INSOLVENCY & AVIATION LAW — TRIBUNAL BRIEFING · CASE ANALYSIS

Jet Airways Liquidation: Does a Right to Detain Constitute a *Security Interest?*

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Introduction

India's aviation sector contributes approximately 5% to the nation's Gross Domestic Product ("GDP") and serves as a foundational pillar of economic connectivity. Yet the legal framework governing the sector has, until recently, left a critical structural question unanswered: when an airline fails, who bears the residual cost of that failure?

The Jet Airways liquidation has forced that question into sharp relief. The Order dated 13.02.2026 passed by the National Company Law Tribunal, Mumbai Bench ("Tribunal"), in I.A. No. 644 of 2025 & connected matters in C.P. (IB) No. 2205/MB/2019 ("Subject Matter"), resolves the issue in formal terms by classifying Mumbai International Airport Limited ("MIAL") and Delhi International Airport Limited ("DIAL") as unsecured operational creditors. However, the Order leaves a larger and arguably more consequential policy question unanswered: who ultimately absorbs the cost of airline insolvency when the entities bearing that cost are essential infrastructure providers that the law compels to continue providing services even when unpaid?

The decision addresses a critical and previously unsettled question at the intersection of aviation regulation and insolvency law, specifically whether airport operators, by virtue of their statutory detention rights over aircraft for non-payment of dues, qualify as secured creditors under the Insolvency and Bankruptcy Code, 2016 ("IBC"). The Tribunal rejected the claim of secured status asserted by MIAL and DIAL, while simultaneously examining the classification of airport dues within the framework of insolvency resolution process costs.

This article critically analyses the Tribunal's reasoning on the nature of "security interest" under Section 3(31) of the IBC, the legal character of statutory liens, the limits of the Tribunal's

interpretative flexibility, and the wider policy consequences for the aviation sector. The Order assumes importance not only for the parties involved, but for the evolving interface between aviation regulation and the insolvency regime in India.

Factual Background & Issues before the Tribunal

Corporate Insolvency Resolution Process ("CIRP") against Jet Airways was initiated on 20.06.2019. Subsequently, the resolution plan was approved on 22.06.2021; however, the implementation of the approved resolution plan failed, which resulted in the liquidation of Jet Airways. The liquidation proceedings were initiated pursuant to the judgment dated 07.11.2024 passed by the Hon'ble Supreme Court in Civil Appeal Nos. 5023-5024 of 2024, following which the Hon'ble NCLT passed the liquidation order.

During the pendency of CIRP and the subsequent liquidation process, certain aircraft belonging to Jet Airways remained stationed at the Mumbai and Delhi airports. While these aircraft continued to occupy the premises, various charges such as parking charges, hangar, office, paved and unpaved land, and terminal building usage accrued in favour of MIAL and DIAL. MIAL had claimed approximately Rs. 838 crore towards such airport dues. MIAL and DIAL submitted their respective claims to the Liquidator, who upon verification admitted substantial portions of the claims but classified them as "operational debt" under the IBC.

Notably, the grievance of the airport operators was not with respect to the quantification per se, but with the categorization of the claims. Specifically, MIAL and DIAL contended that dues accruing from the insolvency commencement date until the commencement of liquidation ought to have been treated as CIRP costs, thereby entitling them to priority in distribution.

In addition thereto, MIAL and DIAL contended that by virtue of their statutory powers under the Airports Authority of India (Management of Airports) Regulations, 2003 as well as the Protection and Enforcement of Interests in Aircraft Objects Act, 2025, they possessed a lien over the aircraft stationed at their respective airports, and that such lien constituted a security interest, thereby elevating their status to that of secured creditors in the liquidation proceedings.

Secured v. Unsecured Creditors under IBC: The Statutory Framework

The IBC makes a deliberate and structural distinction between secured and unsecured creditors. Section 3(10) defines a "creditor" as any person to whom a debt is owed, and expressly includes

financial creditors, operational creditors, secured creditors, unsecured creditors, and decree-holders. Within this framework, Section 3(30) defines a "secured creditor" as a creditor in whose favour a security interest has been created. Section 3(31) further elaborates that a "security interest" means a right, title or interest in property created by a transaction which secures payment or performance of an obligation, and includes a mortgage, charge, hypothecation, assignment or other encumbrance.

Simply stated, a secured creditor is one whose debt is secured by an identifiable interest in a specific asset of the corporate debtor. The existence of a fixed or floating charge over property ensures that, in the event of insolvency and liquidation, the secured creditor is entitled to look to the secured asset for recovery of its dues. Unsecured creditors, by contrast, do not hold any proprietary interest in the assets of the corporate debtor. Their recovery is entirely dependent upon the statutory distribution mechanism under the IBC.

This distinction assumes particular significance at the stage of liquidation. Section 53 of the IBC establishes the waterfall mechanism for distribution of proceeds, under which secured creditors rank high in the order of priority. Section 52 further empowers secured creditors to realise their security interest outside the liquidation estate, granting them a degree of autonomy not available to other classes of creditors. Unsecured creditors, particularly operational creditors, rank considerably lower in the statutory hierarchy and are paid only after satisfaction of higher-ranking claims.

At this juncture, it is essential to note that the Tribunal's determination that MIAL and DIAL do not qualify as secured creditors has direct and material consequences. By classifying them as unsecured operational creditors, the Tribunal confined their recovery to the operational creditor tier within the Section 53 waterfall, subject to the availability of surplus assets after discharge of higher-priority claims.

Lien v. Security Interest: The Conceptual Distinction

Under Indian law, a lien is ordinarily understood as a right to retain possession of goods belonging to another until a debt in respect of those goods is satisfied. The Indian Contract Act, 1872 recognizes both particular and general liens under Sections 170 and 171 respectively. Likewise, the Sale of Goods Act, 1930 acknowledges the unpaid seller's lien over goods in certain circumstances. These statutory recognitions, however, have consistently been understood as conferring a possessory right, i.e., a right to retain the asset, not to sell or appropriate it. A lien, therefore, acts as a shield and not a sword.

> *"A lien acts as a shield and not a sword — a right of retention, not a transactional interest in property.*

The IBC, by contrast, employs the term 'security interest' in a precise and property-centric sense, requiring a right, title or interest in property created to secure payment of an obligation. A mere right of retention does not usually satisfy this threshold. The definition in Section 3(31) is transactional in nature: it contemplates an interest created by a transaction, not a right arising passively by operation of statute or regulation.

The Limits of the Tribunal's Interpretative Flexibility

It is important to appreciate why the Tribunal's conclusion was, in structural terms, almost inevitable. Section 3(31) defines 'security interest' as a right, title or interest in property 'created by a transaction' which secures payment or performance of an obligation. This formulation is expressly transaction-based. It does not accommodate rights that arise merely from regulatory authority, statutory mandate, or the fact of possession. Airport operators do not acquire their detention rights through a consensual or negotiated transaction with the airline; those rights arise by operation of law, specifically under the Airports Authority of India (Management of Airports) Regulations, 2003 and the Protection and Enforcement of Interests in Aircraft Objects Act, 2025.

On that basis, the Tribunal's reading of the provision was formally correct. The text of Section 3(31) does not invite a functional inquiry. It asks whether the right was created by a transaction; in the case of airport detention rights, the answer is plainly no.

A purposive interpretation could, in principle, have proceeded differently. It might have examined whether statutory detention operates as functional security, i.e., whether it performs the same economic role as a contractual lien or charge, and whether denying it secured status frustrates the legitimate expectations of infrastructure providers. Under this lens, the detention right, which prevents the asset from being removed or disposed of without satisfaction of dues, could arguably be viewed as analogous to a possessory pledge. Some comparative jurisdictions have extended secured creditor protection to statutory lienholders on precisely this reasoning.

The Tribunal declined that route entirely and adopted a strictly formal reading of the statutory text. Whether that was the right choice as a matter of statutory interpretation is debatable. What is not

debatable is that the strict textual approach was the path of least resistance given the express language of Section 3(31), and that a purposive departure would have required the Tribunal to effectively rewrite the definitional boundary in the IBC. That exercise, with its attendant consequences for the entire creditor hierarchy, is more appropriately a legislative than a judicial undertaking.

Policy Implications: Three Structural Themes

i. *Risk Transfer*

The most fundamental consequence of the Order is a structural transfer of insolvency risk to airport operators. In any airline failure, the liquidation estate is a finite pool. Once secured financial creditors, liquidation costs, and workmen's dues are satisfied, the residual available to operational creditors is frequently negligible. By classifying MIAL and DIAL as unsecured operational creditors, the Tribunal has, in effect, directed that the cost of parking, hangarage, and terminal occupation during a multi-year insolvency process be borne primarily by the airports. This is not a neutral categorization but a risk allocation decision, and the decision allocates that risk to entities that had no contractual mechanism to refuse exposure.

The practical magnitude of this transfer is illustrated by the facts of the present case. MIAL alone filed a claim of approximately Rs. 838 crore in respect of dues accruing over a period spanning from the CIRP initiation in 2019 through to the liquidation phase. The prospect of recovering any meaningful portion of this sum as an unsecured operational creditor, in competition with other creditors and subject to the availability of residual assets after the discharge of senior claims, is very remote. That figure represents a significant write-off for a public utility infrastructure provider. Multiplied across the sector, the implications are considerable.

ii. *Regulatory Compulsion*

What distinguishes airport operators from ordinary operational creditors is the involuntary character of their exposure. An operational creditor in the conventional sense, such as a vendor or service provider, retains a commercial choice that either it can decline to transact with a counterparty whose creditworthiness is in question, demand an advance payment, or simply walk away from a relationship before the loss accumulates. Airport operators have access to no such freedom.

Airport operators are subject to a web of international obligations, domestic safety mandates, and regulatory frameworks that override simple commercial logic. Under the Chicago Convention on International Civil Aviation and the regulatory framework overseen by the Directorate General of

Civil Aviation ("DGCA") and the Airports Authority of India ("AAI"), airports are not merely commercial entities but are public utilities providing essential infrastructure services. They can neither unilaterally refuse to allow a grounded aircraft to occupy space, nor can they selectively deny services to an airline in financial distress without triggering regulatory consequences.

The result is what may aptly be described as a regulatory trap. The law compels the airport to continue providing expensive parking, hangarage, and terminal services to a failing airline. It grants the airport a right of detention as a nominal counterweight. And then, at the point of liquidation, insolvency law strips away the practical value of that detention right by refusing to recognise it as a security interest. The airport is left having provided essential services on compulsory credit, with no assured means of recovery.

The Tribunal's Order does not acknowledge this tension. By treating airport dues with the same weight as a standard operational debt arising from a voluntary commercial relationship, the Order creates a dual setback for operators as they are legally obligated to continue service, and they are denied the only leverage that might otherwise incentivise prompt payment.

iii. *Incentive Distortion*

The Order will change behaviour across the aviation sector, and the direction of that change is not straightforwardly beneficial. Airport operators, stripped of any meaningful insolvency priority, will rationally seek to front-load their risk management. This will likely manifest in:

- Demands for enhanced security deposits and advance payments;
- More stringent credit monitoring of airline counterparties;
- Tighter contractual frameworks with greater financial-exposure triggers;
- More aggressive use of detention rights at early signs of distress, before moratorium takes effect.

For airlines, particularly those in early-stage financial difficulty, this recalibration will translate into higher operational costs and reduced flexibility at precisely the point when financial headroom is most constrained. The Order may thereby paradoxically accelerate the deterioration of distressed airlines rather than creating conditions conducive to resolution.

For the insolvency process itself, the incentive effects are more nuanced. On one view, the strict waterfall interpretation preserves the predictability and integrity of the IBC. On another, it may discourage the voluntary cooperation of essential service providers at early stages of CIRP, complicating

the resolution professional's ability to manage assets and maintain going-concern value.

Implications

i. *For Airport Operators*

Airport operators must now treat the loss of dues from airline insolvency as a foreseeable operational risk rather than a remote contingency. The statutory detention right, while it retains operational utility in a going-concern context as a lever to extract payment from a solvent airline, carries no priority value in liquidation. This requires a fundamental reassessment of how airports structure their commercial relationships with airlines. Enhanced security deposits, bank guarantees, escrow mechanisms, and more granular contractual provisions addressing the consequences of insolvency proceedings must become standard features of aeronautical service agreements, not optional risk mitigants.

Airports should also consider engaging with insolvency professionals at early stages of airline financial distress. The window for protecting value is narrow: once a moratorium takes effect under Section 14 of the IBC, the airport's leverage is effectively frozen. Proactive credit monitoring and contractual early-warning triggers may be the only meaningful tools available to airports in advance of a formal insolvency event.

ii. *For Airlines*

For airlines, the Order carries a less visible but equally significant consequence. As airport operators reassess their risk exposure and demand stronger upfront protections, the cost of operating at major airports will increase. Enhanced security deposit requirements and advance billing cycles will add to working capital burdens. Airlines with weaker credit profiles may find access to terminal infrastructure more difficult or more expensive than it has historically been. In a sector already characterised by thin margins and structural financial fragility, this additional operational cost pressure is a material concern.

The Order also implicitly signals that the aviation ecosystem is not immune to the disciplining effect of the IBC's priority framework. Airlines that delay payments to airport operators, relying on the assumption that the airports cannot practically withhold services, may find that airports respond by tightening contract terms and escalating disputes earlier rather than absorbing dues as a cost of regulatory compliance.

iii. *For Lenders*

For secured financial creditors in airline insolvencies, the immediate effect of the Order is favourable: a larger share of the liquidation estate is preserved for senior creditors by maintaining the exclusion of airport operators from secured status. However, the longer-term implication is more complex. If the ruling depresses the operational viability of airports as credit counterparties, leads to deterioration in airport infrastructure quality, or accelerates the financial distress of struggling airlines, the underlying value of aviation assets securing financial creditors' claims may itself be affected.

Lenders with significant exposure to the aviation sector should also note that the Order underscores the importance of transaction-based security documentation. The clarity with which Section 3(31) requires a transactional nexus for security interest creation is a reminder that informal understandings, regulatory rights, or assumed priority based on the strategic importance of a service provider carry no weight in the insolvency hierarchy.

Critical Analysis: The Impact of Classification of Airport Operators

The Tribunal's classification of airport operators as unsecured creditors creates a vulnerable position for the aviation infrastructure sector. By relegating these dues to the lower tiers of the waterfall mechanism, the Tribunal has signalled a pro-IBC approach that prioritises the distribution hierarchy stipulated under the IBC.

It is evident from the Order that the Tribunal's primary motivation is the preservation of the common pool of assets of the corporate debtor. In any liquidation, there is a limited pool to be shared among all creditors. Had the Tribunal allowed the classification of MIAL and DIAL as 'secured creditors' solely on the basis of their power to detain aircraft, this could have set a dangerous precedent. If every statutory authority with a detention power, such as the Customs Department or tax authorities, were classified as a 'secured creditor', the liquidation estate would be fragmented and the common pool depleted, leaving nothing for actual secured financial creditors or for the essential costs of the insolvency process. The Tribunal effectively forestalled a situation where operational creditors seek to advance their priority by recharacterising regulatory powers as security interests. By choosing a literal and strict interpretation of 'security interest', the Tribunal chose to protect the predictability of the IBC over the specific grievances of the aviation sector.

Nevertheless, the Order significantly diminishes the bargaining power of airport operators. In the aviation industry, aircraft are often the only high-value assets owned by a corporate debtor. Pursuant to the Tribunal's Order, even if an aircraft is located on an airport's tarmac, the airport

operator has no first right to the value of that asset. Once the aircraft is sold, the proceeds flow into the general liquidation pool. With airports now classified as unsecured creditors, they sit at the bottom of the priority ladder. In many cases, by the time secured lenders are paid, the common pool of the corporate debtor is exhausted, leaving airports in a position where they have provided essential services with almost no guarantee of recovery.

Conclusion

The Tribunal's decision serves as a definitive clarification that statutory detention rights are not synonymous with security interests under the IBC. Section 3(31) demands a transactional nexus for the creation of a security interest, and that threshold is not met by rights arising from regulatory authority or possession alone. On the language of the statute, the Tribunal's conclusion was sound. Whether the statute itself reflects a sound policy choice is a different question, and one that the legislature has not yet answered.

The NCLAT is presently hearing appeals against the NCLT Mumbai Order dated 13.02.2026. The appeals challenge the findings relating to the classification of airport operators as unsecured creditors, the non-recognition of detention rights over aircraft as security interests under the IBC, and the treatment of airport dues as CIRP costs. The appeals have been filed by MIAL and DIAL and are currently pending adjudication before the NCLAT with the next date of hearing listed on 29.05.2026.

The ruling establishes a clear and unambiguous principle: regulatory leverage does not translate into insolvency priority. For the aviation sector, the implication is immediate. Risk will henceforth be contractually priced rather than legally inferred. Airport operators that have historically relied on their detention power as a de facto guarantee of payment will need to replace that reliance with explicit transactional security. Unless the law evolves to recognise the structural asymmetry faced by essential infrastructure providers compelled to extend services on credit, airport operators will continue to bear the residual cost of airline insolvency, absorbing losses that the IBC's framework, by design, does not protect them from.