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NOVATION IN AIRCRAFT LEASING: WHEN A NEW CONTRACT EXTINGUISHES THE OLD ONE

- Payal Singh

ABSTRACT

Aircraft leasing is the legally most complicated area of commercial aviation finance, and one in which the re-arrangement of multi-party transactions over their lifetime is relatively common. This article explores the functioning of the mechanism of novation within the specific context of aircraft lease novations, under Indian law, the Cape Town Convention, and in comparison with the treatment in English, American, and Irish law. The article argues that while section 62 of the Indian Contract Act 1872 provides a solid legal basis, important gaps remain, especially around regulatory novation, insolvency, and international priority interests. It concludes with suggestions to improve Indian practice to better meet the global aviation leasing industry's needs.

I. INTRODUCTION

Few other forms of commercial instrument exceed the modern aircraft operating lease in complexity. A single narrow body aircraft may pass through the hands of three or four operators in its economic life, each transition enacting not just a physical transfer but also a complete restructuring of legal rights regarding maintenance obligations, redelivery conditions, security interests and insurance coverage. Technically an application of novation, the process involves replacing an old contract with a new one, discharging the obligations of the old and providing consideration for the new.¹

¹ Roy Goode, Convention on International Interests in Mobile Equipment and Protocol Thereto on Matters Specific to Aircraft Equipment: Official Commentary (4th ed., UNIDROIT 2019)

The Indian law on novation is laid down in section 62 of the Indian Contract Act 1872.² It provides that when parties to a contract agree to substitute a new contract for the original contract, or to rescind or replace it, the original need not be performed. However, this brief provision was not drafted with complex aircraft leasing transactions in mind and applying the section in this context may be more difficult. Unlike simple rescissions by both parties, aircraft lease novations have multiple parties: the outgoing lessors, the incoming lessors, the lessee, and, sometimes, sub-lessees. These parties may have different interests.³

The Supreme Court of India has consistently approached novation with caution, emphasizing that the intention to discharge the original contract must be explicit. In *Lata Construction v. Dr. Rameshchandra Ramniklal Shah*, the Court reaffirmed that novation cannot be inferred from conduct alone without clear evidence that the parties regarded the prior agreement as terminated⁴. This judicial conservatism contrasts with commercial practices in aviation leasing, where informal lease modifications and fleet restructurings often create ambiguity regarding the governing contractual instrument.

Against this domestic background, India's accession to the Cape Town Convention introduced an international dimension that significantly influences the analysis of novation in aircraft transactions. The Convention's priority rules, International Registry, and default remedies interact with domestic novation doctrine in complex ways that Indian courts are only beginning to address⁵.

II. CONCEPTUAL FRAMEWORK OF NOVATION

A. The Tripartite Structure of Novation

² Indian Contract Act 1872, Section 62, No. 9, Acts of Parliament, 1872 (India).

³ Pollock & Mulla, *The Indian Contract and Specific Relief Acts 1882* (15th ed., LexisNexis 2018).

⁴ *Lata Constr. v. Dr. Rameshchandra Ramniklal Shah*, (2000) 1 SCC 586.

⁵ Convention on International Interests in Mobile Equipment art. 1(p), Nov. 16, 2001, 2307 U.N.T.S. 285 [hereinafter Cape Town Convention]

Novation has always classically meant the extinction of an obligation by a new one⁶. There are three scenarios in which this can occur: when there is a new agreement between the same parties (novation of the agreement), when there is a new party to an agreement (novation of parties), or when there is a new obligation between the same parties (novation of the obligation). All three scenarios can arise in aircraft leasing. However, the most common is the first and third instances: a new lease agreement between the same parties (to accommodate fleet restructuring), or a sale-and-leaseback transaction (to provide the lessor with a new lease between the airline and itself)⁷.

Where novation differs from the simple amendment of a contract is in the extinction of that contract. With novation, the old contract is extinguished; the guarantees of that contract no longer apply to the new contract, any security interests in the aircraft must be re-registered, and any arbitration clauses between the parties will no longer apply to the new parties unless expressly provided for in the new contract⁸. This can have significant implications for lessors of aircraft who intend to lay claim to the aircraft upon the insolvency of an airline; such lessors may discover that the airline had entered into a novation with a third party prior to the insolvency of that airline, effectively extinguishing the airline's lease of that aircraft to the lessor.

B. Requirements Under Indian Law

The Indian Contract Act does not contain a definition of novation. Section 62 states that the performance of the original contract can be excused⁹. In order for novation to be effective under the law, there must be a mutual agreement between the parties to the contract to enter into the novation. There must be consideration for the new contract; this consideration is the performance of the old contract. The novation agreement must be complete and capable of being performed in itself, without the old contract. Finally, the intention of the parties to extinguish the original contract must be evident in the agreement to enter into the novation¹⁰.

⁶ Goode, *supra* note 1.

⁷ Airfinance Annual 2022–23 144–47 (Euromoney 2023).

⁸ Aviation Working Group, Guide to the Cape Town Convention and Aircraft Protocol ch. 4 (2021).

⁹ Indian Contract Act 1872, Section 62.

¹⁰ Bank of India v O.P. Swarnakar, (2003) 2 SCC 721.

The element of intention has proved particularly contentious. In *Juggilal Kamlapat v NV Internationale*¹¹, the Supreme Court held that where parties simply execute an addendum altering financial terms of an existing agreement, without any explicit language of discharge, novation is not made out. The addendum merely varied the contract. This distinction matters greatly for aircraft leasing: many lease restructurings take the form of lease amendments or supplemental agreements that alter payment schedules, maintenance reserves, or redelivery conditions, yet fall short of the threshold that Indian law sets for novation¹².

III. NOVATION IN AIRCRAFT LEASE AGREEMENTS: PRACTICAL CONTEXTS

1. Wet Lease to Dry Lease Transitions

An aircraft wet lease is an agreement by which the lessor provides the aircraft, crew, maintenance and insurance; the most common type of wet lease is ACMI¹³. In contrast, under a dry lease the responsibility for the operation of the aircraft, including hiring and training of the crew, planning of the route and baggage handling, lies only with the lessee. If an airline enters into a dry lease for an aircraft and subsequently enters into a wet lease with the same lessor, thereby novating the contractual relationship to the dry lease arrangement, does the transition from a "wet" lease to a "dry" lease constitute a novation of the contractual relationship?¹⁴

Courts in India have not decided this point. EASA, IATA and the ALSA contemplate that a switch from a "wet" lease to a "dry" lease or from a "wet" lease to a "dry" lease, involves a new contractual relationship¹⁵. However, Indian law holds that for there to be a novation, four requirements must be met. There must be a completeness; consent of both parties to the original contract and the new contractor must be obtained; and consideration, in the form of payment of a new or extra sum by the

¹¹ *Juggilal Kamlapat v N.V. Internationale*, (1955) 2 SCR 1228.

¹² Pollock & Mulla, *supra* note 3, at 884; M.P. Jain, *Indian Contract Law* 361 (8th ed., Wadhwa 2009).

¹³ European Union Aviation Safety Agency, *Guidance on Aircraft Leasing Agreements*, EASA/2020/04 (2020).

¹⁴ IATA, *Aircraft Leasing Standard Agreement (ALSA) Handbook* cl. 19 (4th ed. 2022).

¹⁵ EASA, *supra* note 13.

original contract holder to the original lessor in order to effect completion of the novation; there must be an intent to create a novation¹⁶.

2. Lessee Substitution in Fleet Transfers

Where an airline sells off or redeploys an aircraft with the consent of the owner-lessor, the outgoing lessee relinquishes future obligations, while the incoming lessee assumes those responsibilities.

Under Indian law, three legal considerations arise:

- Every party to the contract must have the legal capacity to contract. Here, the incoming lessee's possession of an operating certificate, DGCA approvals and suitable financial standing is relevant to the lessor's decision to relinquish the original obligor.¹⁷
- Under the Specific Relief Act 1963, contracts involving personal service may not be enforced. While this stipulation seldom impacts commercial aircraft leasing, as obligations are typically financial and operational rather than personal, the law remains a consideration¹⁸.
- The third and critical requirement is the necessity of novation - a formal tripartite deed signed by the outgoing lessee, incoming lessee and lessor, executed tripartite, such that the agreement binds no more than two parties, may release one party without binding other¹⁹. An agreement that binds only two of the parties cannot effectively release a third party without their express consent. This stipulation is vigorously enforced by Indian courts and as such novation is not merely a matter of party preference but a legally mandated requirement under common law privity rule.²⁰

¹⁶ Bank of India, (2003) 2 SCC 721.

¹⁷ Mohori Bibee v Dharmodas Ghose, (1903) ILR 30 Cal 539 (PC).

¹⁸ Specific Relief Act 1963, Section 14(1)(b), No. 47, Acts of Parliament, 1963 (India); ONGC v Saw Pipes Ltd., (2003) 5 SCC 705.

¹⁹ Supra note 3.

²⁰ Ibid.

3. Lessor Substitution and Sale-and-Leaseback Structures

Sale and leaseback transactions, which constitute a major portion of aircraft leasing arrangements around the world, typically involve an airline selling its owned aircraft to a financial institution or leasing company, which then leases the same aircraft back to the airline under a new lease agreement. The airline's existing obligations to any prior financier and any guarantees or deposits held by third parties must be addressed in the sale of the aircraft.²¹ The airline's existing obligations to the original lessor and any guarantees or deposits held by the original lessor must be addressed in the sale of the aircraft.

The Cape Town Convention provides considerable clarity regarding sale and leaseback transactions. Article 9 of the Convention provides that the provisions of the Convention shall apply to the assignment of the "associated rights" and the "international interest" in those rights²². Article XIII of the Aircraft Protocol provides that the interest of the new owner of the aircraft that is registered on the International Registry will prevail over any other registered interest in the aircraft²³. Thus, if the interest of the original lessor of an aircraft in India is not properly discharged and replaced with the interest of the new lessor in the registry of the Cape Town Convention, the original lessor will still have priority over the new lessor - creating an anomalous result²⁴.

IV. REGULATORY DIMENSIONS IN INDIA

Aviation leasing in India is not purely a matter of private contract law. The Directorate General of Civil Aviation (DGCA) exercises regulatory oversight that intersects with contractual novation in at least three ways.

²¹ Airfinance Annual 2022–23, *supra* note 7, at 144–47.

²² Cape Town Convention, *supra* note 5, art. 9.

²³ Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment art. XIII, Nov. 16, 2001, 2367 U.N.T.S. 4 [hereinafter Aircraft Protocol].

²⁴ International Registry of Mobile Assets, <https://www.internationalregistry.aero> (last visited June 11, 2026).

The first is the issue of aircraft registration. According to the Aircraft Rules 1937, all aircraft must be registered in the name of the operator or owner of that aircraft²⁵. If the lessee of the aircraft is changed to another lessee that is itself capable of operating the aircraft, registration of the aircraft must be undertaken. If a novation occurs between the parties to the lease agreement, the DGCA must be notified of such a change, and the operator whose aircraft is to be leased must be deregistered before the incoming lessee can operate the aircraft on Indian air routes²⁶. Section 5 of the Aircraft Act 1934 provides the Central Government with regulatory powers regarding aircraft registration, as do several circulars published by the DGCA indicating which documents must be produced in the registration of an aircraft, including the novation deed tripartite form of contract.²⁷

The second issue involves the Insolvency and Bankruptcy Code 2016 (IBC). Section 14 of the IBC creates a stoppage on trying to collect debts from a company that has started the insolvency process²⁸. In the Go Airlines case in 2023, foreign aircraft lessors faced significant enforcement hurdles: they were unable to repossess the aircraft due to the statutory moratorium, and attempting to novate these leases to alternative operators mid-proceedings introduced profound ambiguities regarding possessory rights and legal title²⁹. India does not yet have a self-help repossession regime comparable to the Cape Town Convention's framework, which further complicates lease restructurings during insolvency.

In a similar vein, the case where **SMBC Aviation Capital** litigated against SpiceJet at the Delhi High Court highlighted how fragile lease structures can be in such scenarios where airlines default. There was a dispute whether the original lease or amended instrument governed, and this was complicated by the lessor's attempts to recover aircraft on the basis that alleged amendments to purporting leases (in reality novations under section 62) had changed redelivery dates. The case demonstrated how the lack of an unequivocal novation regime in aviation-specific legislation permits satellite litigation that serves neither party's commercial interests.³⁰

²⁵ Aircraft Rules 1937, r. 30, G.S.R. 124(E) (India).

²⁶ . Directorate General of Civil Aviation, Airworthiness Circular AC-21-02: Aircraft Registration and De-registration (2019).

²⁷ Aircraft Act 1934, Section 5, No. 22, Acts of Parliament, 1934 (India).

²⁸ Insolvency and Bankruptcy Code 2016, Section 14, No. 31, Acts of Parliament, 2016 (India).

²⁹ Go Airlines (India) Ltd. v Bureau of Immigration & Ors., Delhi High Court, W.P.(C) 5748/2023, order dated May 10, 2023.

³⁰ SMBC Aviation Capital Ltd. v SpiceJet Ltd., Delhi High Court, CS(COMM) 377/2022.

Third regulatory dimension is the foreign currency framework. Whilst aircraft leases in India themselves generally involve making cross-border payments to foreign lessors (which are largely governed by the Foreign Exchange Management Act 1999 and the Reserve Bank of India External Commercial Borrowings framework)³¹, this consultancy seems only fitted for big ticket global engine overhauls. A novation may introduce a new foreign lessor, necessitating fresh RBI approvals or compliance filings under FEMA. Practitioners often overlook this regulatory dimension, treating novation purely as a contractual exercise rather than an arrangement that also requires regulatory approvals to provide legal efficacy under Indian public law.³²

The Go Airlines insolvency starkly illustrated how the IBC's moratorium under Section 14 could trap leased aircraft in legal limbo, preventing lessors from repossessing assets even as airlines defaulted. This tension prompted the Ministry of Corporate Affairs' October 2023 notification exempting CTC-covered aircraft transactions from the moratorium³³, while the Protection of Interests in Aircraft Objects Act, 2025 now provides statutory backing for repossession within 60 days³⁴. However, as the SpiceJet-TWC Aviation Capital litigation shows—where the airline repeatedly failed to comply with court orders to return engines despite contempt proceedings—effective implementation remains a critical challenge³⁵. The success of India's reforms ultimately depends not merely on legislative intent, but on consistent enforcement by courts and regulators .

V. COMPARATIVE PERSPECTIVES

1) ENGLISH LAW

English law governs most international aircraft lease documents and considers novation to require consideration and the agreement of all parties to the tripartite arrangement. The Contracts (Rights of

³¹ Foreign Exchange Management Act 1999, Section 6, No. 42, Acts of Parliament, 1999 (India); Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations 2004, reg. 6.

³² Reserve Bank of India, External Commercial Borrowings Framework, RBI/2018-19/17 A.P.(DIR Series) Circular No. 17 (2019).

³³ Ministry of Corporate Affairs, Notification No. S.O. 4514(E) (Oct. 11, 2023).

³⁴ Protection of Interests in Aircraft Objects Act 2025, No. 17, Acts of Parliament, 2025 (India).

³⁵ SpiceJet-TWC Aviation Capital Litigation, Delhi High Court, CS(COMM) 377/2022.

Third Parties) Act 1999 created a limited, qualified exception to the rule on privity³⁶. However, aircraft leases generally have provisions that prevent third-party enforcement. English courts have held that, to novate a contract, the intention to discharge the original contract must be explicit, and be either wholly inconsistent with the original contract remaining in force or expressed clearly. This is very similar to the position in India, however, the English courts have a much greater volume of aviation case law leading to a more precise application³⁷.

Irish courts have adopted a similar approach. In *Emirates Airlines v Irish Aviation Authority*, the Irish High Court, while acting as a specialist aviation law court, held that a novation, accomplished by a tripartite agreement, must express with particularity both the obligations that are being discharged, and the obligations that are being created, and the general 'assumption' language does not satisfy the requirement for a full novation³⁸. Given the presence of Avolon, SMBC Aviation Capital, and AerCap, it is no surprise that Ireland is the main aircraft leasing jurisdiction, leading to the significant practical effects of its legal standards in international transactions.

2) CHINA

Article 555 of China's 2020 Civil Code describes novation as one in which the new debtor can only join with other parties on condition of the creditor's consent³⁹. With significant Chinese leasing companies in the Indian Aviation market (CALC, BOC Aviation, ICBC Leasing), this is critical when Chinese law novation is used to lease aircraft to Indian Airline companies. The intersection of novation law in China and the Indian regulatory framework has not been the focus of litigation in India and is a research void area.

³⁶ Contracts (Rights of Third Parties) Act 1999, c. 31, Section 1 (UK).

³⁷ *Emirates Airlines v Irish Aviation Auth.*, [2017] IEHC 238, ¶ 45 (Ir. High Ct.)

³⁸ *Emirates Airlines*, [2017] IEHC 238, ¶ 45.

³⁹ Civil Code of the People's Republic of China 2020, art. 555.

VI. THE CAPE TOWN FRAMEWORK AND NOVATION

In the context of novation, one of the other most important structural frameworks of the Cape Town Convention is the separation of contracts and property rights. According to the Convention, a 'lessor's interest' is an 'international interest' which is contractually completed and may be perfected by registration⁴⁰. This separation of interest means that, in the context of the Cape Town Convention, although a contractually complete novation may be achieved, it may be rendered incomplete unless the steps to the International Registry are also completed.

In the context of the Cape Town Convention, the Aviation Working Group's practical guidance suggests that novation documentation should complete the following: (i) irrevocably cancel the prior interest; (ii) register a new interest; (iii) ensure that no 'associated rights' remain with the prior arrangement⁴¹. This checklist method shows a clear grasp of novation's functioning in both domestic contract law and the Convention's proprietary framework. Such understanding has yet to find its way into Indian transactional practice.

India's membership in the Cape Town Convention and the Aircraft Protocol aimed to provide Indian carriers easier access to financing due to a perceived reduction in creditor risk⁴². The IBC moratorium saga has shown the real limits of that aim in the absence of implementation. A novation regime that is merged with the Convention and the realities of aviation leasing will provide legislative improvement. This has been suggested in different formats with no effect.

VII. DRAFTING CONSIDERATIONS FOR NOVATION AGREEMENTS

The standard trade tools, including the IATA ALSA, include novation clauses that name the released parties, the transferred obligations, the consideration exchanged, and the intentional exclusion of third parties⁴³. Indian parties will require greater focus.

⁴⁰ Goode, *supra* note 1.

⁴¹ Aviation Working Group, *supra* note 8, ch. 4

⁴² Cape Town Convention, *supra* note 5, art. 30(3)

⁴³ IATA, *supra* note 14, cl. 19.

First, consistent with section 62 of the Indian Contract Act 1872, the novation deed should include clear language that the original lease is 'discharged and of no further force or effect'. Indian Courts have found implied novation. However, the Indian Supreme Court's tendency to be strict on implied terms supports the preference for clear statements⁴⁴.

Second, if the airline is subject to RBI's external commercial borrowing guidelines, the deed should include representations and warranties of the incoming party ensuring compliance with the guidelines, and as necessary, copies of the relevant approvals from the RBI as conditions precedent.

Third, arbitration clauses in the original lease do not automatically carry into the novated agreement. Following the Supreme Court's analysis of the separability doctrine in *Garware Wall Ropes v Coastal Marine Constructions*,⁴⁵ practitioners should ensure the novation deed either incorporates the original arbitration clause by reference or provides a fresh dispute resolution mechanism. Ambiguity on this point could result in court proceedings in India where the parties intended international arbitration.

CONCLUSION

Novation in aircraft leasing relates to various laws, such as Indian contract law and property rights law. Possibly, the closest Indian courts have come to developing any level of coherence on the issue of novation is in the context of aviation law, which is possibly the most underdeveloped in comparison with England and Ireland. The recent cases of corporate insolvency in India have emphasized the need to address novation and the distinction between the continuity of contract and the completion of a transaction⁴⁶. To address these gaps, this article proposes three specific legislative and practice-oriented reforms. Until there are these specific laws, novation in aircraft leasing contracts will be governed by general contract law, and the loss and damage from a poorly drafted contract will be a commercial reality for the stakeholders.

⁴⁴ Tata Sons Ltd. v Cyrus Invs. Pvt. Ltd., (2021) 9 SCC 1.

⁴⁵ Garware Wall Ropes Ltd v Coastal Marine Constructions & Engineering Ltd (2019) 9 SCC 209, [22].

⁴⁶ Jetstar Asia Airways Ltd. v Kingfisher Airlines Ltd., OMP 546 (Delhi High Court 2012).

First, Parliament should consider a standalone aircraft leasing law that explicitly provides that a registered novation under the Cape Town Convention automatically discharges the prior lessor's interest without the need for a separate deed of release under Section 62, thereby eliminating redundancy and ensuring consistency with the International Registry. Second, the DGCA should issue a circular expressly recognizing tripartite novation deeds as sufficient for aircraft registration and deregistration purposes, reducing regulatory friction and uncertainty for lessors. Third, the Insolvency and Bankruptcy Code should incorporate a provision mirroring the Cape Town Convention's alternative remedy framework, permitting lessors to repossess aircraft within a fixed timeline during the moratorium, subject only to the airline curing defaults in full.