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Moving to a Statutory Framework for Cross-Border Insolvency in India:

A BRIDGE TOO FAR?

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A MESSAGE FROM THE INSOL India PRESIDENT

Dinkar Venkatasubramanian
President, INSOL India

With India striving to become the 3rd largest economy in the world in the coming years, the government is taking proactive and transformative steps in the realm of international trade and investments. In this rapidly evolving scheme and era of globalization, a large number of corporates have transcended national boundaries and are operating across various jurisdictions. However, with Indian corporations now expanding their businesses to various jurisdictions the complexities of insolvency law become all the more challenging due to the interplay of various jurisdictional laws and procedures.

The introduction of the Insolvency & Bankruptcy Code, 2016 (Code) resulted in an overall positive impact on the Indian economy. However, with the changing times and maturing of the insolvency law in India, there is now a requirement for another round of reforms so as to address the emerging concerns. Recently, while addressing the 8th Annual Day event of the insolvency regulator in India, the Chief Economic Advisor to the Government of India, Shri V. Anantha Nageswaran highlighted that *"A continuously evolving and improving IBC framework is important for India to achieve a 7-8% growth rate over the next decade"*.

The next generation of reforms require a statutory framework dealing with the complexities involved with cross-border insolvency. The recent developments in relation to the initiation of the insolvency proceedings against companies in various sectors such as aviation, manufacturing and education, having global footprints, lends credence to the fact that a robust statutory framework is required for such cases having cross border implications.

The report *"Moving to a Statutory Framework for Cross-Border Insolvency in India: A Bridge too Far?"* seeks to examine and delve into the key issues pertaining to cross-border insolvency including the global approach towards resolution. The report also analyses the current legal framework dealing with aspects of cross-border insolvency and the prevailing policy discussions in relation to a statutory framework for cross border insolvency in India.

We hope this piques your interest. INSOL India looks forward to your thoughts and observations on the topic.

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1. Introduction

Businesses have engaged in trade and commerce across political borders for centuries. The increasing economic globalization and growing transnational trade and investment in the recent decades have had an impact at the level of national economies, leading them to become more inter-dependent.[1] Most economies in the modern world are structured as market economies that allow businesses to earn profits by participating in the market and undertaking certain risks. With the risks, however, comes the possibility of business failure[2] – which is fundamental to the nature of such markets. When businesses fail in such globalised and inter-dependent market economies, the consequences often span beyond national boundaries.

A business failure may result in the business becoming 'insolvent',[3] i.e. where the business is unable to meet its financial commitments and consequently, cannot repay its debts in full.[4] The majority of national legal systems provide legal mechanisms, in the form of insolvency proceedings, to collectively satisfy outstanding claims of creditors from the assets of the debtor.[5] Though such insolvency proceedings may take a variety of forms in different jurisdictions,[6] they usually aim to maximise value for creditors while balancing the rights of other stakeholders.

Historically, insolvency law regimes were limited to governing debtors and creditors located within their respective national jurisdictions.[7] But when the creditors, assets, or operations of a business are spread across the globe, such business may end up being subject to multiple insolvency proceedings in different countries with distinct (and often conflicting) insolvency laws. In other words, when a business that has cross-border links becomes insolvent, it affects stakeholders situated in multiple countries and governed by different laws.[8] The divergent legal frameworks across jurisdictions involved in the insolvency of such businesses create complex challenges. Consequently, insolvency regulation presents "*acute difficulties when it involves international dimensions.*"[9]

The prominence of multinational businesses as well as the complexity of the questions that arise in the insolvency of such businesses has made issues of cross-border insolvency a crucial theme in global debates on insolvency regulation. Though efforts to harmonise the response to such issues on a global level have led to a certain degree of international consensus on some common principles for governing cross-border insolvency cases, countries still differ in their approach towards these issues.

This paper discusses the key issues involved in cross-border insolvency and the prominent schools of thought for resolving them. The authors then discuss the law and practice on cross-border insolvency in India. In the discussions throughout this paper, the authors have only dealt with insolvency procedures related to companies. Further, the authors have not specifically considered insolvency procedures that govern enterprise groups and have focused on corporate insolvency procedures related to a single entity.

2. Key Issues in Cross-Border Insolvency

Domestic insolvency laws grapple with establishing the rights of different stakeholders in insolvency proceedings and prescribing procedures at various stages of such proceedings, like locating the debtor's assets; identifying creditors of the debtor and their claims; determining the means of repaying creditors and distributing the proceeds to creditors based on priority rules; etc.[10] The domestic law will need to provide additional rules to deal with complexities that arise in a cross-border context, such as the rights of foreign creditors in respect of distribution in the respective country; the extent of access available to foreign insolvency practitioners to assets held in the respective country; the validity of foreign authorities' orders in the respective country; etc.[11] However, instead of delving into the procedural rules that a cross-border insolvency law needs to establish, it may be helpful to understand the primary questions that are raised in cross-border insolvency.

Envisaging a suitable regulatory framework for cross-border insolvency begins with three primary questions.[12]

First is the question of the appropriate forum that asks who has the jurisdiction to administer the insolvency process.[13] The question of jurisdiction is the preliminary issue that arises in cross-border insolvency since the assets of the debtor and creditors of the debtor may be spread across the world. Once the forum for the insolvency proceedings is determined, the jurisdiction of the assets of the debtor that are to be governed by such proceedings is also an important determination.

Second is the question of choice of law that asks what law should apply. Cross-border insolvency laws may either choose to establish special provisions to clarify the applicable law or leave it to be determined based on the choice of law rules in private international law.[14] In common law countries, choice of law issues usually only arise if parties invoke them; otherwise, the law of the forum is applicable.[15]

Third is the question of the appropriate manner in which the proceedings related to insolvency should be recognised and judgments should be enforced.[16] This will depend on the court that issued the judgment and the type and effect of the judgment.

According to Mason, *"Approaches to this issue that are not integrated with the approach to jurisdiction and the applicable law are incomplete. A comprehensive multi-state insolvency system should link the exercise of jurisdiction with its recognition and enforcement and address the applicable law in the process."*[17] Therefore, a comprehensive cross-border insolvency law should answer the above three questions in an integrated manner. The prominent global approaches and theories in cross-border insolvency law that attempt to answer the above questions have been discussed below.

3. Global Approaches to Resolving Key Issues

Traditional debates on the approach to answering questions posed in cross-border insolvency have been divided into two extremes of universalism and territoriality.[18] The crux of the debate revolves around determining the first question discussed above, i.e., the question of appropriate forum. As noted by Goode in the context of cross-border insolvency, *"The battle lines are drawn when it comes to jurisdictional issues."*[19] To understand the debate, two sets of principles are of particular significance- *unity versus plurality and universality versus territoriality.*[20] Whereas the debate on unity and plurality is related to the number of courts that have jurisdiction over the insolvency proceedings of a debtor, the debate on universality and territoriality is related to the effect that insolvency proceedings in one country should have in other countries.

Although traditional narratives chose between these extremes of universalism and territorialism, modern theories on cross-border insolvency are often placed somewhere in the middle of the spectrum. This has led to the mushrooming of hybrid approaches, like the modified universalist approach and the cooperative territorialist approach which have gained traction from policymakers.

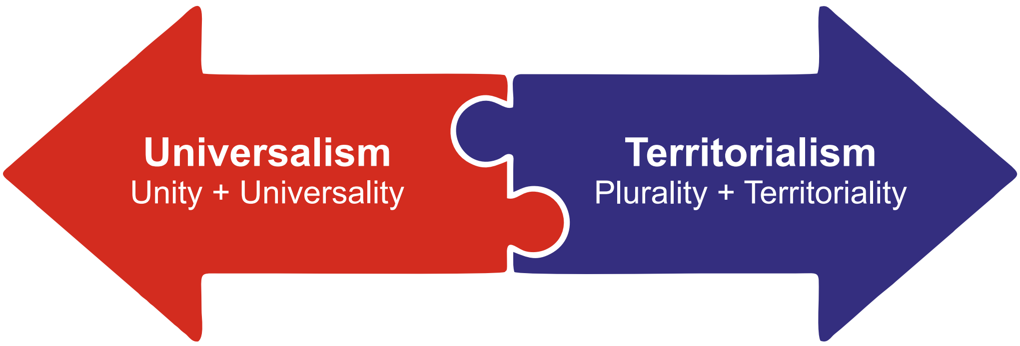

Figure : Comparison of universalism and territorialism

While all the above approaches offer a variety of solutions to the problems raised in cross-border insolvency, each of them present certain advantages as well as disadvantages. The lack of unanimous international consensus for any one approach has led many to conclude that they all *"may have a role to play in cross-border insolvencies"*.[21] These approaches have been discussed in detail below.

3.1. The Traditional Extremes

3.1.1. Understanding the Principles

As noted above, the key to understanding the debate over territorialism and universalism is based on two sets of opposing principles.

The first set of opposing principles are unity and plurality, which are related to the number of courts that can have jurisdiction over the insolvency proceedings of a debtor. 'Unity' dictates that courts in the state to which the debtor has the closest juridical connection should have exclusive jurisdiction over the insolvency proceedings of the debtor.[22] The meaning of the term 'closest juridical connection' may differ between states and may mean the place of incorporation, the principal place of business, or the centre of main interests of the debtor. On the other hand, 'plurality' accepts that multiple insolvency proceedings against the same debtor may progress concurrently in various states and does not vest exclusive jurisdiction of such proceedings in any state.[23]

The second set of principles are universality and territoriality, which are related to the effect that insolvency proceedings in one country should have in other countries. 'Universality' propagates that insolvency proceedings initiated against a debtor in a state that exercises exclusive jurisdiction, as per the principle of unity, should affect all properties and interests of the debtor located around the world.[24] As opposed to this, 'territoriality' provides that the effect of insolvency proceedings opened in a state should be limited to that state, and no insolvency proceedings should have an extraterritorial effect.[25]

The principles of unity and universality combine to give force to the theory of universalism, whereas the principles of plurality and territoriality combine to support the theory of territoriality. We elaborate on this in the discussion below.

3.1.2. Universalism

Proponents of universalism argue that an ideal cross-border insolvency system is one where a single forum administers insolvency proceedings against a debtor, and such proceedings impact the assets and interests of the debtor across the world. In other words, universalism proposes that the best way to resolve cross-border insolvency cases is by consolidating all assets of the debtor in insolvency proceedings administered by a single forum that has a universal extraterritorial effect.[26] These proceedings should take place in the debtor's home state[27] and be administered under one insolvency law (which is assumed to be the law of the forum by universalists).[28]

This theory gathers support due to its simplicity as it consolidates multiple insolvency proceedings into one, which in turn leads to speedy proceedings that are more efficient. Westbrook argues that it is only possible to maximise value for creditors and ensure equality amongst them if insolvency proceedings in respect of a debtor are conducted in a unified framework.[29] He also claims that universalism usually produces higher distributions in liquidation and provides a higher probability of success in reorganization.[30] Bebchuk & Guzman also make similar arguments and contend that universalism generates greater economies in areas like *"avoiding duplication of administration expenses, selling cross-border assets as a whole, coordination of reorganization efforts, and encouraging efficient investment patterns"*.[31, 32]

However, universalism also attracts criticism on several grounds. One of the most prominent shortfalls of universalism is that it requires a high degree of international consensus for it to be implemented, which has proven extremely difficult in practice.[33] Universalism requires that other countries practice it as well; otherwise, the creditors of a territorialist jurisdiction can be advantaged over the creditors of a universalist jurisdiction.[34] Further, most countries would be apprehensive of completely deferring to foreign law, especially when the requisite laws of the two countries are significantly different.[35] Some commentators have also argued that imposing foreign laws and authorities on completely domestic debtor-creditor relationships confuses such creditors and defies their reasonable expectations.[36] Thus, the continued orientation of countries towards sovereignty and the fear of undermining the interests of local creditors have been significant roadblocks to global acceptance of universalism.

Some patrons of universalism also argue that it will eliminate forum shopping. But critics contend that there will be uncertainty in determining the basis for the identification of the proper exclusive forum – which may be subject to strategic manipulation.[37] Moreover, lack of uniformity in the manner of determining the 'home state' of the debtor may completely compromise the advantages claimed by universalism.

Therefore, although attractive in theory, universalism may be too idealistic for successful implementation on a global level.

3.1.3. Territorialism

Territorialism means that the insolvency proceedings in a country should be primarily applicable to assets and creditors of the debtor that are within its jurisdiction, and such proceedings should not have any extraterritorial effect. Accordingly, there may be as many insolvency proceedings in respect of a debtor as there are states with the power to exercise insolvency jurisdiction over the debtor.[38] Territorialism is based on the principle of state sovereignty and promotes an exclusively national focus on insolvency proceedings.[39]

This theory garners support due to its sovereign nature and is often the default approach for most countries since it relies on actual *in rem* control of assets.[40] By being limited to a single country in effect, territorialism offers an easy solution that does not require international agreement. Thus, in its implementation, territorialism also allows states to ensure that the insolvency outcomes are integrated with their policy objectives while allowing them to preserve their culturally distinct jurisdictional identities.

Insolvency proceedings in a country that follows this approach will be primarily governed by the laws of that country. Consequently, territorialism also avoids issues that arise from a conflict of laws like conflicts among priority, voting and participation rights, etc. Further, proponents of territorialism argue that, when compared to universalism, territorialism is far more consistent with expectations that creditors have while making lending decisions in a particular country.[41]

Despite such benefits, various shortcomings of territorialism have also been highlighted in insolvency scholarship.[42] Territorialism is often criticised for being inefficient by creating administrative duplications, which in turn increase costs for both parties and the courts involved in the insolvency proceedings.[43] For instance, the costs of filing multiple cases and the costs of re-litigating the same issues and claims in different jurisdictions may unnecessarily burden courts and parties. Further, if there are concurrent proceedings in multiple states that ascribe to territorialism, it may lead to creditors being subject to conflicting decisions as well as unequal distributions despite belonging to the same class.[44] Furthermore, territorialism often results in benefitting some creditors who managed to move first due to its reliance on the ideology of the 'grab rule'. Thus, creditors who grab assets first would usually fare better than creditors generally, defeating a vital goal of insolvency laws – balancing the interests of all stakeholders.[45]

Moreover, it has also been claimed by some scholars that territorialism produces less economically efficient results as it may not allow a coordinated and unified administration of all assets of the debtor in most cases.[46] Wessels, Markell, and Kilborn note that territorialism *"will have the virtually inevitable result of dismembering the enterprise,* *destroying asset value synergies by breaking up productive units divided by national borders, and all but assuring the impossibility of any reorganization.*"[47] Finally, in response to the claim that this approach is better from a political perspective, critics argue that territorialism may cause disharmonious international relations due to its tendency to enable creditors in one jurisdiction to 'grab all' assets of the debtor at the expense of creditors and stakeholders elsewhere.[48]

Therefore, territorialism may lead to inefficient outcomes and cause more disruptions than it resolves.

3.2. Moving Away from the Extremes

As discussed above, both theoretical extremes that have traditionally dominated the debate on cross-border insolvency have several drawbacks. This has resulted in their rejection in practice and has led most jurisdictions to adopt an approach that combines both universalism and territorialism. Experts and academics in the field have also proposed various models that modify or combine the two theoretical extremes. Two prominent hybrid theories that have gained popularity in recent times are cooperative territorialism and modified universalism. These have been discussed below.

3.2.1. Modified universalism

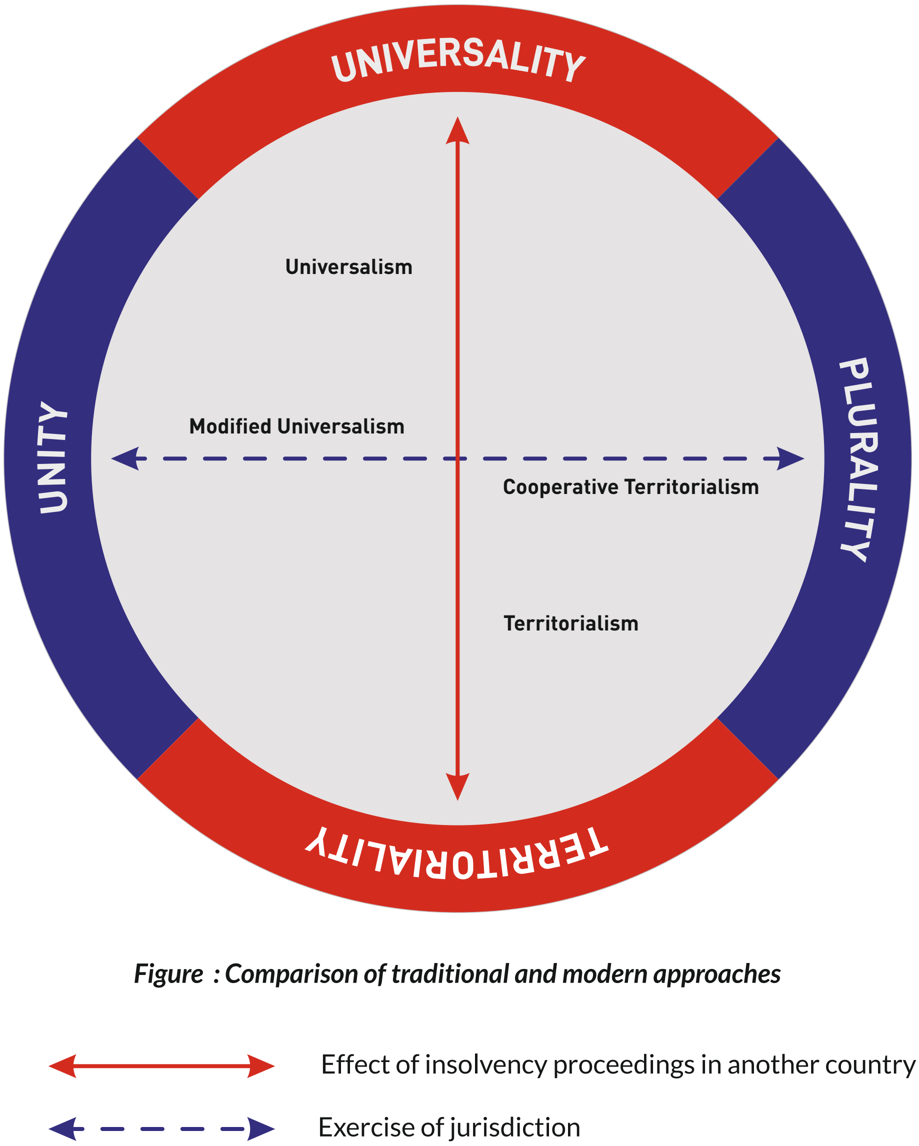

Figure : Comparison of traditional and modern approaches

As evident by the name, modified universalism is a variation of universalism. This theory upholds the central premise of universalism that there should be a single insolvency proceeding in the home state

of the debtor that deals with all its global assets.[49] Nevertheless, it allows forums in other relevant jurisdictions to exercise discretion before deferring to and assisting the insolvency proceedings in the foreign home state.[50] Thus, recognition and relief in respect of a foreign proceeding are not automatic and are based on the discretion of the courts involved. Relevant factors in the exercise of such discretion include considering whether procedures adopted in the insolvency proceeding in the foreign home state are fair and that the interests of domestic creditors would be adequately protected in such a proceeding.[51]

The insolvency proceedings in the home state of the debtor are usually called the 'primary' or the 'central' proceeding and proceedings in other states where discretion is exercised in the above manner are 'ancillary' or 'auxiliary' proceedings. Ancillary proceedings are mainly undertaken to assist the primary proceedings.[52] Assistance to primary proceedings may be provided by other states in various ways like staying all local insolvency proceedings, surrendering property of the debtor to the foreign office holder, allowing local claims to be addressed in the primary proceeding, etc.[53] Local proceedings may be instituted in a jurisdiction, where the authorities conclude that assistance to foreign primary proceedings should not be provided.[54]

Supporters[55] of modified universalism argue that it retains many of the advantages of pure universalism while also providing states flexibility when deciding to compromise sovereignty. Further, it dispenses with the requirement of a worldwide convention, unlike universalism, and may be implemented through unilateral domestic statutes. However, critics argue that modified universalism lacks predictability and may be implemented in varying ways by different states, causing conflicts. Further, despite its obvious advantages, this model does not spell out the manner of determining the home state of the debtor, which can lead to several complications. This vagueness leaves significant room for disagreement and strategic manipulation, which may be an acute problem in practice.[56] In fact, some scholars also contend that practical implementation of modified universalism may be no different from territorialism as nations insistent on protecting sovereignty would deny assisting primary proceedings in most cases.[57]

3.2.2. Cooperative Territorialism

Cooperative territorialism is a modification of territorialism that advocates for *"international cooperation in insolvency cases grounded in territoriality."*[58] This model argues that each country in a cross-border insolvency scenario should conduct insolvency proceedings for assets situated within its jurisdiction. Assets within each country are administered as a separate estate and the applicable law for insolvency resolution is the law of that country.[59] Though sometimes confused with modified universalism, cooperative territorialism does not make any insolvency proceeding ancillary to another and, in lieu, advocates for cooperation between different insolvency proceedings taking place concurrently.[60] Such cooperation may be undertaken where states view it as mutually beneficial and may be in the form of information sharing (about distributions in the separate estates), joint sale of the assets (involved in different proceedings), and linking of avoidance action outcomes, among other types of mutual assistance and coordination between jurisdictions.

This approach has been appreciated due to its basis in legal realism.[61] It allows states to guard their sovereignty and follow their own laws while also promoting international cooperation. Consequently, it is simpler to implement and does not require massive changes to existing legal frameworks and practices of many national jurisdictions.[62] It also promotes predictability for creditors and other stakeholders as long as they are familiar with the location of assets and the applicable rules regarding distributions in such locations.[63]

Nevertheless, cooperative territorialism has also attracted trenchant criticism on several fronts. Although this model allows for cooperation among states, such cooperation is limited due to the very nature of this model.[64] Since this model leaves a lot of discretion with states, they are likely to cooperate only when it is evidently useful or mutually beneficial, and not as a default rule to be followed from the beginning of a case.[65] Opponents argue that this raises several concerns. First, certain procedures like reorganizations may require a higher degree of international cooperation to efficiently rescue a multinational enterprise.[66] Westbrook claims that *"To adopt territorialism as a long-term solution would be to leave multinational corporations mired in a liquidation-centered bankruptcy system already obsolete domestically."*[67] Second, it may lead to injustices against creditors as some states may deny priority claims to foreign creditors, leaving them worse off than domestic creditors.[68] Third, it may be susceptible to manipulation since assets may be transferred to jurisdictions with lax procedures and favorable outcomes for the enterprise.[69] Lack of cooperation can cause grave injustices in both the second and the third scenarios.[70] Finally, as with pure territorialism, creditors involved in such proceedings will have to file claims in insolvency systems of multiple jurisdictions contributing to increased costs for both creditors and courts.

3.3. Other Notable Models

Modified universalism and cooperative territorialism are perhaps the most popularly discussed hybrid approaches in academic debates surrounding cross-border insolvency. Nonetheless, many other alternatives have emerged in deliberations on this topic and are practiced in both international as well as national insolvency systems.

A variation of the theory of modified universalism is the 'secondary proceedings' model. This model postulates that insolvency proceedings should be undertaken in jurisdictions in which the debtor has a substantial presence.[71] It argues for a 'main' proceeding that takes place in the debtor's home state. Unlike modified universalism, though, proceedings in jurisdictions that are not the home state of the debtor are not undertaken to *only* assist the main proceeding. Instead, proceedings in other jurisdictions, known as non-main proceedings or secondary proceedings, are insolvency proceedings as well.[72] Such non-main proceedings realise and distribute local assets to locally secured and priority claims by applying local law.[73] If there are any assets left after this, they are then remitted to the main proceeding for distribution. Concurrent proceedings in different jurisdictions are subject to cooperation and coordination by courts and officeholders.

Another theory called universal proceduralism proposes that the best way to resolve the issues of cross-border insolvency is by creating minimally harmonised procedural rules and harmonised 'choice of law' rules that apply across the globe.[74] It argues that substantive laws on insolvency in various countries need not be harmonised with each other due to various practical roadblocks to achieving it. Accordingly, it suggests that the 'choice of law' rules applicable to insolvency proceedings are the same, and insolvency proceedings of a multinational should take place in a common forum on a worldwide basis.[75]

As opposed to the above theories, contractualism stands outside the spectrum of territorialism and universalism. It argues for 'contractual bankruptcy' and proposes that the appropriate jurisdiction for conducting the insolvency proceedings of a debtor should be chosen by the debtor and its creditors by contract. One of the ways in which this may be decided is by specifying the fora with jurisdiction over the insolvency proceedings of a debtor in its documents of incorporation.[76] Such choice of fora of the proceedings may be altered if the debtor negotiates so with all its creditors.[77] The thrust of the argument underlying this theory is that bankruptcy regimes negotiated in the marketplace would be more efficient than standardised procedures or agreements.[78] Although this theory is often utilised in the form of negotiated protocols and treaties to govern insolvency proceedings, this theory has been criticised for resulting in costly and difficult negotiations that may be time-consuming in reality.[79]

3.4. Finding a Balance in Practice

There has been considerable effort in recent years to harmonise laws and procedures relating to cross-border insolvency across the world. Most of these efforts have been led by global institutions that have attempted to develop practice guides, good practice standards, and principles for resolving cross-border insolvency issues. Some examples of such initiatives are the International Monetary Fund Principles for Orderly and Effective Insolvency Procedures; the International Bar Association Cross-Border Insolvency Concordat; the Asian Development Bank Good Practice Standards; the European Bank for Reconstruction and Development Core Principles and Insolvency Law Regime; etc.

The UNCITRAL Model Law on Cross-Border Insolvency,1997 ("**Model Law**"), which largely follows the principles of modified universalism, is perhaps the instrument that has gained maximum popularity.[80] It is a model legislation that provides procedural rules to coordinate concurrent insolvency proceedings in more than one jurisdiction in respect of the same debtor. In doing so, it neither answers questions of the appropriate choice of law nor does it attempt to harmonise substantive insolvency laws of different jurisdictions. Instead, it only enables procedural coordination of concurrent proceedings by allowing –

- direct access for foreign insolvency practitioners to local courts;
- equal treatment of foreign and local creditors in insolvency proceedings;
- recognition of foreign insolvency proceedings;
- relief for foreign insolvency proceedings after recognition; and
- cooperation and communication between courts and insolvency practitioners involved.[81]

Notably, instead of replicating any particular model, most international efforts have attempted to find a balance amongst the various theoretical approaches discussed above.[82] Mevorach argues that *"it seems that these initiatives operate under the presumptions that efforts towards harmonization should proceed with caution, should appreciate differences between legal regimes and should leave room for innovations."*[83] Therefore, practical instances of harmonisation of global laws and practice may involve various elements of the above theories to resolve the issues at hand. This is also reflected in India's approach to cross-border insolvency over the years.

4. Law and Practice on Cross-Border Insolvency in India

India reformed its insolvency laws with the enactment of the Insolvency and Bankruptcy Code, 2016 ('**IBC/Code**') that, *inter alia*, consolidates the laws relating to the insolvency of corporate entities. The Code has transformed the corporate insolvency landscape in the country by providing the reorganisation process that aims at resolving corporate entities in a time-bound manner, maximising the value of assets of such entities, promoting entrepreneurship, increasing the availability of credit, and balancing the interests of all stakeholders.[84] Before the enactment of the Code, the corporate insolvency framework in India was fragmented and involved outdated procedures plagued with delays, that led to suboptimal results and poor recoveries.

The erstwhile corporate insolvency laws in India did not provide specific provisions to comprehensively deal with cross-border insolvency matters. Even now, despite the recent reforms, the legal provisions on cross-border insolvency have *"not kept pace with international developments in the field."*[85] As with the erstwhile corporate insolvency laws, the IBC does not provide any specific guidance on coordinating cross-border insolvency cases. Instead, it leaves such issues to be determined by courts or through treaties entered into by the Government of India, if any.[86] While certain general civil law provisions for enforcement of foreign judgments may be relied on to give effect to foreign insolvency judgments, these provisions adopt a territorialist approach and are limited in their application.

Nevertheless, despite there being no comprehensive statutory backing, cross-border insolvency jurisprudence in India continues to develop through case law, supported by some basic enabling provisions. We elaborate on this in the subsequent paragraphs. First, we discuss the general civil law on enforcement of foreign judgments in India, as relevant for cross-border insolvency cases. Thereafter, we discuss the development of cross-border insolvency law as enabled by domestic insolvency laws – both before and after the enactment of the IBC. Finally, we discuss policy deliberations on this issue, including proposals for the adoption of the Model Law in India.

4.1. Enforcement of Foreign Judgments and Cross-Border Cooperation under Civil Laws

Civil laws in India recognise the principle of comity and allow enforcement of foreign judgments to a limited degree.[87] Sections 13 and 44A of the Code of Civil Procedure, 1908 ("**CPC**") lay the foundation for enforcement of foreign judgments in India. Further, certain common law doctrines recognized by Indian courts may also help achieve cooperation between Indian and foreign courts in cases of cross-border insolvency.[88] These have been discussed below.

4.1.1. Enforcement of foreign judgments

Section 44A of the CPC embodies the principle of comity and allows Indian courts to enforce judgments passed by foreign courts that are situated in 'reciprocating territories'.[89] A country is considered a 'reciprocating territory', within the meaning of this section, if it is notified as such by the Government of India through publication in its Official Gazette.[90] Further, only judgments from 'superior courts' in such reciprocating territories are eligible for enforcement under Section 44A. An explanation to Section 44A clarifies that 'superior courts' shall be such courts as are notified by the Government of India in its Official Gazette.[91] A judgment recognised under this provision shall have the same effect as if it was passed by a district court in India.

Section 44A is, however, limited by Section 13 of the CPC, which provides a list of exceptions to the principle of enforcement under Section 44A. According to Section 13, a judgment by a foreign court cannot be recognised and enforced under Section 44A if it is inconclusive. A judgment is considered inconclusive if it meets any of the following criteria:

"(a) *where it has not been pronounced by a Court of competent jurisdiction;*

(b) *where it has not been given on the merits of the case;*

(c) *where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;*

(d) *where the proceedings in which the judgment was obtained are opposed to natural justice;*

(e) *where it has been obtained by fraud;*

(f) *where it sustains a claim founded on a breach of any law in force in India.*"[92]

While deciding if a foreign judgment should be recognised, Indian courts do not consider whether the conclusions in such judgment are supported by the evidence or are otherwise correct.[93] A foreign judgment shall be eligible for enforcement even if the substantive and procedural law of the foreign country is drastically different from the domestic law on the subject in India.[94] Nevertheless, a foreign judgment that falls within clauses (a)-(f) of Section 13 of the CPC shall not be eligible for enforcement under Section 44A.

Although the above remedies have been provided in Indian civil laws, it is important to note the limitations of such remedies. Firstly, the remedy available under Section 44A regarding enforcement of foreign judgments is limited and adopts a territorial approach, as it is restricted to reciprocating territories.[95] Judgments from countries that are not included within the list of reciprocating territories cannot be enforced through Section 44A and require the filing of fresh suits in India to give them effect.[96] This means that parties from non-reciprocating territories would have to go through a much longer and costlier process. Further, the process of availing enforcement – for both reciprocating and non-reciprocating territories – is riddled by *"a mix of instruments, multiple authorities and courts"*.[97] These issues pose a hindrance to effective cross-border recognition and enforcement of judgments.

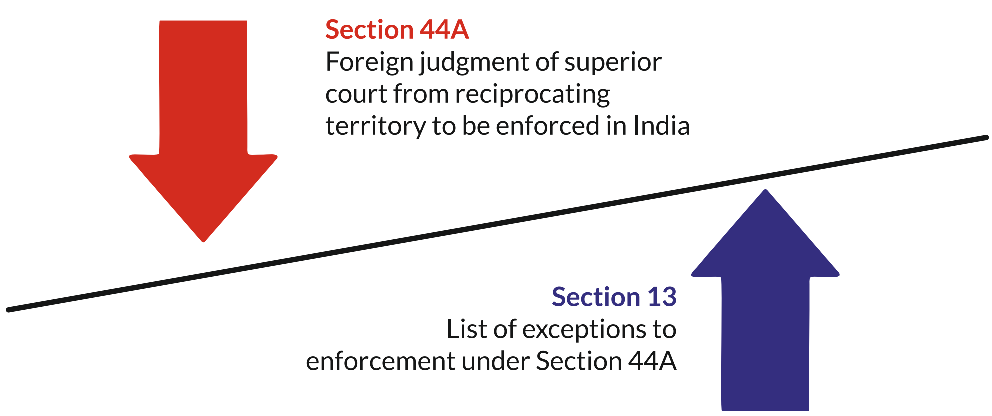

Figure : Recognition of foreign proceedings

Secondly, foreign judgments from reciprocating territories are enforced unless they fall within Section 13.[98] However, parties may be uncertain about whether, in a given case, Indian courts would enforce a foreign judgment due to the uncertainties around the interpretation of Sections 13 and 44A.[99] Due to this, parties do not have *ex-ante* certainty on the legal status of foreign judgments in India. Thirdly, recognition and enforcement under these provisions is limited to 'decrees'[100] of foreign courts and thus does not include enforcement of non-conclusive orders and orders involving the recognition of proceedings. Therefore, they do not permit actions that may be necessary for the effective conduct of cross-border insolvency, like recognition of foreign reorganization proceedings; grant of stay or administration of assets to insolvency practitioners appointed in foreign insolvency proceedings; cooperation and communication between Indian and foreign courts; etc.[101]

4.1.2. Court-to-court cooperation

Proceedings regarding the same debtor may take place in different countries simultaneously. Under civil procedure jurisprudence in India, it has been established that a judgment may be executed or enforced in more than one place at the same time. In *Prem Lata Agarwal vs Lakshman Prasad Gupta & Ors.*,[102] the Supreme Court noted that *"simultaneous execution proceeding in more places than one is possible but the power is used sparingly in exceptional cases by imposing proper terms so that hardship does not occur to judgment debtors by allowing several attachments to be proceeded with at the same time."*[103]

Courts in different countries will need to cooperate with each other to a certain degree to allow coordinated responses to concurrent proceedings or simultaneous enforcement of judgments. Although Indian courts have rarely engaged in cross-border communication with foreign courts, certain doctrines recognised in common law jurisprudence may help in allowing cooperation between Indian and foreign courts.[104]

The first such doctrine is that of comity of courts.[105] It is a principle of private international law according to which courts of one jurisdiction give effect to the laws and judicial decisions of another.[106] Such effect is given out of deference and respect, and not as a matter of right.[107] Thus, comity forms an exception to the general rule of territorial application of domestic laws of a country. One way in which the principle of comity is embedded in the CPC is through Section 44A discussed above. Another example of this principle may be found in Section 10 of the CPC which is reproduced below-

> *"10. Stay of Suit.*
>
> *No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.*
>
> ***Explanation***. - *The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action."*[108]

Utilising the above provision, Indian courts can, *inter alia*, stay a suit in one court if another court is adjudicating over the same matter for the same cause of action and the same relief.[109] The principle of comity, however, is recognised beyond the scope of Section 10 as well. Therefore, Indian courts may stay domestic suits when a foreign court is adjudicating on the same matter.[110] Such stays may aid in ensuring that different courts exercising separate jurisdiction pass similar orders, and thus, assist in the coordination of concurrent proceedings.[111] Accordingly, the doctrine of comity may be utilised in instances of cross-border insolvency to avail stays and enforcement of judgments in India.

Court-to-Court Cooperation

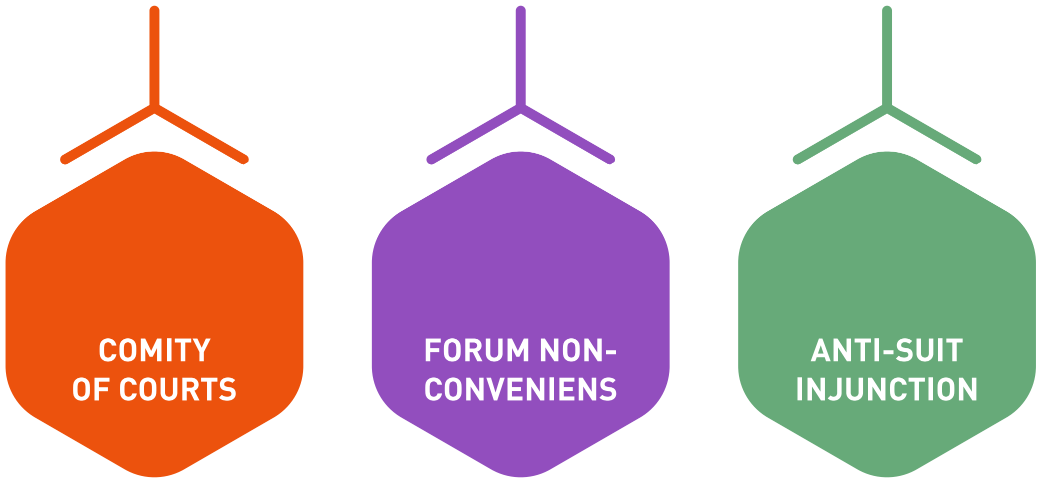

Figure : Discretionary principles enabling court-to-court cooperation

The second doctrine that is relevant in this context is forum non-conveniens, which is the power of common law courts to refuse to hear cases that have been brought to them. It is very similar to the doctrine of comity as it also determines the jurisdiction over the proceedings in scenarios where concurrent proceedings are taking place in different courts in respect of the same matter. However, unlike the comity doctrine, forum non-conveniens determines the appropriate jurisdiction for the matter that is the most convenient.[112] This doctrine has been recognised by Indian courts and is applied based on a two-part test.[113] The court first determines if there is an alternate forum that is competent and appropriate to adjudge the matter. Thereafter, the court determines if it is in the interests of justice to direct the parties to utilise such alternative forum and refuse to entertain the matter itself. The analysis in both tests is based on various factors like the location of parties and witnesses, the location of evidence, the choice of law applicable to the dispute, possible undue hardship for the defendant, the location where the cause of action arose, etc.[114] Although sparingly utilised, the doctrine of forum non-conveniens may be useful in avoiding multiplicity of judgments and conflicting orders or judgments on the same issue.[115]

The third doctrine which may be useful in cross-border insolvency scenarios is that of anti-suit injunctions. An anti-suit injunction is an order that may be issued by a court preventing parties from filing or conducting a proceeding in another jurisdiction or forum.[116] In a scenario where a foreign court and an Indian court are adjudicating on the same matter, parties may contend that the Indian court is the more convenient and effective forum for adjudicating that matter. Such parties may request the Indian court to issue an anti-suit injunction prohibiting the opposing parties from continuing the proceeding in the foreign jurisdiction to avoid conflicting judgments by both courts. Anti-suit injunctions are, therefore, the converse of the principle of forum non-conveniens discussed above. Whereas a court applying forum non-conveniens will conclude that it is not the most convenient forum for adjudicating a case, a court providing an anti-suit injunction will conclude that it is the most convenient forum to exercise jurisdiction in a case and prohibit adjudication of the case in another forum. Indian courts have held that they have the power to provide anti-suit injunctions to parties over whom they exercise *jurisdiction in personam*.[117] However, this power is only utilised in exceptional cases.[118]

Although the above doctrines may be applied in cross-border insolvency cases, their utilisation in the sphere of insolvency has been very limited in India.[119] Recently, however, the Delhi High Court, in *Toshiaki Aiba v. Vipan Kumar Sharma*,[120] has provided asset restoration remedies to a Japanese Bankruptcy Trustee. The Court relied on an interlocutory order from a Japanese court declaring the defendant to be bankrupt, even though Section 44-A of the CPC does not include such interlocutory orders within its ambit. The High Court reasoned that since a request for enforcement of the foreign order has not been made and instead the Japanese Bankruptcy Trustee has pleaded for administration of assets situated in India, Section 44-A of the CPC does not apply.[121] It may be argued that this judgment has set a precedent for recognition of similar orders in India.

4.2. Cross-Border Insolvency before the IBC

The first occurrence of cross-border insolvency cases in India can be dated back to the early 20th century. The case of *Re P. MacFadyen & Co, Ltd.*,[122] which is perhaps the first recorded case that utilised a cross-border insolvency agreement, involved concurrent insolvency proceedings against a deceased debtor in both England and India. The insolvency administrators in London and Madras had to respectively collect, realise and distribute assets to the creditors in their respective jurisdictions. To undertake this task efficiently, the insolvency representatives negotiated and entered into an agreement that provided for *"concurrent continuation of both insolvency proceedings, treatment of both companies as one, a rateable distribution of the assets to all creditors, regular exchange of information between the insolvency representatives on claims admitted by them and recognition of claims duly admitted in one proceeding in the other proceeding."*[123] This agreement was approved by the courts of both England and India, and the English Court noted that the agreement was a *"proper and common-sense business arrangement to make, and one manifestly for the benefit of all parties interested."*[124]

Despite this, the laws dealing with insolvency procedures for corporate entities in India did not specifically deal with cross-border insolvency scenarios and provided a rudimentary framework for the same. This framework was largely territorial in nature.[125]

4.2.1. Legislative Competence

The Constitution of India, 1950 ('**Constitution**') lays the foundation for the distribution of powers between the Centre and states. The Constitution empowers the Parliament to enact laws concerning matters stated in Lists I (the Union List) and III (the Concurrent List) of the Seventh Schedule contained in the Constitution. On the other hand, state legislatures are empowered to make laws on matters mentioned in Lists II (the State List) and III (the Concurrent List) of the Seventh Schedule. While the Parliament and state legislatures have the power to make laws falling under the Concurrent List, i.e., List III of the Seventh Schedule, the laws made by the Parliament will prevail in case of any conflict.[126]

Key legislations related to insolvency and rescue of companies are enacted by the Parliament of India. Though 'Bankruptcy and Insolvency' is listed in the Concurrent List[127] of the Seventh Schedule, the Union List contains matters such as- *"incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations, but not including co-operative societies"* in Entry 43 and *"incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities"* in Entry 44.[128]

4.2.2. Erstwhile Insolvency Laws

The erstwhile insolvency framework for corporations in India was fragmented across various legislation. This meant that the legislative process was covered by multiple statutes, and adjudication pursuant to such statutes took place before multiple judicial fora. A 2015 study of Indian corporate insolvency laws noted that although the key provisions are contained in the company laws, in *"reality though there are three major laws, two ancillary laws and one special provision that address various elements of it."*[129] This framework was tied together by a mix of debt recovery laws as well as collective action laws to resolve insolvency and recover debts.

The cross-border insolvency aspects provided in the key statutes governing the erstwhile insolvency regime in India have been discussed below.[130]

(i) Liquidation/ winding up of companies

The Companies Act, 1956 laid down the provisions for the winding up of companies. The provisions of this statute envisaged the winding up of two categories of companies – (a) companies incorporated in India, and (b) unregistered companies. Such winding up could be ordered on various grounds, including if the company was *"unable to pay its debts"*.[131]

The provisions[132] dealing with the winding up of companies incorporated in India would apply even if the business of such companies was carried out in foreign jurisdictions. The winding up proceedings would be limited in their scope to assets located in India and would not have any extraterritorial effect.[133] Any assets of such a company situated in a foreign country could only be included in the Indian winding up proceedings with the consent of the relevant foreign court.[134] Any proceedings in a foreign country for this purpose would be governed by the respective foreign law. However, foreign creditors were permitted to file claims in Indian winding up proceedings and were treated on a par with domestic creditors.

Companies incorporated in foreign countries, that were conducting business in India, were eligible to be wound up as unregistered companies.[135, 136] Even in the case of winding up of foreign companies,[137] foreign creditors were treated on a par with domestic creditors and had a right to file claims in the Indian winding up proceedings of foreign companies. Further, these provisions also did not have any extraterritorial effect and did not recognise the jurisdiction of other territories in respect of local branches of any foreign companies. In *Rajah of Vizianagaram v. Official Receiver and Liquidator,*[138] the Supreme Court clarified that foreign creditors were eligible to file their claims in Indian winding up proceedings of companies incorporated outside India (as an unregistered company), and would be treated on a par with domestic creditors. The Apex Court observed that-

> *"The courts of a country dealing with the winding up of a company can ordinarily deal with the assets within their jurisdiction and not with the assets of the company outside their jurisdiction. It is, therefore necessary that if a company carries on business in countries other than the country in which it is incorporated, the court of those countries too should be able to conduct winding up proceedings of its business in their respective countries. Such winding up of the business in a country other than the country in which the company was incorporated is really an ancillary winding up of the main company whose winding up may have already been taken up in that country or may be taken up at the proper time…*
>
> *Ordinarily, the winding up of the company will be proceeding simultaneously in the various countries where it carried on business whenever the business of the company has ceased to be profitable and the company is reduced to a position in which it is not expected to make good its liabilities."*[139]

Further, the assets in the winding up proceedings of foreign companies in India were limited to the assets situated in India. When a foreign company would be liquidated outside India, its Indian business would be treated separately. Consequently, the Indian assets of such a foreign company would not automatically be bound by the liquidation proceeding in the foreign jurisdiction, and separate proceedings in India would have to be filed to deal with such assets. [140] The proceedings in India would be governed by the laws of India. A case illustrating this is the liquidation of Bank of Credit & Commerce International ("**BCCI**").[141]

The BCCI was registered in the Cayman Islands and operated in multiple countries through local branches, and in India through its branch in Mumbai. Winding up proceedings in respect of the BCCI were initiated in the Cayman Islands and England. Soon after receiving this information, the Reserve Bank of India ("**RBI**") (India's central bank that also functions as the banking regulator) filed a petition in India to wind up the Mumbai branch of the BCCI as an unregistered company.[142] The RBI relied on the fact that the BCCI was undergoing winding up proceedings in both the Cayman Islands and England to plead that it would be unable to pay its debts in India. Winding up proceedings were initiated against the BCCI as an unregistered company under the Companies Act, 1956, and the State Bank of India ("**SBI**") was appointed as the Official Liquidator. Negotiations were conducted by the SBI with various stakeholders, including the liquidators appointed in the Cayman Islands and England. Thereafter, a scheme of arrangement was approved by the Bombay High Court according to which the SBI acquired the Mumbai branch of the BCCI as a going concern, and the below was observed:

> *"I would conclude that the arrangement as reached and arrived at, as mentioned earlier and as recorded in the agreement between the parties and as sanctioned by this Court, is by and large in the best interest of the creditors and depositors of the BCCI(O) Bombay Branch. It is noteworthy that 100% claims of such creditors and depositors are secured. The interest of the public at large is and should be a paramount consideration before the Court which should override the claim and the interest of any individual…"*[143]

However, the mere fact that an insolvency proceeding in respect of a company had commenced in a foreign jurisdiction did not always mean that winding up proceedings in respect of the Indian business of the company would be initiated in India. As a general principle, courts in India exercised wide discretion in deciding if petitions in respect of winding up of companies should be admitted.[144] The satisfaction of courts that a foreign company should be wound up was a subjective determination and occasionally resulted in inconsistent and varying outcomes.[145]

The Companies Act, 1956 was reformed, and the Companies Act, 2013 ("**2013 Act**") was enacted to replace it. The provisions related to the winding up of companies incorporated in India went through substantial modification, and various improvements were made by the 2013 Act. However, before the modified provisions could get tested, the IBC repealed insolvency as a ground for winding up a company under the 2013 Act (so that insolvent companies could be resolved or liquidated under one uniform law). Therefore, the provisions related to the winding up of insolvent Indian companies contained in the 2013 Act remained practically unimplemented.

Companies incorporated outside India continue to be included within the scope of the provisions for winding up unregistered companies under the 2013 Act. The provisions regarding the winding up of unregistered companies are provided in Chapter XXI Part II of the 2013 Act. As with the Companies Act, 1956, unregistered companies may be wound up if they are unable to pay their debts. The provisions under the 2013 Act, in this regard, remain largely unchanged in substance as compared to the provisions in the Companies Act, 1956. These provisions came into operation in 2016 and continue to remain operational.

(ii) Corporate rescue and restructuring

One of the key legislations intended to enable corporate rescue in India was the Sick Industrial Companies (Special Provisions) Act, 1985 ("**SICA**"), which has now been repealed. The provisions of SICA applied only to 'industrial companies' and allowed rescue proceedings for such companies if it was determined that they had become 'sick'.[146] The provisions of SICA did not have extraterritorial application and were only intended to apply domestically.[147] In *Yashdeep Trexim v. BIFR*,[148] the Calcutta High Court clarified that SICA does not apply to companies incorporated outside India. Accordingly, it concluded that a scheme for the revival of a company incorporated outside India could not be sanctioned under the SICA.

Another mechanism that could have been utilised for the restructuring of businesses in India is the scheme of arrangement process. The current law relating to schemes of arrangements is contained in the 2013 Act, and the provisions relating to this came into effect in 2016.[149] Until then, schemes of arrangements were governed by the Companies Act, 1956. This process allows companies to enter into a 'compromise' or an 'arrangement' with both creditors and shareholders for the financial and operational restructuring of the company. Such restructuring may involve the sale of assets or business of the debtor company or its amalgamation with another company and can also include debt restructuring.[150] Under the scheme of arrangement process, foreign and domestic creditors are treated similarly.[151] Moreover, a scheme of arrangement may provide for inbound and outbound mergers.[152] This means that it allows both – the merger of a foreign company into an Indian company and an Indian company into a foreign company.[153] It may be noted that the scheme of arrangement process is not designed to resolve insolvency, and may be undertaken for both solvent and insolvent companies.[154] Consequently, the scheme of arrangement provisions under the Companies Act, 2013 have not been repealed after the enactment of the IBC and continue to be available as a restructuring mechanism.

Further, certain out-of-court mechanisms were also made available by the RBI for restructuring loans of distressed businesses.[155] However, these mechanisms only applied to domestic institutional creditors and did not have an extraterritorial application.[156]

4.3. Cross-Border Insolvency under the IBC

The IBC was enacted in 2016 to reform the insolvency laws for corporate entities, individuals, and partnership firms in India. Within a few months of its enactment, a new insolvency regulator was established, an ecosystem of insolvency professionals was created, and the provisions on corporate insolvency were operationalized. This was a radical transformation from the erstwhile insolvency regime and has been touted as one of the biggest financial sector reforms in the country.

The corporate insolvency processes under the IBC are time-bound and streamlined. They are adjudicated upon by the National Company Law Tribunal ("**NCLT**"),[157] and in appellate jurisdiction by the National Company Law Appellate Tribunal ("**NCLAT**"),[158] which are specialised quasi-judicial bodies created under the 2013 Act to adjudge corporate law matters.[159] Insolvency professionals are entrusted with being office-holders in the insolvency proceedings and are regulated by a separate regulator - the Insolvency and Bankruptcy Board of India ("**IBBI**").[160]

The provisions related to corporate insolvency under the IBC apply to companies and limited liability partnerships (collectively referred to as "**corporate debtors**" under the IBC).[161] A petition to initiate an insolvency resolution process in respect of a corporate debtor may be filed by a financial creditor, an operational creditor, or the corporate debtor itself.[162] The NCLT adjudicates over such a petition and admits it if the corporate debtor has committed a default on a loan of the requisite amount.[163] The insolvency resolution process aims to come up with a resolution plan to sell the corporate debtor as a going concern and is therefore a reorganization process to resolve the insolvency of the debtor. This is a creditor-driven process and involves the taking over of the management of the corporate debtor by the insolvency professional appointed for the proceeding.[164]

Among other grounds, a failure to resolve the insolvency of the corporate debtor through an insolvency resolution process within the stipulated period triggers the liquidation process.[165] The liquidation process is conducted by a liquidator, who is an insolvency professional, under the aegis of the NCLT. The assets of the corporate debtor are auctioned or sold, and the proceeds are distributed amongst the creditors of the corporate debtor based on the repayment waterfall provided in the law.[166] The liquidation proceeding thereafter ends in the closure and dissolution of the corporate debtor.[167]

4.3.1. Legal Framework on Cross-Border Insolvency

The Insolvency and Bankruptcy Bill originally did not contain any provisions to deal with cross-border insolvency. The Bankruptcy Law Reforms Committee ("**BLRC**") noted the following in respect of the design of the IBC –

> *"The next frontier lies in addressing cross-border issues. This includes Indian financial firms having claims upon defaulting firms which are global, or global financial persons having claims upon Indian defaulting firms…The Committee proposes to take up this work in the next stage of its deliberations."*[168]

The draft Bill prepared based on the recommendations of the BLRC was thereafter revised by a joint parliamentary committee ("**JPC**") before its enactment. The JPC noted the need for provisions dealing with cross-border insolvency and recommended the addition of two provisions in the draft Bill, which are Sections 234 and 235 of the IBC. Section 234 empowers the Central Government to enter into bilateral agreements with other countries to resolve situations pertaining to cross-border insolvency. Section 235 allows the NCLT to issue a letter of request to a court in a country with which an agreement under Section 234 has been entered into to deal with assets situated in that country. These provisions remain untested as the Central Government has not yet entered into any bilateral agreements with other countries for the purposes of cross-border insolvency.

Further, these provisions provide an inefficient framework to deal with matters of cross-border insolvency since entering into agreements with other countries will be a lengthy and expensive process involving several rounds of negotiations. This framework would also be limited in usage to scenarios where only one foreign country is involved. Where multiple countries are involved in an insolvency proceeding, balancing the conflicting clauses of the Indian Government's bilateral agreements may be difficult. It may be noted however that certain elements of the IBC allow cross-border effects. For example, the IBC treats foreign and domestic creditors on a par and does not differentiate amongst them. Further, insolvency professionals appointed as resolution professionals are permitted to represent the corporate debtor in legal proceedings.[169] This may include foreign proceedings in respect of the corporate debtor.[170]

4.3.2. Practice under the IBC

Despite the lack of a comprehensive legislative framework for cross-border insolvency, Adjudicating Authorities under the IBC have played a proactive role in addressing cross-border concerns in some cases. The most prominent case in this regard is the insolvency of Jet Airways (India) Private Ltd ("**Jet**"), which at one point was the largest private airline in India.

On 17 June 2019, the SBI (India's largest bank, which also happens to be state-owned) filed an application in the NCLT, Mumbai to initiate a corporate insolvency resolution process in respect of Jet.[171] In its application, the SBI argued that Jet had defaulted on its loans. Two operational creditors of the airline also submitted applications for initiation of insolvency proceedings arguing that it had defaulted on their payments as well.[172] On 20 June 2019, the NCLT admitted these petitions and initiated a corporate insolvency resolution process against the company, ordered a moratorium, and appointed an interim resolution professional (as envisaged under the Code).[173] In this order, it also noted that insolvency proceedings against Jet had also been initiated before the NOORD – Holland District Court on 21 May 2019.[174]

Earlier that year, a Jet flight had been grounded in Amsterdam over non-payment of dues to a European cargo firm.

Therefore, insolvency proceedings in respect of Jet were already ongoing in the Netherlands on the date of the initiation of the insolvency resolution process by the NCLT in Mumbai. The administrator appointed in the proceedings in Holland filed a petition in the NCLT to have the Dutch proceedings recognised in India. He also requested that the insolvency resolution proceedings in India should not be initiated as it would lead to two parallel insolvency proceedings in different jurisdictions against the same entity, which would lead to inefficiencies and conflicts.[175]

The NCLT, however, noted that *"there is no provision and mechanism in the I&B Code, at this moment, to recognise the judgment of an insolvency court of any Foreign Nation. Thus, even if the judgment of Foreign Court is verified and found to be true, still, sans the relevant provision in the I&B Code, we cannot take this order on record."*[176] Based on this, it declared that the order of the Dutch court was a 'nullity' for the NCLT and initiated a corporate insolvency resolution process in respect of Jet under the IBC.[177] Thereafter, the Dutch administrator appealed this order of the NCLT and requested the NCLAT to recognise the Dutch insolvency proceedings in respect of Jet.

The NCLAT stayed the order of the NCLT in so far as it declared the Dutch proceedings a nullity, and asked the insolvency professional in the Indian proceedings to collate all claims in respect of Jet, take custody of its assets (including assets in the Netherlands), and attempt to reach an agreement with the Dutch administrator on the manner of conducting the parallel proceedings.[178] Pursuant to the NCLAT's directions, the administrator appointed in the Dutch proceedings and the resolution professional appointed in the Indian proceedings agreed to a 'Cross Border Insolvency Protocol'.[179] This protocol was drafted along the lines of the Model Law. According to this protocol, India was recognised as the centre of main interests ("**COMI**") of Jet Airways and thus, the Indian insolvency proceedings were considered to be the 'main proceedings'. The Dutch proceedings were recognised as the 'non-main insolvency proceedings'. It also provided various other aspects of coordinating the proceedings in India and the Netherlands, including the manner of coordination of proceedings, information sharing and communication, reconciliation of the claims filed in both proceedings, and preservation of assets.[180]

This protocol became effective after receiving approval from the NCLAT and the Dutch court. While approving the protocol, the NCLAT also allowed the Dutch administrator to observe the meetings of the committee of creditors in the Indian proceedings to avoid any overlap of powers.[181] In the same order, the NCLAT set aside the order of the Mumbai-bench of NCLT, which had declared that the Dutch court administrator had no jurisdiction in India. Subsequently, the parties followed the terms of the protocol and coordinated the insolvency proceedings in India and the Netherlands.

Interestingly, India has acceded to the Convention on International Interests in Mobile Equipment ("**Cape Town Convention**") and the Protocol to the Convention on Matters Specific to Aircraft Equipment ("**Cape Town Protocol**"). These instruments provide special rules that come into play during insolvency proceedings of airlines. However, these instruments have not yet been adopted into a statute in India (other than a notification issued under Section 14[182]), and thus, were not utilised in the insolvency proceedings of Jet. Regardless, the Jet case shows a marked shift in the Indian approach to cross-border insolvency, wherein the courts and parties chose to communicate and cooperate with each other in the interest of an efficient outcome instead of upholding a territorial stance.

Another recent development involved the recognition of Indian insolvency proceedings as foreign main proceedings under Chapter 15[183] of the United States ("**US**") Bankruptcy Code. This Chapter of the US Bankruptcy Code provides the framework for cross-border insolvency by incorporating the provisions of the Model Law, with some modifications. Section 1517 under Chapter 15 allows recognition of a foreign proceeding as a foreign main proceeding if it takes place in the COMI of the debtor. An application for such recognition would have to be filed by the foreign representative, i.e., an insolvency practitioner appointed in respect of the insolvency proceedings of the debtor in another jurisdiction.[184] On recognition, the foreign main proceeding is entitled to automatic relief in the form of a stay on the transfer of the debtor's interests and property located within the territorial jurisdiction of the US.[185]

On 4 November 2019, the insolvency resolution process of SEL Manufacturing Company Limited ("**SEL Manufacturing**") ongoing in NCLT Chandigarh[186] was recognised by the US District Court of Delaware as a foreign main proceeding.[187] The Delaware court noted that the application for recognition was made by an insolvency professional who had been appointed as a resolution professional in the corporate insolvency resolution process of SEL Manufacturing under the IBC. Thereafter, it recognised the proceedings under the IBC as a foreign main proceeding owing to the fact that India was the COMI of SEL Manufacturing.[188] The Delaware court also granted the stay-related relief in respect of the Indian insolvency proceedings in this case.[189] This is the first instance where the proceedings under the IBC have been recognised under Chapter 15 of the US Bankruptcy Code.

In another judgment concerning Videocon Industries, the NCLT ordered the inclusion of a corporate group's overseas oil and gas business in the domestic insolvency process of the group companies in India.[190]

4.3.3. Need for a Holistic Cross-Border Insolvency Framework under the IBC

The need for a globally recognised framework for addressing cross-border aspects of insolvency is not a recent phenomenon. Various legislative reforms committees have discussed the need for a holistic framework for cross-border insolvency law in India and have recommended its possible contours since the 2000s. In this section, we note some of the key reasons that necessitate a framework for cross-border insolvency in Indian law.

Firstly, the current framework provided in the IBC is that bilateral agreements may be entered into by the Government of India with foreign countries to enable cooperation in cross-border aspects of insolvency proceedings. This limited framework for dealing with cross-border insolvency matters is time-consuming, costly and cumbersome as several agreements need to be negotiated and entered into with different countries. Perhaps this is one of the key reasons why the Government of India has not currently entered into any agreements or treaties with a foreign country under the provisions of Sections 234 and 235 of the Code. Even if such agreements were to be entered into, however, relying solely on the differential bargains struck through negotiations with other countries may not be helpful in resolving cross-border issues in all kinds of cases. For instance, where assets and insolvency proceedings of a company are present in multiple foreign countries, common solutions may be difficult to reach as agreements with each country may contain conflicting or distinct clauses. Thus, the present approach of the IBC in dealing with cross-border aspects is inefficient and insufficient.

Secondly, due to the lack of utilisation of the aforementioned provisions, the IBC presently takes a territorial stance in insolvency matters (other than permitting foreign creditors to file claims and be treated on a par with Indian creditors in insolvency and liquidation proceedings under Part II of the Code). Indian insolvency and liquidation proceedings will therefore consider global creditor claims but will usually be limited to domestic assets of insolvent companies. This is not because the law restricts Indian insolvency professionals from approaching foreign countries to avail custody of foreign assets of companies undergoing insolvency proceedings. Instead, it is because there is no framework or provision that explicitly requires insolvency professionals to consider whether foreign assets need to be made part of the Indian insolvency proceedings and to analyse the effect of such action on the costs and time of completing the Indian proceedings.

Even where insolvency representatives do approach foreign courts or authorities for asset related remedies, they may not be granted in several countries if Indian insolvency law does not contain any principles of comity or any assurance of reciprocal cooperation. This limits the pool of assets available to creditors in Indian insolvency proceedings and consequently, hampers value maximisation. It also puts the onus on individual Indian creditors to file claims in insolvency proceedings against a company in multiple jurisdictions to avail themselves of the maximum value of their claim instead of ensuring that a synchronised common solution is available to creditors through a single insolvency proceeding. This, in turn, increases costs for creditors. For further drawbacks of a territorial approach, see discussion in para 3.1.3. of this paper.

Thirdly, the significant growth in foreign trade and commerce witnessed by India in the last decade will inevitably lead to an increase in the incidence of cross-border insolvency scenarios for Indian companies. India's merchandise exports increased from $314 billion in 2013-14 to $451 billion in 2022-23, growing at an average annual rate of 5%. Imports have grown at an even faster annual pace.[191] Indian imports grew by 7% annually over the past decade, rising from $450 billion in 2013-14 to $716 billion in 2022-23.[192] This increase in trade is indicative of the growth of Indian businesses in a competitive, globalised market economy. A higher incidence of cross-border trade naturally means that instances of cross-border issues in Indian insolvency proceedings will also increase, given the higher probability that Indian companies have assets in foreign countries and vice versa. Thus, it may be expected that cases under the IBC will increasingly have cross-border issues. A few cases where such issues have already arisen are discussed in para 4.3.2. above.

A holistic framework that is in line with international best practices is not only imperative for efficiently resolving insolvency but is also a key part of the puzzle that makes India an attractive destination for foreign investment. The Model Law has been adopted by 60 States and 63 jurisdictions, including five of India's top ten trading partners, i.e., the US, the United Arab Emirates, Singapore, Saudi Arabia, and South Korea.[193] Further, the certainty and predictability provided by the Model Law has the potential to boost foreign trade and investment, which is evident from the following discussion in the Guide to Enactment to the Model Law:

> *"T**he increasing incidence of cross-border insolvencies reflects the continuing global expansion of trade and investment.** However, national insolvency laws by and large have not kept pace with the trend, and they are often ill-equipped to deal with cases of a cross-border nature. This frequently results in inadequate and inharmonious legal approaches, which hamper the rescue of financially troubled businesses, are not conducive to a fair and efficient administration of cross-border insolvencies, impede the protection of the assets of the insolvent debtor against dissipation and hinder maximization of the value of those assets. **Moreover, the absence of predictability in the handling of cross-border insolvency cases can impede capital flow and be a disincentive to cross-border investment.**"*[194] *(Emphasis Supplied)*

The Model Law's potential of increasing foreign investments has been relied on by several countries when deciding whether to adopt the instrument, especially Singapore which has recently made several changes to its insolvency law to become a debt restructuring hub.[195]

Finally, the lack of a comprehensive framework for international insolvency has led to Adjudicating Authorities utilising *ad hoc* mechanisms to address cross-border issues, as observed in cases like Jet Airways discussed in para 4.3.2. above. In cross-border insolvency cases, Indian courts face numerous obstacles, including conflicts of laws, jurisdictional issues, and differing legal systems. In the absence of a uniform international framework, determining which country's laws should prevail is frequently complicated. Moreover, differences in legal standards can make coordination between different jurisdictions and recognition of foreign insolvency proceedings challenging. This leads to time-consuming litigation as the NCLT has to develop a mechanism that is suitable to the facts and circumstances of the case, adding delays and costs for parties. It also leads to uncertainty and unpredictability for stakeholders, effectively eroding the concept of rule of law embedded in the IBC.

Additionally, while emphasising the need for adopting the Model Law in India, the authors note that it is only one piece of the puzzle to holistically resolving cross-border issues. The Model Law was adopted by the UNCITRAL over 25 years ago and only deals with insolvency on a single entity basis. Indeed, global economic, policy, and regulatory settings have now evolved, and developing norms to deal with corporate groups in cross-border scenarios is a necessary second step to the adoption of the Model Law in India. The authors envisage that the adoption of the Model Law can serve as a launching pad to pursue such further reforms, in tandem with the further uptake of the Model Law of Enterprise Group Insolvency and the Model Law on Recognition and Enforcement of Insolvency-Related Judgments, as well as the development of domestic norms for guiding Indian courts and tribunals in developing cross-border protocols. The discussion in this paper is however limited to the considerations of the first step to be taken by India, i.e. adoption of the Model law on Cross Border Insolvency.

4.4. Policy Deliberations on Cross-Border Insolvency in India

Considering the scale of the Indian economy and its integrated position in the global economy,[196] the need for an effective cross-border insolvency mechanism has been echoed by many policymakers and experts in the field. Most of these suggestions have concluded in recommending the adoption of the Model Law.

Various government-led committees formed to evaluate the erstwhile corporate insolvency regime noted the lacuna in the law on cross-border insolvency and recommended that it be addressed urgently. In May 2000, the Eradi Committee Report[197] observed that the globalisation of trade and opening up of the Indian economy had led to sweeping changes and noted that the issues relating to cross-border insolvency had become increasingly important. It recommended that the Model Law should be implemented in India by amending the Companies Act, 1956. In the following year, the Advisory Group on Bankruptcy Law made a similar recommendation, noting that the Indian law in force at the time *"is not comparable to the standard set in international legal requirement and as such stands apart and alone and has not taken into consideration of any cross-border relation."*[198]

Subsequently, in 2005, the Expert Committee on Company Law observed that a cross-border insolvency framework is needed and noted that adoption of the Model Law may be considered.[199] In 2009, the Report of the Committee on Financial Sector Reforms discussed that *"cross-border insolvency is rapidly becoming a 'hot-button' issue in domestic insolvency reform in emerging market countries. As one of the largest recipients of foreign direct investment in the world, India has an urgent need for a mechanism of dealing with foreign judgements, cooperation and assistance amongst courts in different countries and the transnational nature of corporate entities."*[200]

All the above-mentioned committees have focused on the adoption of the Model Law to harmonise the cross-border insolvency laws in India with international practices. This is perhaps due to the adoption[201] of the Model Law by other developed nations as well as the participation[202] by India during deliberations of the Model Law. Despite these recommendations, no changes to reflect this were made in the erstwhile insolvency laws in the country.

After the enactment of the IBC and operationalisation of its key provisions relating to corporate insolvency, the Ministry of Corporate Affairs formed the Insolvency Law Committee ("**ILC**"), which is a standing committee tasked with reviewing the functioning of the IBC periodically and suggesting amendments to the law.[203] The ILC released its first report in March 2018 wherein it recommended various amendments to IBC to make its implementation smoother. It discussed the gap in the law due to the lack of a framework for cross-border insolvency, and noted that –

"…the existing two provisions in the Code (S. 234 & S. 235) do not provide a comprehensive framework for cross border insolvency matters. Accordingly, it was decided to attempt a comprehensive framework for this purpose based on UNCITRAL model law on Cross Border Insolvency, which could be made a part of the Code by inserting a separate chapter for this purpose. Given the complexity of the subject matter and the requirement of in-depth research to adapt the model law in the Indian context, the Committee decided to submit its recommendations on Cross Border Insolvency separately."[204]

Shortly after, the ILC released a second report exclusively dealing with cross-border insolvency under the IBC. The chairperson of the Committee and the then Secretary of the Ministry of Corporate Affairs notes various advantages of adopting the Model Law in his preface to the report. This includes factors such as –

(a) adoption of the Model Law by other countries;

(b) possibility of increasing foreign investment;

(c) flexibility to make changes while adopting the Model Law;

(d) clauses of the Model Law giving adequate protection to domestic creditors and priority to domestic insolvency proceedings while granting relief; and

(e) promotion of cooperation with other courts and insolvency practitioners.[205]

Accordingly, the Committee recommends the adoption of the Model Law in India by amending the IBC and provides a legal framework for the same as an annexure to the report (referred to as "**Draft Part Z**" in the report).[206] Its report provides certain modifications to the text of the Model Law, which it considers necessary in the Indian context, and provides reasons for the same. The ILC's recommendations were supplemented by the Cross-Border Insolvency Rules/ Regulations Committee ("**CBIRC**") in June 2020, which recommends the design of subordinate legislation for the smooth implementation of the proposed Draft Part Z.[207] Subsequently, the Ministry of Corporate Affairs in November 2021, issued a notice ("**MCA Notice**") inviting comments on its proposed modifications to include a cross-border insolvency framework in the Code.[208] The Draft Part Z, the CBIRC recommendations and the MCA Notice may collectively be referred to as the "**Proposed Framework**" for the cross-border insolvency law in India.

4.4.1. Overview of the Proposed Framework

The Proposed Framework envisages the enactment of a procedural law that deals with cross-border insolvency proceedings of a debtor that has assets or creditors in multiple jurisdictions. Like the Model Law, this framework focuses on four elements as key to the conduct of cross-border insolvency cases: access, recognition, relief (assistance), and cooperation. Some of the key aspects of the Proposed Framework are provided below:

(i) A foreign representative has the right to apply to the Adjudicating Authority,[209] and upon recognition of a foreign proceeding, is entitled to participate in domestic insolvency proceedings under the Code.[210]

(ii) A foreign proceeding may be recognised as the main proceeding if the proceeding is taking place in the country where the corporate debtor's centre of main interests lies.[211] In case of non-corporate debtors, the main proceeding should be taking place in the country that is the habitual place of residence of the debtor. On the other hand, a foreign proceeding may be recognised as a non-main proceeding if it takes place in a country where the corporate debtor has an establishment.[212]

(iii) Recognition of a foreign proceeding as a main proceeding results in the grant of certain automatic reliefs that impose a moratorium on domestic proceedings against the debtor and any activities resulting in alienation of the debtor's assets.[213] In addition to these automatic reliefs, the Adjudicating Authority may grant discretionary relief to protect the corporate debtor's assets or the creditors' interests.[214] Such discretionary relief may be granted upon the recognition of a foreign non-main proceeding as well. However, the recognition of a foreign non-main proceeding would not result in the automatic grant of reliefs, unlike in the case of main proceedings.

(iv) The Proposed Framework also empowers the Adjudicating Authority and insolvency professionals to cooperate and communicate directly with their foreign counterparts and provides for coordination of two or more concurrent insolvency proceedings in different countries.[215]

4.4.2. Issues in the Proposed Framework

(i) ***Nature of the Proposed Framework:*** The Proposed Framework, like the Model Law, provides a procedural law that deals with cross-border insolvency proceedings of a debtor that has assets or creditors in multiple jurisdictions. Therefore, the framework does not deal with the substantive rights and duties of parties and leaves this to be determined by the insolvency laws of the respective countries. It also does not contain provisions on conflict of laws and leaves it to courts to determine the applicable substantive insolvency law based on the jurisdiction's principles of private international law. The Proposed Framework thus leaves significant discretion for the Adjudicating Authority to interpret jurisprudence on conflict of laws principles and decide on the applicable law governing the substantive rights of parties. This may lead to lack of certainty for stakeholders and prolonged litigation in practice, exacerbating the current issue of delays in proceedings under the Code.

(ii) ***Scope of the Proposed Framework:*** The corporate insolvency processes under the IBC do not apply to companies registered outside India. As discussed above, companies registered outside India, i.e., foreign companies, can be wound up as unregistered companies under the 2013 Act. The ILC notes that *"certain provisions in the 2013 Act continue to deal with insolvency of foreign companies. For example, section 375(3)(b) of the 2013 Act provides that an unregistered company (which may include foreign companies) may be wound up due to inability to pay debts."*[216] Consequently, it recommends that the Central Government should consider the utility of these provisions of the 2013 Act, and suggests harmonising them with the provisions of the IBC.[217] The CBIRC reviewed the recommendations of the ILC and suggested that the insolvency of unregistered foreign companies and foreign limited liability partnerships ("**LLPs**") should be governed by the Code.[218] It further recommended that the Ministry of Corporate Affairs and IBBI should conduct a study to identify suitable amendments required to the Code, the 2013 Act and the Limited Liability Partnership Act, 2008.[219] No further development seems to have been undertaken in this regard, and it is unclear how the provisions of these three statutes will be harmonised in relation to the insolvency mechanism for unregistered foreign entities.

(iii) ***Reciprocity:*** The ILC recommends that the provisions of Draft Part Z should only be applicable based on legislative reciprocity.[220] This means that Draft Part Z will only apply in respect of countries that have also adopted the Model Law. Its report also notes that reciprocity should be a temporary measure and be applicable at the initial stages of the implementation of the cross-border insolvency framework.[221] It clarifies, however, that the IBC would continue to treat all foreign creditors on a par with domestic creditors irrespective of reciprocity. Considering the historically territorial stance of Indian courts and insolvency statutes, the apprehension to provide access to countries that do not have reciprocal laws is understandable. However, a reciprocity requirement may do more harm than good -

(a) Firstly, the Model Law is a procedural law that enables providing access, recognition, and cooperation in respect of foreign proceedings to effectively coordinate concurrent insolvency proceedings. It does not provide the substantive laws applicable to such concurrent proceedings. Thus, substantive rights and duties of parties would vary amongst countries even if they have adopted the Model Law. Consequently, it is unclear if reciprocity actually results in the protection of domestic creditors and interests.

(b) Secondly, the Model Law provides courts with wide discretion while granting access and relief to foreign proceedings, and leaves much room for interpretation.[222] In fact, some scholars have contended that the manner in which the Model Law is adopted and interpreted across jurisdictions does not produce harmonious outcomes.[223] Some have even asserted that countries are often inclined to opt for stances that promote their preferred approach in a case rather than uniformly relying on principles of modified universalism.[224] Even if this position were considered untrue, it may be fair to conclude that the provisions of the Model Law allow courts significant discretion to protect domestic interests when necessary.[225] Therefore, limiting laws on cross-border insolvency through reciprocity only limits the ability of local courts to entertain cases from non-reciprocating countries altogether. Tying the hands of courts in such a manner will limit the ability of local courts to cooperate with foreign courts. This may, in turn, be value destructive where such cooperation could have reduced overlaps, costs, and complications involved in the concurrent proceedings.

(iv) ***Public policy:*** In line with Article 6 of the Model Law, Draft Part Z allows the NCLTs to refuse to take any action under its provisions if such actions are *"manifestly contrary"* to the public policy of India.[226] Although the ILC does not lay down the contours of the term 'public policy of India', it recommends that public policy exceptions should be interpreted narrowly and should take international jurisprudence in this regard into account.[227] It also allows the Central Government to provide submissions and be heard on contentions related to public policy.[228] While the lack of a definition for 'public policy' may aid judicial authorities by providing them with flexibility in interpretation, such unbridled discretion for NCLTs may lead to prolonged litigation leading to value-destructive delays. Inconsistencies in interpretation amongst different NCLT benches would likely cause differential outcomes and ambiguity. Guidance may be taken from the experience of interpreting 'public policy' under the Arbitration and Conciliation Act, 1996, where a statutory definition was added after a series of conflicting judgments created uncertainty amongst stakeholders.

(v) ***Access to foreign representatives:*** The Model Law recommends providing a broad right to foreign representatives to access domestic courts, including taking certain actions like participating in and commencing domestic insolvency proceedings against a debtor. Foreign insolvency practitioners can be granted access to NCLTs under Draft Part Z. However, the Proposed Framework provides such access to foreign representatives in a limited manner -

(a) The ILC discusses that the access provided to foreign representatives need not be direct and proposes that foreign representatives may be mandated to access NCLTs through domestic insolvency professionals.[229] This approach is conservative and seems to be rooted in restrictive access provisions for professionals in other fields under Indian laws.[230] The CBIRC however disagrees with this recommendation of the ILC and rightly notes that the *"right of an insolvency representative to access the foreign court directly is critical to preserve costs and save time in cross-border insolvency cases."*[231] The CBIRC recommends that foreign representatives must be given direct access to appear before the NCLT for the purposes of representing the foreign proceeding in respect of which she has been appointed.[232] Thus, the ILC's and the CBIRC's recommendations in relation to direct access of foreign representatives are conflicting and it is unclear which approach would be adopted in the Indian cross-border insolvency framework.

(b) The right to access under the Model Law allows foreign representatives to take various actions such as participating in and commencing insolvency proceedings in the enacting State against a debtor. Whereas the Proposed Framework allows a foreign representative to intervene in any domestic insolvency proceeding, it does not permit the foreign representative to be an applicant for commencing insolvency proceedings in India.[233] The ILC report discusses that foreign representatives are not required to be permitted to commence insolvency proceedings since the Code already permits foreign creditors to do so.[234] However, in many instances, foreign creditors may be passive and less willing to initiate proceedings in a foreign jurisdiction that they are not familiar with, especially if they expect minimal payouts. Foreign representatives may also be better placed to demonstrate that a default has occurred since they would usually have access to financial information and records of the debtor (as per the insolvency law of the jurisdiction wherein they have been appointed). Thus, it is unclear why foreign representatives are not permitted to commence insolvency proceedings in India under the Proposed Framework. Notably, although foreign representatives are allowed to commence domestic insolvency proceedings in most jurisdictions that have adopted the Model Law, some jurisdictions only permit foreign representatives to do so *after* recognition has been obtained for the foreign proceeding.[235]

(vi) ***Main proceedings and COMI:*** The ILC's recommendations align with the Model Law's principle of determining the main insolvency proceedings based on the COMI of the debtor.[236] In line with the Model Law, the ILC suggests that there should be a rebuttable presumption that the registered office of the corporate debtor is its COMI. It goes a step further and provides that where such presumption is rebutted, the COMI shall be the place where *'the central administration of the debtor takes place' and such place 'is readily ascertainable by creditors'*.[237] These are the two principal factors for determining COMI as per the ILC. Where the COMI is not determined by these two principal factors, the NCLT may assess the COMI based on factors provided in the subordinate legislation (such as the location of the debtor's books and records, the location of employees, etc.).[238] Thus, the ILC recommends that it would be presumed that the debtor's registered office is its COMI. When such presumption is rebutted, the ILC creates a hierarchy for determining COMI – first by the two principal factors of central place of administration and ascertainment of creditors; failing which by the additional factors provided in the subordinate legislation. However, it is unclear how and when determination of COMI based on the two principal factors is considered to be failed or inconclusive. This is especially because the additional factors discussed by the ILC relate to determining the place from where the debtor conducted most of its business, which is precisely the 'central place of administration'. The CBIRC acknowledges the same and notes that –

> *"A review of case law suggests that the other factors are often considered at par with the identifiable place of central administration and that they are not considered on a standalone basis. Further, the other factors are often the basis on which the identifiable place of central administration of the debtor is determined. For example, factors like the place where the senior management of the debtor are situated, where the management decisions are taken, where the books are audited and contracts are executed, are often used to determine the identifiable place of central administration of the debtor. Finally, laws in jurisdictions, such as the US, UK and Singapore have not provided such a hierarchical test of the sequence in which different factors are to be considered while determining he COMI."*[239]

Thus, the CBIRC rightly recommends that the hierarchy of factors for determining COMI as suggested by the ILC should be dispensed with, and the additional factors provided in the subordinate legislation should be utilised to determine the central place of administration of the debtor.[240] Given these conflicting recommendations of the ILC and CBIRC, it is unclear which approach will be adopted in the Indian cross-border insolvency framework.

(viii) ***Interim relief:*** The Model Law allows courts in an enacting country to provide interim relief in favor of a foreign proceeding after an application for recognition in respect of such proceeding has been filed but before recognition of such proceedings.[241] Such interim relief includes measures like staying the execution of debtor's assets; staying transfer and disposal of debtor's assets; entrusting the administration of debtor's assets to the foreign representative or other designated person; providing for the examination of witnesses related to the debtor's property; etc.[242] No corresponding provision has been adopted in Draft Part Z proposed by the ILC.[243] Recognition of foreign proceedings is a time-consuming process, and not having recourse to interim relief in urgent scenarios may risk asset stripping and depletion of value.

(viii) ***Enforcement of foreign judgments:*** The UK court case of *Rubin v. Eurofinance SA*[244] is infamous for initiating debate around whether the Model Law permits courts to enforce judgments of foreign courts when providing discretionary relief under Article 21 of the Model Law. The UNCITRAL thus recommends that when adopting the Model Law, States may consider clarifying that enforcement of a foreign judgment is permitted as a discretionary relief under Article 21 of the Model Law.[245] The MCA Notice thus proposes that an explanation in this regard should be added to Draft Part Z, clarifying that the Adjudicating Authority may allow the enforcement of a foreign insolvency judgment under Clause 18(1)(f) of Draft Part Z.[246] The scope of this provision is, however, unclear as the definition of what constitutes a 'judgment' is not discussed in the MCA Notice. For instance, it is unclear whether a judgment initiating insolvency proceedings in a foreign country can be enforced in India by the NCLT. It is also unclear whether foreign judgments that relate to or are ancillary to the insolvency proceeding (such as judgments relating to avoidance transactions) can be enforced by the NCLT in India. Further, the Proposed Framework does not elaborate on any exceptions to the discretion of the Adjudicating Authority to permit enforcement of foreign insolvency judgments. For instance, Section 13 of the CPC provides several exceptions to the enforcement of foreign judgments by Indian courts (such as where the judgment is obtained by fraud, where it has not been given on the merits of the case, where the proceedings in which the judgment was obtained are opposed to natural justice, etc.). Even the UNCTRAL Model Law on Insolvency Related Judgments, 2018 provides for circumstances where a foreign judgment should not be enforced (such as where the judgment is the subject of review in the originating State, where it has not been pronounced by a competent court, where the judgment was obtained by fraud, etc.).[247] It is unclear whether these exceptions would be incorporated in the Proposed Framework.

5. Conclusion

The foregoing discussion illustrates the difficulties involved in cross-border insolvency cases and highlights the manner in which these difficulties may be resolved. The cross-border insolvency law in India has traditionally adopted a territorial stance. The enactment of the IBC has brought domestic insolvency laws of the country up to speed with international best practices. However, the legal framework on cross-border insolvency remains rudimentary and (largely) non-operational.

The recommendations of the ILC regarding the adoption of the Model Law are a step in the right direction. However, certain provisions of the ILC's recommended draft framework for cross-border insolvency may limit its utility. For instance, provisions like - the reciprocity requirement, indirect access for foreign insolvency practitioners, omission of the power to grant interim relief - may limit or disincentivise the utilisation of the cross-border insolvency framework. Further, the execution and recognition of foreign judgments continue to be governed by the provisions of the CPC that are territorial in nature and limited in their application.

Nevertheless, cases like the insolvency proceedings of *Jet* and *SEL Manufacturing* are indicative of the maturity and sophistication of the market and judicial authorities in India in tackling issues of cross-border insolvency even in the absence of a statutory framework. Since the ILC's recommendations on cross-border insolvency are yet to be implemented, future legislative reforms on this subject appear to be a moving target for the government. However, the transformation of India's domestic insolvency regime over the last few years, and the rapidly developing maturity of its insolvency ecosystem indicates that India is now ready for a modern statutory framework for the effective resolution of cross-border insolvency cases involving Indian debtors. It has been eight years since the enactment of the Code. Enacting a statutory framework for cross-border insolvency will send a strong signal to the world of our own confidence in the resilience of our domestic insolvency system, paving the way for its further development.

End Notes

1 Rosalind Mason, 'Cross-Border Insolvency Law: Where Private International Law and Insolvency Law Meet' in Paul J. Omar (ed), International Insolvency Law Themes and Perspectives (2008, Ashgate) 27.

2 Such business failure may be due to a variety of reasons that may be internal (like poor management, malfeasance, inefficiency, etc.) or external (like change in regulation, natural disasters, financial crisis, etc.) to the business.

3 While the term 'insolvency' is generally employed to mean a state of financial distress, the term 'bankruptcy' usually refers to the proceedings that declare a person insolvent. However, these terms have been used interchangeably by the authors. Conceptually, it may be argued that the issue is largely semantical.

4 Ian F. Fletcher, *The Law of Insolvency* (2002, Sweet and Maxwell, London) 1.

5 United Nations Commission for International Trade Law, *Legislative Guide on Insolvency Law* (2004) 9.

6 For instance, reorganisation and liquidation proceedings are provided in the insolvency laws of various jurisdictions. Informal mechanisms to resolve insolvency may also be available in certain jurisdictions. See United Nations Commission for International Trade Law, *Legislative Guide on Insolvency Law* (2004) 9, 10.

7 Irit Mevorach, *Insolvency Within Multinational Enterprise Groups* (2009, Oxford University Press, Oxford) 85; Ian F. Fletcher, Insolvency in Private International Law (2005, Oxford University Press, Oxford) 5.

8 Kritsin Van Zwieten, *Goode on Principles of Corporate Insolvency Law* (2018, 5th ed., Sweet and Maxwell).

9 Irit Mevorach, *Insolvency Within Multinational Enterprise Groups* (2009, Oxford University Press, Oxford) 62.

10 Arjya B. Majumdar, 'The UNCITRAL Model Law on Cross-Border Insolvency' (March 2009) Vol 2, Issue I, India Law Journal, 3, available at < https://ssrn.com/abstract=2256144> accessed 10 October 2024 .

11 Rachel Morrison, 'Avoiding Inherent Uncertainties in Cross-Border Insolvency: Is the UNCITRAL Model Law the answer?' (1999) 15, Queensland University of Technology Law Journal 103.

12 *See* Rosalind Mason, 'Cross-Border Insolvency Law: Where Private International Law and Insolvency Law Meet' in Paul J. Omar (ed), I*nternational Insolvency Law Themes and Perspectives* (2008, Ashgate) 40; Ran Chakrabarti, 'Key Issues in Cross Border Insolvency' (2018) 30 National Law School of India Review 119, 123.

13 Ran Chakrabarti, 'Key Issues in Cross Border Insolvency' (2018) 30 National Law School of India Review 119, 123.

14 Arjya B. Majumdar, 'The UNCITRAL Model Law on Cross-Border Insolvency' (March 2009) Vol 2, Issue I, India Law Journal, 4, available at < https://ssrn.com/abstract=2256144> accessed 10 October 2024 .

15 Rosalind Mason, 'Cross-Border Insolvency Law: Where Private International Law and Insolvency Law Meet' in Paul J. Omar (ed), *International Insolvency Law Themes and Perspectives* (2008, Ashgate) 40-41.

16 Ran Chakrabarti, 'Key Issues in Cross Border Insolvency' (2018) 30 National Law School of India Review 119, 123.

17 Rosalind Mason, 'Cross-Border Insolvency Law: Where Private International Law and Insolvency Law Meet' in Paul J. Omar (ed), *International Insolvency Law Themes and Perspectives* (2008, Ashgate) 40.

18 Paul Omar, 'The Landscape of International Insolvency Law' (2002) 11 International Insolvency Review 173.

19 Roy Goode, *Principles of Corporate Insolvency Law* (2011, ed. 4, Sweet & Maxwell, Thomson Reuters) 782.

20 *ibid.*

21 Irit Mevorach, *Insolvency Within Multinational Enterprise Groups* (2009, Oxford University Press, Oxford) 80.

22 Roy Goode, *Principles of Corporate Insolvency Law* (2011, ed. 4, Sweet & Maxwell, Thomson Reuters) 782.

23 Rosalind Mason, 'Cross-Border Insolvency Law: Where Private International Law and Insolvency Law Meet' in Paul J. Omar (ed), *International Insolvency Law Themes and Perspectives* (2008, Ashgate) 42.

24 Irit Mevorach, *The Future of Cross-Border Insolvency Overcoming Biases and Closing Gaps* (2018, Oxford University Press, Oxford) para 1.2.

25 *Ibid.*

26 Rosalind Mason, 'Cross-Border Insolvency Law: Where Private International Law and Insolvency Law Meet' in Paul J. Omar (ed), *International Insolvency Law Themes and Perspectives* (2008, Ashgate) 46.

27 The meaning of 'home state' herein may be different in various states, and may mean the place of incorporation, the principal place of business, or the centre of main interests of the debtor.

28 Rosalind Mason, 'Cross-Border Insolvency Law: Where Private International Law and Insolvency Law Meet' in Paul J. Omar (ed), *International Insolvency Law Themes and Perspectives* (2008, Ashgate) 46.

29 Jay Lawrence Westbrook, 'A Global Solution to Multinational Default' (2000) 98 issue 7 Michigan Law Review 2276; See Roy Goode, *Principles of Corporate Insolvency Law* (2011, ed. 4, Sweet & Maxwell, Thomson Reuters) 782.

30 *Ibid.*

31 Kent Anderson, 'The Cross-Border Insolvency Paradigm: A Defense of the Modified Universalism Approach Considering the Japanese Experience' (2000) 21:4 U. Pa. Intl Econ. L. 679, 688.

32 See Bebchuk, L.A. and Guzman, A.T., 'An Economic Analysis of Transnational Bankruptcies' (1999) 42 Journal of Law and Economics 775. Notably, Westbrook has been cautious about overstating the argument of efficiency of universalism, see Jay Lawrence Westbrook, 'A Global Solution to Multinational Default' (2000) 98 issue 7 Michigan Law Review 2276, 2326.

33 For instance, Tung argues that universalism is politically implausible. See F. Tung, 'Is International Bankruptcy Possible?' (2001) 23 Mich. J. Int'l L. 31, 71-2, 76 and 98.

34 Morshed Mannan, 'Are Bangladesh, India and Pakistan Ready to Adopt the UNCITRAL Model Law on Cross-Border Insolvency' (2016) 25 Int'l Insolvency Rev 195, 209.

35 Bob Wessels, Bruce A. Markel, and Jason J. Kilborn, *International Cooperation in Bankruptcy and Insolvency Matter*s (2009, Oxford University Press, Oxford) 59.

36 Lynn M. LoPucki, 'The Case for Cooperative Territoriality in International Bankruptcy' (2000) 98 Mich. L. Rev. 2216.

37 Rosalind Mason, 'Cross-Border Insolvency Law: Where Private International Law and Insolvency Law Meet' in Paul J. Omar (ed), *International Insolvency Law Themes and Perspectives* (2008, Ashgate) 48.

38 *Ibid*, 43.

39 Morshed Mannan, 'Are Bangladesh, India and Pakistan Ready to Adopt the UNCITRAL Model Law on Cross-Border Insolvency' (2016) 25 Int'l Insolvency Rev 195, 207.

40 *Ibid;* Kent Anderson, 'The Cross-Border Insolvency Paradigm: A Defense of the Modified Universalism Approach Considering the Japanese Experience' (2000) 21:4 U. Pa. Intl Econ. L. 679, 697.

41 Rosalind Mason, 'Cross-Border Insolvency Law: Where Private International Law and Insolvency Law Meet' in Paul J. Omar (ed), *International Insolvency Law Themes and Perspectives* (2008, Ashgate) 43-44.

42 Notably, the drawbacks of territorialism originally gave impetus to the movement towards universalism. See Kent Anderson, 'The Cross-Border Insolvency Paradigm: A Defense of the Modified Universalism Approach Considering the Japanese Experience' (2000) 21:4 U. Pa. Intl Econ. L. 679, 698.

43 Rosalind Mason, 'Cross-Border Insolvency Law: Where Private International Law and Insolvency Law Meet' in Paul J. Omar (ed), *International Insolvency Law Themes and Perspectives* (2008, Ashgate) 44.

44 Kent Anderson, 'The Cross-Border Insolvency Paradigm: A Defense of the Modified Universalism Approach Considering the Japanese Experience' (2000) 21:4 U. Pa. Intl Econ. L. 679, 699.

45 Bebchuk, L.A. and Guzman, A.T., 'An Economic Analysis of Transnational Bankruptcies' (1999) 42 Journal of Law and Economics 775, 778.

46 *Ibid.*

47 Bob Wessels, Bruce A. Markel, and Jason J. Kilborn, *International Cooperation in Bankruptcy and Insolvency Matters* (2009, Oxford University Press, Oxford) 58.

48 Kent Anderson, 'The Cross-Border Insolvency Paradigm: A Defense of the Modified Universalism Approach Considering the Japanese Experience' (2000) 21:4 U. Pa. Intl Econ. L. 679, 699.

49 Rosalind Mason, 'Cross-Border Insolvency Law: Where Private International Law and Insolvency Law Meet' in Paul J. Omar (ed), *International Insolvency Law Themes and Perspectives* (2008, Ashgate) 51.

50 *Ibid.*

51 *Ibid.*

52 Irit Mevorach, *Insolvency Within Multinational Enterprise Groups* (2009, Oxford University Press, Oxford) 69.

53 *Ibid.*

54 *Ibid.*

55 Notably, many supporters of modified universalism consider it to be only an interim solution and view it as a path to pure universalism.

56 Irit Mevorach, *Insolvency Within Multinational Enterprise Groups* (2009, Oxford University Press, Oxford) 70; Lynn M. LoPucki, 'Cooperation in International Bankruptcy: A Post-Universalist Approach' (1999) 84 Cornell L. Rev. 696, 716-25.

57 Adrian Walters, *'Modified Universalisms & the Role of Local Legal Culture in the Making of Cross-Border Insolvency Law'* (December 7, 2017), available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3084117> accessed 10 October 2024.

58 Irit Mevorach, *Insolvency Within Multinational Enterprise Groups* (2009, Oxford University Press, Oxford) 73.

59 *Ibid.*

60 LoPucki, 'Cooperation in International Bankruptcy: A Post-Universalist Approach' (1999) 84 Cornell Law Review 696, 743.

61 Irit Mevorach, *Insolvency Within Multinational Enterprise Groups* (2009, Oxford University Press, Oxford) 73.

62 *Ibid.*

63 LoPucki, 'Cooperation in International Bankruptcy: A Post-Universalist Approach' (1999) 84 Cornell Law Review 696; 742-753.

64 Jay Lawrence Westbrook, 'A Global Solution to Multinational Default' (2000) 98 issue 7 Michigan Law Review 2276.

65 *Ibid.*

66 *Ibid.*

67 *Ibid, 2310.*

68 Jay Lawrence Westbrook, 'A Global Solution to Multinational Default' (2000) 98 issue 7 Michigan Law Review 2276.

69 *Ibid.*

70 *Ibid.*

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73 *Ibid.*

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75 E.J. Janger, 'Universal Proceduralism' (2007) 32 Brook. J. Int'l L. 821, 822, 846.

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81 Please note that these are only some of the key aspects of the Model Law, according to the authors.

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89 Code of Civil Procedure, 1908, Section 44A.

90 Until now, a total of 11 countries are notified as reciprocating territories under Section 44A. This consist of United Kingdom, Aden, Fiji, Republic of Singapore, Federation of Malaya, Trinidad and Tobago, New Zealand,

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91 Code of Civil Procedure, 1908, Section 44A Explanation 1.

92 Code of Civil Procedure, 1908, Section 13.

93 *R. Viswanathan v Rukn-Ul-Mulk Syed Abdul Wajid*, AIR 1963 SC 1.

94 A K Sikri, 'Cross Border Insolvency: Court-to-Court Cooperation' (October-December 2009) 51 4 Journal of the Indian Law Institute 467, 490.

95 Sudhaker Shukla and Kokila Jayaram, 'Cross Border Insolvency – A Case to Cross the Border Beyond the UNCITRAL' in Insolvency and Bankruptcy Board of India, *Insolvency and Bankruptcy Regime in India A Narrative* (2020) 307, 312.

96 Such a suit is filed based on the respective judgment from the foreign court or the original cause of action, or both. *See Marine Geotechnics LLC v/s Coastal Marine Construction & Engineering Ltd., 2014 (2) BomCR 769; Moloji Nar Singh Rao v. Shankar Saran*, AIR 1962 SC 1737, para 14; *I & G Investment Trust v. Raja of Khalikote*, AIR 1952 Cal. 508, para 38.

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98 A K Sikri, 'Cross Border Insolvency: Court-to-Court Cooperation' (October-December 2009) 51 4 Journal of the Indian Law Institute 467, 492.

99 *Ibid.*

100 According to Explanation 2 to Section 44A of the Code of Civil Procedure, 1908, a decree under this provision would mean *"any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment"*. See also, the definition of 'decree' in Section 2(2) and the definition of 'judgment' in Section 2(9) of the CPC.

101 Sudhaker Shukla and Kokila Jayaram, 'Cross Border Insolvency – A Case to Cross the Border Beyond the UNCITRAL' in Insolvency and Bankruptcy Board of India, *Insolvency and Bankruptcy Regime in India A Narrative* (2020) 307, 312.

102 1971 SCR (1) 364.

103 *Ibid.*

104 A K Sikri, 'Cross Border Insolvency: Court-to-Court Cooperation' (October-December 2009) 51 4 Journal of the Indian Law Institute 467, 492.

105 The word 'comity' is derived from the word 'courtesy', and is a doctrine recognised in many countries. Comity may be of different kinds- like sovereign or judicial. Judicial comity is generally referred to as 'comity of courts'.

106 The Black's Law Dictionary <https://blacks_law.enacademic.com/4944/comity> accessed 10 October 2024.

107 *Ibid.*

108 Code of Civil Procedure, 1908, Section 10.

109 *Indian Bank v Maharashtra State Co-op Marketing Federation Ltd.*, AIR 1998 SC 1952.

110 A K Sikri, 'Cross Border Insolvency: Court-to-Court Cooperation' (October-December 2009) 51 4 Journal of

the Indian Law Institute 467, 480.

111 *TTamil Nadu Mercantile Bank Share Holders Welfare Association v S.C. Sekhar, (2009) 2 SCC 784, para 48.*

112 Edward Flanders, Ranah L. Esmaili and Peter Ostrovski, 'A Tale of Two Doctrines' (14 January 2013) New York Law Journal.

113 *Glaxosmithkline Consumer Healthcare Limited and Horlicks Limited and Ors. v Heinz India (P) Limited*, 156 (2009) DLT 330.

114 *Kusum Ingots and Alloys v Union of India*, AIR 2004 SC 2321; *Mayar Ltd. v Vessel MV Fortune Express*, (2006) 3 SCC 100.

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117 *Modi Entertainment Network v WSG Cricket PTE Ltd.*, AIR 2003 SC 1177.

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119 A K Sikri, 'Cross Border Insolvency: Court-to-Court Cooperation' (October-December 2009) 51 4 Journal of the Indian Law Institute 467, 477.

120 2022: DHC: 1682.

121 *Ibid*, para 23.

122 *Re P. MacFadyen & Co, ex parte Vizianagaram Company Limited*, (1908) 1 K.B. 675.

123 United Nations Commission on International Trade Law, 'UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation' (2009) 125.

124 *Re P. MacFadyen & Co, ex parte Vizianagaram Company Limited*, (1908) 1 K.B. 675.

125 Reserve Bank of India, *Report of the Advisory Group on Bankruptcy Laws* (May 2001) 42.

126 Constitution of India, 1950, Article 254(1). However, if the state has sought presidential assent for a law, such law will prevail in that state over the Parliamentary law.

127 Constitution of India, 1950, Seventh Schedule, Entry 9 of List III.

128 According to Entry 32 of List II of the Seventh Schedule to the Constitution of India, 1950, the power to make laws relating to 'incorporation, regulation and winding up of corporations, other than those specified in List I...' is vested with states.

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130 Kindly note that discussion on certain entity specific insolvency provisions, like those applicable to banks, is not within the scope of this paper.

131 Companies Act, 1956, Sections 433(e) and 583(4)(b).

132 Companies Act, 1956, Sections 484-520.

133 Reserve Bank of India, *Report of the Advisory Group on Bankruptcy Laws* (May 2001) 39.

134 *Ibid*, 42.

135 Companies Act, 1956, Sections 582 – 584. This includes winding up on the ground of inability to pay debts.

136 See for instance, *Re Travancore National Bank Ltd.*, 1939 Mad 318; *In re Frontier Bank Ltd.*, 1951 Punj 145.

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138 AIR 1962 SC 500.

139 *Ibid*, para 15, 16.

140 Planning Commission, Government of India, *A Hundred Small Steps Report of the Committee on Financial Sector Reforms* (2009) 176.

141 *Reserve Bank of India and Ors. v Joint Provisional Liquidators Bank of Credit and Commerce International (Overseas) Ltd.*, AIR 1994 Bom 177.

142 *Ibid.* This petition was filed by the RBI utilising its powers under Section 38(3) of the Banking Regulation Act, 1949 read with Sections 582, 583 and 584 of the Companies Act, 1956.

143 *Ibid*, para 17.

144 Department of Economic Affairs, Ministry of Finance, *Interim Report of the Bankruptcy Law Reforms Committee* (February 2015) 88.

145 *See for instance, Intesa Sanpaolo S.P.A. v Videocon Industries Limited* (2014) 183 Comp Cas 395 (Bom); *Marine Geotechnics LLC v Coastal Marine Construction & Engineering Ltd.*, (2014) 183 Comp Cas 438 (Bom).

146 Sick Industrial Companies (Special Provisions) Act, 1985, Section 3(1)(o).

147 *Yashdeep Trexim v BIFR*, [2011] 106 SCL 530 (Cal).

148 *Ibid.*

149 Companies Act, 2013, Section 230.

150 A. Ramaiya, *A Guide to the Companies Act*, (2015, 18th ed., Gurgaon: LexisNexis) 3692.

151 *In Re Arvind Mills Ltd*, (2002) 111 Comp. Cas. 118 (Guj).

152 Companies Act, 2013, Section 232. Notably, the Companies Act, 1956 did not allow outbound mergers.

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154 Umakanth Varottil, 'The Scheme of Arrangement as a Debt Restructuring Tool in India: Problems and Prospects' (March 2017) NUS Working Paper 2017/005 NUS Centre for Law & Business Working Paper 17/02, 7.

155 Reserve Bank of India, Corporate Debt Restructuring (CDR) (23 August 2001); Reserve Bank of India, Framework for Revitalising Distressed Assets in the Economy – Guidelines on Joint Lenders' Forum (JLF) and Corrective Action Plan (CAP) (26 February 2014); Reserve Bank of India, Strategic Debt Restructuring Scheme (8 June 2015); Reserve Bank of India, Scheme for Sustainable Structuring of Stressed Assets (13 June 2016). It may be noted that this list only includes the frameworks in use before the IBC was implemented.

156 Umakanth Varottil, 'The Scheme of Arrangement as a Debt Restructuring Tool in India: Problems and Prospects' (March 2017) NUS Working Paper 2017/005 NUS Centre for Law & Business Working Paper 17/02, 13-14.

157 Insolvency and Bankruptcy Code, 2016, Section 60.

158 Insolvency and Bankruptcy Code, 2016, Section 61.

159 Companies Act, 2013, Section 408.

160 Insolvency and Bankruptcy Code, 2016, Section 196.

161 Insolvency and Bankruptcy Code, 2016, Section 3(7) and (8).

162 Insolvency and Bankruptcy Code, 2016, Sections 7, 9 and 10.

163 Insolvency and Bankruptcy Code, 2016, Section 4.

164 Insolvency and Bankruptcy Code, 2016, Sections 17, 20, 28, and 30(4).

165 Insolvency and Bankruptcy Code, 2016, Section 33.

166 Insolvency and Bankruptcy Code, 2016, Section 53.

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170 For instance, *SBI v SEL Manufacturing Company Limited*, CP (IB) No. 114/ Chd/ Pb/2 017, National Company Law Tribunal, Chandigarh.

171 *State Bank of India and Ors. v Jet Airways (India) Limited*, CP 2205 (IB)/MB/2019, CP 1968(IB)/MB/2019, and CP 1938(IB)/MB/2019, Order dated 20 June 2019, National Company Law Tribunal, Mumbai, para 1.

172 *Ibid*, para 2.

173 *Ibid*, para 39.

174 *Ibid*, para 21.

175 *Ibid*, para 24.

176 *Ibid*, para 21.

177 *Ibid*, para 28, 29, 33.

178 *Jet Airways (India) Limited (Offshore Regional Hub / Office Holland) v State Bank of India and Anr.*, Company Appeal (AT) (Insolvency) No. 707 of 2019, Order dated 4 September 2019, National Company Law Appellate Tribunal, New Delhi.

179 *Jet Airways (India) Ltd. (Offshore Regional Hub / Offices Through its Administrator Mr. Rocco Mulder) v State Bank of India and Anr.*, Company Appeal (AT) (Insolvency) No. 707 of 2019, Order dated 26 September 2019, National Company Law Appellate Tribunal, New Delhi.

180 *Ibid*.

181 *Ibid*, para 5.

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184 11 U.S. Code Title 11—Bankruptcy, Chapter 15, Sections 1515 and 1517.

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221 *Ibid*

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The Indian insolvency and stressed assets sector stands at a crucial inflection point, marked by ongoing discussions and initiatives aimed at fortifying the ecosystem, a crucial facet of India's economic growth aspirations. INSOL India is at the forefront of this transformation, with a particular focus on insolvency practice and ongoing professional education within the country. The organization is instrumental in shaping a robust insolvency regime in India, catalysed by the recent sweeping insolvency reforms. Its presence is deeply felt in both national and international forums where insolvency takes centre stage, making it an influential voice in the global conversation.

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