. 31 of 2016, § 14(3), Acts of Parliament, 2016 (India).

commencement of corporate insolvency resolution process even during insolvency proceedings. Also, a surety cannot avail the benefit of a moratorium and therefore, the creditor can recover the debt from the personal guarantor even when insolvency proceedings are going on against the principal debtor.[27] This provision was made retrospectively applicable by the 2018 Amendment Act.

Thus, any remedy or right that anybody may have with regard to the corporate debtor under any other Indian law shall be superseded by the order declaring moratorium from the insolvency commencement date passed by the Adjudicating Authority. According to Section 238 of the Code, the provisions of the law will take effect regardless of any conflicting provisions found in any currently enacted legislation or other instrument that has legal power. More clarity is provided by this non-obstante provision than by any other earlier statutes pertaining to secured creditors' rights, which resulted in a flurry of litigation. For example, The RDB Act, 1993 and the SARFAESI Act, 2002 have intricate non-obstante clauses. As a result, the Supreme Court was forced to ultimately explain in Madras Petrochem Ltd. v. BIFR[28] that the SARFAESI Act's provisions shall supersede the Companies Act of 2013.

But generally speaking, some proceedings are not covered by the moratorium. For instance, as the moratorium only applies to the determination of responsibility, not its realisation, the processes to ascertain the corporate debtor's tax due could not be covered by it. It is not possible to halt criminal proceedings against the business, its executives, and directors.[29] In this regard, the Code addresses the penalties for breaking a moratorium.[30] When a Corporate Debtor, one of its executives, or a creditor violates Section 14's requirements, or when such a violation is intentionally or wilfully committed, authorised, or tolerated, the following penalties will apply.

Officials of Corporate Debtor	**Creditors of Corporate Debtor**
"Imprisonment for a term of at least 3 years, which can be extended to 5 years. Or Fine of at least one lakh rupees, which can extend to three lakh rupees. Or With both fine and imprisonment"	"Imprisonment for a term of at least 3 years, which can be extended to 5 years. Or Fine of at least one lakh rupees, which can extend to one crore rupees. Or With both fine and imprisonment"

Conundrum Surrounding Applicability of Moratorium in Real Estate Insolvency

Once the CIRP is initiated, the IRP takes over and due to the application of moratorium, all projects of the real estate company result in abeyance. Homebuyers assume a peculiar position in the real estate insolvency matrix and apart from IBC, one of the parallel remedy available to them is under the provisions of the RERA Act, 2016,[31]. Since the provisions of moratorium under IBC supersede the provisions of RERA, 2016 as well, the homebuyers are not left with any other remedy but to wait till the approval of the resolution plan by the Committee of Creditors (COC) or the liquidation of the corporate debtor. This creates a conflict between IBC and RERA in case an individual home buyer wishes to approach the RERA authority to seek possession of the flat. This implies that not only under RERA but also under any other law is rendered ineffective.

The demand for specific resolution for the benefit of allottees cannot be achieved in such cases. Owing to

27. SBI v. V. Ramakrishnan, (2018) 17 SCC 394 (India).
28. (2016) 4 SCC 1 (India).
29. Sumant Batra, Corporate Insolvency Law and Practice 255 (Eastern Book Co., Lucknow, 2017).
30. Insolvency and Bankruptcy Code, No. 31 of 2016, § 74, Acts of Parliament, 2016 (India).
31. The Real Estate (Regulation and Development) Act, 2016, No. 16, Acts of Parliament, 2016 (India).

the large number of homebuyers in a real estate project, homebuyers might seek redressal in the form of obtaining ownership or possession of the unit. Currently due to a moratorium being imposed on any transaction pertaining to the real estate project, the homebuyers are not permitted to take possession of a unit. The lack of resolution for homebuyers in case of initiation of CIRP is even more as haircuts cannot be allowed in their case.

Even though the IBC has clear provisions that allottees in a real estate project are included within the category of financial creditors and have become an integral part of the Committee of Creditors,[32] there are instances where their interests diverge from the objectives of the corporate insolvency resolution process. Unlike other financial creditors, allottees typically prioritize obtaining ownership and possession of the plot, apartment, or building as compared to receiving repayment of their advances with haircuts or proceeding with the liquidation process. This creates an inherent conflict of interests between allottees and other financial creditors, particularly banks and financial institutions whose only interest lies in refund of the loan amount or even liquidation of the promoter's company.

This conflict was dealt by the Supreme Court in the case of Union Bank of India v. Rajasthan Real Estate Regulatory Authority & Others,[33] wherein the Supreme Court held that even the Real Estate Regulatory Authority can accept complaints filed by a homebuyer against a bank or financial institution who takes an action for enforcement of security interest against the promoter under the provisions of section 13 (4) of the SARFAESI Act, 2002.

Thus, 'as is where is basis' allotment can be adopted in case of homebuyers. Also, in instances where the possession has been transferred to the homebuyers, the Resolution Professional (RP) shall be allowed to hand over the ownership of a plot, apartment or building to the allottees through transfer during the resolution process with the approval of the COC[34]. This would enable the homebuyers to obtain their dues as even taking haircuts by them is a futile effort.[35] Due to this, the conundrum between IBC and RERA increases and the CIRP fails to create a balance between project completion and financial recovery. Further, in order to overcome the challenges faced by homebuyers by the tensions between RERA and IBC, the Courts have evolved the mechanisms of firstly, project wise corporate insolvency resolution process and secondly a reverse corporate insolvency resolution process.

Project wise Corporate Insolvency Resolution Process

Under the project wise CIRP, in cases where, only one project of a promoter converts into a defaulting entity but due to the provisions of CIRP provided under the IBC, the entire company's insolvency has to be initiated leading to halt of several well-performing projects as well. In such instances a new framework under the IBC has been introduced for real estate insolvencies where the CIRP provisions shall apply to the defaulted project only.

Recently, in February, 2024, the Insolvency and Bankruptcy Board of India has inserted a clarification in regulation 36A, after sub-regulation (1). It provides that the resolution professional after the approval of the committee may invite a resolution plan for each real estate project or group of projects of the corporate debtor.[36]

As a part of this framework, each development project is kept separate from the other. This enables that the assets under the insolvent project are distinguished from other solvent company's projects. Accordingly, the NCLAT in *Whispering Tower Flat Owner Welfare Association v. Abhay Narayan Manudhane, RP of Corporate Debtor and others*[37], permitted the COC to invite

32. The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, No. 26, Acts of Parliament, 2018 (India).
33. D.B. SLP (Civ.) Nos. 1861–1871 of 2021, SC (India).
34. Insolvency & Bankr. Bd. of India, Discussion Paper on Issues Related to Real Estate (2024) (India), https://ibbi.gov.in/uploads/whatsnew/c7ddc802e5b2c4f073fa0d419813844a.pdf.
35. Andhra Bank v. Sterling Biotech Ltd., MANU/NL/0408/2019 (NCLAT) (India).
36. Insolvency & Bankr. Bd. of India, Notification No. IBBI/2023-24/GN/REG113 (Feb. 15, 2024), Gazette of India, pt. III, § 4 (India).
37. Jitender Arora v. Tek Chand, Comp. App. (AT) (Insolvency) Nos. 896, 980 & 1045 of 2021 (NCLAT Mar. 31, 2023) (India).

project-wise expression of interest and even extended the time period of CIRP beyond 330 days.

Though this concept goes against the objectives of CIRP as suggested by the Bankruptcy Law Reforms Committee (BLRC) but is more suitable for real estate insolvencies so that homebuyers can participate in the process and have minimum liability in the CIRP. Further, it was on these lines that the NCLT in the case of *Mr. N. Kumar Resolution Professional, M/s Sheltrex Developers Pvt. Ltd v. M/s Tata Capital Housing Finance Ltd.*[38] held that considering the facts of this case, project wise CIRP is not a feasible solution as it goes against the basic tenets of IBC and cannot be approved by the COC.

Additionally, the imposition of moratorium leads to a non-recovery of loan by banks and financial institutions as no action or proceeding can be initiated against the corporate debtor during the cool off period. Hence, all channels through which funds can be allocated to the development of project are stopped.

Reverse Corporate Insolvency Resolution Process

This is a unique form of CIRP solely introduced for the real estate insolvencies. It allows one of the promoters of the same company to remain outside the corporate insolvency resolution process but play the role of a financial creditor or lender to ensure that the CIRP reaches success and the allottees take possession of their flats during the CIRP without any third-party intervention. Consequently, the conflict between the various stakeholders is reduced to a minimum as they all achieve the desired outcomes. Accordingly, in Flat Buyers Association Winter Hills – 77, Gurgaon v. Umang Realtech Pvt. Ltd through IRP & Others[39], the NCLT had for the first time introduced this concept considering the facts of the case so that the debtor remains a going concern and allowed the allottees to pay the remaining amount and obtain the possession.[40]

Impact of Moratorium on Lessor Rights in Airline Insolvency

The aviation sector which has lately seen some major insolvencies is facing issues in contract of aircraft leasing which is rendered ineffective by a moratorium. The high cost of aircrafts and the costs involved in airline business makes the insolvency process even more difficult. This has a ripple effect on the creditors and lessors whose investments are still at risk because it's hard to get back planes that have been leased out during insolvency.[41] And once the CIRP is initiated as discussed above, by imposition of clause (d) of Section 14 (1) of the Code the aircraft owner or lessor is prohibited from recovering or repossessing a property which is in the possession of the corporate debtor during the CIRP.[42]

Further, India being a signatory to the Protocol on Matters Specific to Aircraft Equipment[43] from March 31, 2008, and to the Convention on International Interests in Mobile Equipment,[44] known as the Cape Town Convention (CTC), 2001, it enables to solve the problem of acquisition of opposing rights in aviation assets without any permanent location.[45]

Alternative A of the Article XI (2) of the Convention obligates that a contracting state should enable a lessor to obtain the aircraft's possession at the expiry of the

38. Flat Buyers Ass'n Winter Hills-77 v. Umang Realtech Pvt. Ltd., CP (IB)/889/(CHE)/2019 (NCLT Feb. 4, 2020) (India).
39. Flat Buyers Ass'n Winter Hills-77 v. Umang Realtech Pvt. Ltd., Comp. App. (AT) (Insolvency) No. 926 of 2019 (NCLAT Feb. 4, 2020) (India).
40. In this case, one of the promoters, Uppal Housing Pvt. Ltd. agreed to invest in the corporate debtor and homebuyers agreed to pay 30% at the time of registration of the flat. The entire procedure was completed under the IRP's supervision and the promoter was asked to give a deadline for completion of the project by an affidavit.
41. Rupakshi Sharma, Aviation Industry's Exclusion from Moratorium: A Catalyst for Change?, NLIU J. Bus. L.: Blog (Dec. 7, 2023), https://cbcl.nliu.ac.in/insolvency-law/aviation-industrys-exclusion-from-moratorium-a-catalyst-for-change/.
42. Supra note 20.
43. Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, Nov. 16, 2001, 2367 U.N.T.S. 517. (last visited May 26, 2025).
44. Supra note 8.
45. Supra note 9.

waiting period as provided in the State's declaration.[46] Under Article XI, India has imposed a two-month waiting time. As such, a resolution professional has sixty days from the start of CIRP to either (i) rectify all CD defaults or (ii) surrender the lessor control of the aircraft.[47] Furthermore, as per Aircraft Rules, 1937, in the event that a debtor defaults, creditors may de-register and re-possess aircrafts by issuing an Irrevocable Deregistration and Export Request Authorization (IDERA), which were created under provisions of the Aircraft Act, 1934.[48]

In 2014, SpiceJet Airlines caused defaults on leases for six aircraft. The owners/hypothecates were forced to seek the approval of Directorate General of Civil Aviation (DGCA) for deregistration under the IDERA, which benefited them, as the defaults persisted. The aircrafts were not deregistered, but original IDERAs and photocopies of Priority Search Certificates proving that the lessors/owner/mortgagees are the sole registered interest holders were sent to the DGCA. The Hon'ble Delhi High Court[49] applied the CTC, India's declarations under it, and the timely Aircraft Rules change (which recognised the IDERA and included Rule 30(7)) in its thorough ruling and thereby allowing deregistration of aircrafts of SpiceJet Limited.

But this changed post application of IBC, as the Code supersedes every other law in force which is in contravention of the Code, making the application of mandatory moratorium once the CIRP initiates and the law made in constraint of the CTC to violate. Since, the application of moratorium would result on bar on any suits and even the bar on lessor's right to take possession of assets i.e., the aircrafts. As the Indian government did not formally ratify CTC in the form of a separate implementing legislation, the municipal law i.e., the Code took precedent over India's international law duties with regard to CTC. Globally this resulted in a lot of back slash for the Indian law and the Indian Insolvency regime.

Additionally, the voluntary bankruptcy case of GoAir airlines also depicts the implications of moratorium upon rights of lessors or mortgagers. In the case of *Accipiter Investment Aircrafts* 2 Ltd. v. Union of India[50], the Delhi High Court rejected the DGCAs refusal to process deregistration applications of for fifty-four aircrafts leased to GoAir. The facts of this case assume importance as before the applications for deregistration requests filed by aircraft lessors of GoAir could be processed by the DGCA, the GoAir initiated voluntary insolvency proceedings u/s 10 of the Code. The airline cited ₹ 10,800 crore in revenue loss and higher costs due to the defective engines supplied by Pratt & Whitney. Due to the automatic imposition of moratorium on GoAir's assets u/s 14 (1) of the IBC, DGCA rejected the deregistration application of lessors.

This action led to the instant installation of a moratorium under the Code, which forbade the lessor from recovering any GoAir aircraft.[51] As a result, issues in relation to the running of the company as a going concern and the value of an operator license which is essential to the business arose. The High Court held that the jurisdiction of NCLT was confined to matters arising out of IBC and not on regulatory functions of authorities like DGCA. It also clarified that moratorium would not apply to aircrafts in possession of GoAir as they do not own them but are only leased. Also, to ensure compliance with international conventions the Court granted the lessors of their rights over the aircrafts and allowed termination of leases.

Further, the High Court instructed DGCA to process deregistration applications within 5 working days and allowed aircraft maintenance rights to lessors or their authorized representatives. Additionally, the resolution professional of GoAir airlines was asked to provide all documentation to lessors and GoAir's employees were restrained from accessing aircraft documents. As a response, the resolution professional filed a Special Leave Petition before the Supreme Court in the case of Go Airlines India Limited v. SMBC Aviation Capital

46. *Id.*
47. Supra note 9.
48. The Aircraft Act, 1934, §§ 30(6)(iv), 30(7), No. 22, Acts of Parliament, 1934 (India).
49. AWAS 39423 Ireland Ltd. v. Directorate Gen. of Civil Aviation, MANU/DE/0832/2015 (India).
50. 2024 SCC OnLine Del 3125.
51. *NCLT Admits Go Air Insolvency Plea; Moratorium Kicks In*, MINT (May 10, 2023, 11:32 AM), https://www.livemint.com/companies/news/nclt-admits-go-air-insolvency-plea-moratorium-kicks-in-11683699511694.html.

Limited & Ors.[52], which was rejected and the order of the High Court was upheld.

The long continuing bankruptcy case of GoAir highlighted the difficult decision that judicial and quasi-judicial authorities must make between upholding international conventions and treaty commitments or giving precedence to local laws. The insolvency code now takes precedence over the rights provided to lessors under the CTC because there is no separate legislation in accordance with the Cape Town Convention and Protocol. But with the release of the Notification dt. 03.10.2023, lessors should expect positive rulings.[53]

In order to overcome the drawbacks of a non-existent law, the Government of India through Ministry of Civil Aviation introduced the Protection and Enforcement of Interests in Aircraft Objects Bill, 2022. The Draft Bill, 2022 includes reciprocal provisions under Sections 15(1) and 19(5) & (7). Furthermore, under Section 31(1) of the Draft Bill, any existing Indian Law in force at the time held precedence over the proposed measure. But until the Bill is passed, the insolvency code will take precedence under Section 238 as no specific actions have been done to enforce it.

Further, to reduce the adverse impact of IBC on the airline sector, the Ministry of Corporate Affairs in 2023, exempted the application of moratorium on aircraft lessors.[54] It was intended that this was also leading to additional losses for air carriers as high cost of flight ticket and lease rentals effected the revenues of airline companies. It also provides that India ratifies the CTC and its Protocol. Specifically, it states that section 14 (1) of the Insolvency and Bankruptcy Code, 2016 would not apply to any transactions, arrangements, or agreements pertaining to aircraft, aircraft engines, airframes, or helicopters under it. To give effect to the notification, an exemption has been carved out in pursuance of Section 14(3)(a) of the IBC, 2016.[55]

Thus, the Protection and Enforcement of Interests in Aircraft Objects Bill, 2022 can solve the hurdles for aircraft lessors by allowing them to de-register and re-possess their aircrafts. By this they can further lease those aircrafts to other airlines while continuing to receive the earlier unpaid lease rentals during the CIRP. To resolve this existing legal conundrum, the parliament with majority of both houses of parliament has on 3rd April, 2025, enacted the Bill.[56]

Features of a Detached Moratorium Under United Kingdom's Insolvency Law[57]

Unlike India, UK has instituted better provisions regarding moratorium. The new moratorium process was introduced as part of the Corporate Insolvency and Governance Act, 2020 (CIGA)[58] with the intention of providing legal protection from creditors to firms that are having financial difficulties while they consider their options. The new stand-alone moratorium is intended to give bankrupt or soon-to-be insolvent enterprises a brief window of breathing room free from the fear of impending or current litigation by their creditors. It exists outside of any official insolvency proceedings. The idea of the isolated moratorium is to give boards of failing companies time to consider all available options, including formal company rescue processes, in a less stressful setting.

Under the UK law, it is a noteworthy feature that moratorium should not be only utilised as a means of

52. Accipiter Invs. Scoop v. Union of India, CM Appl. Nos. 34411–34413/2023 (Del. HC July 5, 2023) (India).

53. Supra note 9.

54. Ministry of Corporate Affairs, Notification No. S.O. 4321(E) (Oct. 3, 2023), Gazette of India, Extraordinary, Pt. II, § 3(ii) (India).

55. Ministry of Corporate Affairs, Notification No. S.O. 4321(E) (Oct. 3, 2023), https://ibclaw.in/moratorium-under-insolvency-and-bankruptcy-code-2016-shall-not-apply-to-transactions-arrangements-or-agreements-under-the-convention-and-the-protocol-relating-to-aircraft-aircraft-engines-airfra/ (last visited May 26, 2025).

56. Press Info. Bureau, Parliament Passes the Protection of Interests in Aircraft Objects Bill, 2025 (2025) (India), https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2118797.

57. Ali Shalchi, Corporate Insolvency and Governance Act 2020, House of Commons Library, Research Briefing No. CBP-8971 (Apr. 6, 2022), https://researchbriefings.files.parliament.uk/documents/CBP-8971/CBP-8971.pdf (last visited May 26, 2025).

58. Corporate Insolvency and Governance Act 2020, c. 12 (UK).

just postponing a company's unavoidable liquidation. Rather, it is based on a premise that a business ought to request a moratorium only in cases when it is thought that doing so will improve the business's prospects of surviving.

In instances when a firm's directors file the necessary documents with the court of law indicating that the company is unable, or soon will be unable, to pay its obligations when they become due, a stand-alone moratorium is declared. A licensed insolvency practitioner is appointed as a monitor, who affirms that the company is in problem and can be saved as a going concern after the moratorium period provided there is approved.

The corporate debtor's Board may decide to prolong the moratorium by an additional 20 working days after the 20-day period initially granted. In some cases, a lengthier extension may also be granted however, this will require approval from the court or the company's creditors.[59] The firm will continue to be run by the directors, with limitations on borrowing money and selling company assets, but the designated insolvency practitioner will supervise the moratorium in their capacity as monitor. A corporation can benefit greatly from the moratorium by having important protection from creditors and any legal action they may choose to take against the company for unpaid debts.

Some of the implications of moratorium under the UK law are:[60]

i. The firm is not subject to any insolvency actions, including winding up petitions for forcible liquidation;

ii. Secured creditors are prohibited from using their security to seize assets or in any other way;

iii. No lawsuit can be filed against the company;

iv. Any ongoing litigation comes to stay;

v. A valid lease cannot be revoked by property owners and

vi. The majority of existing debts (pre-moratorium) will get a payment holiday.

This buys much-needed time and breathing room for the creation and execution of a rescue strategy. During the duration of the moratorium, trade continues. However, without the monitor's specific approval, the firm will not be allowed to take out additional finance resources exceeding £500 or sell company assets outside of the regular course of business. Although directors must make sure that employee wages, goods and services provided during the moratorium, and any rent owed to landlords related to the moratorium period are paid, debts that were accumulated prior to the moratorium will normally not need to be paid during this time.[61]

Further, if the company enters into a formal insolvency process like a company voluntary arrangement or a restructuring plan or if the monitor determines the company is past the point of rescue or if rescue has already been accomplished, or if the moratorium period expires without being extended, it will end. A stand-alone moratorium can often be only a stopgap measure leading to a more permanent restructuring alternative rather than the ultimate fix for a company's financial issues.

Thus, the flexible approach towards moratorium adopted under the UK law not only enables the rehabilitation and rescue of companies in the long run but also supports value preservation and safeguards jobs. By encouraging directors to act earlier to tackle financial difficulties, it enhances the possibility of company rescue by providing time and space to consider available options when most needed.

However, a point of concern raised under such provisions of moratorium which has also been tackled by the CIGA, 2020 is that moratorium might be misused by businesses which have no realistic prospect of rescue. Accordingly, the Act excludes the application of moratorium to companies that are already insolvent, companies which have, in the previous 12 months entered in a moratorium, an administration, a CVA, or have been the subject of a petition for winding up.[62]

59. Gide Loyrette Nouel LLP, A Freestanding Moratorium and Cross-Class Cram Down: Features of the New uUK Insolavency Law (2020) https://www.gide.com/sites/default/files/gide_clientalert_covid19_featuresnewukinsolvencylaw_en_16june2020.pdf.

60. *Id.*

61. *Id.*

62. Supra note 59.

Additionally, features of a cross-class cramdown have also been provided under the CIGA Act, 2020, which enable the imposition of a restructuring plan upon dissenting senior or junior classes of creditors even if they vote against the plan. Under a cross-class cram down, court can still confirm the plan, if it is satisfied that none of the members of the dissenting class would be any worse off under the plan than they would be in the event of the relevant alternative and at least one class of creditors who would receive a payment, or have a genuine economic interest in the company, in case of a relevant alternative has voted in its favour. Such a clause also gives the court absolute discretion to decide on acceptance or refusal of a plan even if all requirements are fulfilled.

Comparative Analysis of Moratorium Between India and United Kingdom

India and United Kingdom, both common law countries having industry-based economies with similar laws as India was a colony of UK for over two centuries. Both the countries have a very similar but very different process of Corporate Insolvency, the following table provides for the comparison of how provision of moratorium is used as a tool to deal with corporate insolvency or the revival of a company almost getting bankrupt.

S. No.	Comparison Factor	India	United Kingdom
1.	Introduction to moratorium	The moratorium is applied as a part of the CIRP.	The moratorium is a standalone procedure and is introduced separately to serve as a last resort mechanism to keep the company afloat.
2.	Commencement of Moratorium	Moratorium only commences once the CIRP is initiated.	It is a mechanism used before the official process of insolvency commences.
3.	Relief provided by the moratorium to CD	It is a tool to provide relief to the CD during the insolvency proceedings are in motion.	It is a tool used to give a last opportunity to the Debtor Company to become afloat before going into insolvency.
4.	Control of Company	IRP takes control over the company and board of directors resigns with decision making power with IRP and CoC.	Professional / Monitor is only to guide for best opportunities but the control still exists with the directors of the company.
5.	Time Period	Time period of Moratorium is equal to CIRP i.e., 330 days to maximum.	Time period is 20 + 20 days unless extended further with approval of monitor and creditors.
6.	Mandate of Moratorium	It is a mandatory procedure once the CIRP commences, moratorium comes into existence by order of NCLT.	In UK, Moratorium is not mandatory to insolvency proceedings, it is a separate proceeding only provided in cases where the doubt of survival is good and company can be saved from liquidation.

Conclusion

The Insolvency and Bankruptcy Code, 2016 even after 8 years of enactment, is still developing due to its all stakeholder and creditor-in control approach. Allocating the Code to take precedence over other laws has been a step forward in insolvency resolution but at the same time not providing any remedy to a class of creditors results in inconsistency and absurdity. The amendments introduced in the Code and judicial interpretations often create a conundrum among available remedies.

Through this research, the authors have made an in-depth analysis of the benefits and drawbacks of instituting a mandatory moratorium specifically on the real estate and aviation insolvencies. The authors have highlighted some recent amendments and judgments which have played a crucial role in removing difficulties for homebuyers and lessors who are key creditors in real estate and airline insolvency to seek an appropriate remedy.

The research is carried on the premise that while a calm period must be provided to the corporate debtor to enable maximisation of value of assets, a flexible approach for application of moratorium on a case-to-case basis can improve CIRP outcomes. The aim should be to facilitate resolution for creditors who are at crossroads within the same class by enabling resolution efforts even before the commencement of CIRP. Although, reforms are made in the right direction, it would be early to say whether harmonization of creditors rights will be achieved.

Way Forward

Resolving the issue of moratorium in real estate and airline insolvencies is very crucial as both sectors face unique challenges during insolvency and a blanket moratorium is leading to disruptions for homebuyers and operational continuity in airlines. A meticulous and sector-specific approach is a need of the hour. Legal and policy reforms by amending section 14 of the Code to permit construction of incomplete real estate projects and ensuring continuity of airline operations with essential vendors should be implemented. Efforts in the form of mediation and asset reconstruction companies can also help to prevent value destruction.

On the other hand, moratorium can be used as an alternative to CIRP rather than as a part of CIRP itself. Instead of making moratorium a creditor's paradise, it can be used by the debtor to recover its debts and eventually restructure itself. Efforts made by the corporate debtor to make payment of debt and interest before the commencement of CIRP can go a long way in giving relief to debtors and eventually creditors.