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**CROSS-BORDER INSOLVENCY REGIME IN INDIA: AN OVERVIEW
AND STUDY UNDER UNCITRAL MODEL LAW**

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Abstract

Cross-border insolvency regulates the treatment of financially distressed debtors where such debtors have assets or creditors in more than one country. Typically, cross-border insolvency is more concerned with the insolvency of companies that operate in more than one country rather than the bankruptcy of individuals. Cross-border insolvency focuses on three areas: choice of law rules, jurisdiction rules, and enforcement of judgment rules. This paper will study cross-border insolvency and its implementation in India. The main findings of this research article are that the UNCITRAL Model Law serves as an excellent blueprint for designing the cross-border insolvency system in India. The UNCITRAL Model Law has been strongly recommended for providing a wide-ranging solution for resolving cross-border insolvency issues. Inconsistencies in interpretation can be overcome by UNCITRAL model laws in harmonious combination with municipal laws and regulations, e.g., Insolvency and Bankruptcy Code 2016 and Insolvency Bankruptcy Board of India. As evident in Sections 234 and 235 of the IBC, the scheme of entering into separate bilateral agreements or issuance of letters of request is not very efficacious, and therefore, the Indian transnational insolvency system should have a proper mechanism of cooperation and coordination between local courts and insolvency representatives on the one hand, and foreign courts and foreign representatives on the other hand. The paper also discusses the guidelines on cross-border insolvency by the Insolvency Law Committee (ILC), which recommended the inclusion of the draft chapter in the IBC and these draft guidelines are found in the UNCITRAL Model Law, which provides flexibility, economic benefits, etc. However, this paper also discussed the challenges and opportunities regarding the

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cross-border system under IBC. In this paper, case law and the role of the Indian judiciary regarding cross-border insolvency have also been included to understand and interpret cross-border insolvency in various jurisdictions.

Keywords: *Insolvency and Bankruptcy Code, Cross Border Insolvency, Indian judiciary, Insolvency Law Committee's (ILC), United Nations Commission on International Trade Law, UNCITRAL Model Law, Sections 234 and 235*

1. Introduction

The principal legislation governing insolvency and bankruptcy in India is the Insolvency and Bankruptcy Code of 2016. Cross-border insolvency has gained significant attention due to the increasing globalization of business and commerce, leading to the establishment of subsidiaries worldwide. The UNCITRAL Model Law, recommended by the United Nations Commission on International Trade Law, provides legislative guidance for states dealing with cross-border insolvency issues.

The relevant laws related to cross-border insolvency in India are Sections 234 and 235 of the Insolvency & Bankruptcy Code, 2016. India can enter into bilateral treaties with specific countries for insolvency proceedings, creating reciprocal arrangements and allowing for issuing a letter of request for an insolvency proceeding. However, there are perceived defects and inconsistencies in the current legislation, prompting discussions about adopting the UNCITRAL Model Law on cross-border insolvency. This could involve introducing a bill and adding it as a new chapter to the Insolvency and Bankruptcy Code.

India must negotiate individual bilateral agreements with other countries, each differing based on the nation involved. Adopting the UNCITRAL Model Law would standardize the process for all signatory countries. Establishing comprehensive legislation for cross-border insolvency is a way to attract increased foreign investment in Indian companies.

India has taken steps in this direction by releasing a set of draft guidelines on cross-border insolvency, known as Part Z ("draft chapter"). Based on the UNCITRAL Model Law with minor

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modifications, these guidelines were recommended by the Insolvency Law Committee in its report submitted on October 16, 2018. The proposed draft chapter covers General Provisions, Public Policy Exceptions, Access of Foreign Representatives and Creditors to the Adjudicating Authority, Recognition of a Foreign Proceeding and Relief, Cooperation with Foreign Courts and Foreign Representatives, Concurrent Proceedings, and miscellaneous provisions.

1.2. Legal Framework Governing Cross-Border Insolvency in India

Insolvency means a state in which an organization or an individual is not able to fulfil its financial burdens, which are due against the lenders in terms of debts. When a company is declared insolvent, there are specific procedures that a company goes through, i.e., there are informal meetings organized between the company and the creditors to make an alternative mode of paying the debts. When the outcome of such meetings is different due to poor cash management or the cash inflow is less than expected. The company can be declared insolvent by performing certain insolvency proceedings where the liquidator acquires all its assets, evaluates them, and liquidates them to pay off the debts.

The concept of cross-border insolvency refers to the treatment of financially burdened debtors where the assets of the debtors are in more than one country or the creditors are in more than one country.²

Cross-border insolvency deals with three dimensions:

- i. Firstly, protect the rights of the foreign creditors who have certain rights on the debtor's assets in different jurisdictions wherein the insolvency proceedings are in place.
- ii. Secondly, when the debtor's assets are in various jurisdictions, and the creditor wants to involve those assets in different jurisdictions in the insolvency proceedings,
- iii. Thirdly, the insolvency proceedings are going on or commenced on the same debtor in more than one jurisdiction.³

²Umakanth Varottil, Filling in the Gaps in the Insolvency And Bankruptcy Code-Cross Border Insolvency, India Corp Law, available at <https://indiacorplaw.in/2016/05/filling-in-gaps-in-insolvency-and.html>, last seen on 20/10/2023.

³The Insolvency and Bankruptcy Code, 2016.

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With the increase in globalization, the investment of different countries in India has also increased. With such an increase in investment, these foreign nations should be given protection for their investment to assure them that their investments are safe in India. Proper cross-border insolvency laws are necessary to protect the rights of foreign investors. IBC has been formulated by the legislation in order to get speedy and smooth disposal of the cases in regards to insolvency and bankruptcy.⁴

However, even though the Code has made strides in drastically harmonizing the insolvency process in India, it does not account for a sufficient procedure to regulate cross-border insolvency proceedings. Cross-border insolvency arises when the debtor has assets or creditors in different jurisdictions or when different insolvency proceedings have been filed in multiple jurisdictions. As such, the mechanism for cross-border insolvency is primarily focused on regulating the insolvency proceedings that operate beyond domestic jurisdiction and the constraints therein. The following aspects are involved in cross-border insolvency:

1. Equal protection of the interests of domestic and foreign creditors;
2. Safeguarding the value of the assets of a debtor, which are located in different jurisdictions;
3. Coordination and cooperation amongst courts and judicial authorities in various jurisdictions and the domestic laws applicable therein;
4. Uniformity in the insolvency law and practices of different jurisdictions.

The Code offers two provisions that assist in cross-border insolvency disputes, i.e., Section 234 and Section 235.

a. ***Section 234: Agreements with foreign countries***

In order to enforce the provisions of IBC, the Central Government is empowered to enter into bilateral agreements with other nations to administer the cross-border ramifications and may also direct the application of the Code when assets or property of a corporate debtor or its guarantor is

⁴Jain S., Sheth A., "*Cross Border Insolvency: Why India Should Adopt the UNCITRAL Model Law*", <https://www.indialawjournal.org/cross-border-insolvency.php>

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situated at any place in the country with which reciprocal arrangement has been expressly signed.

a. ***Section 235: Letter of request to a country outside India in certain cases: -***

This provision calls for the application of the doctrine of reciprocity when, in the course of the insolvency resolution process, any evidence or action relating to the assets of a corporate debtor or its guarantor is required, the resolution professional or the liquidator or the bankruptcy trustee make an application to the National Company Law Tribunal, if satisfied, may issue a letter of request to a court or an authority of the country with which an agreement has been made to deal with such request.

The prima facie objective behind incorporating the abovementioned provisions in the Code is to maximize the asset value of the corporate debtor; however, until now, for that purpose, India has not signed any reciprocal agreement with any other nation and also, no effective measures have been taken to implement the inter-government agreements. The rationale behind implementation uncertainty stems from the fact that treaties with different nations would have varying provisions involved and, therefore, require lengthy negotiations between nations in their individual capacities. However, the burden on the judiciary will certainly be lessened if the nations adopt a uniform framework concerning cross-border insolvencies. Thus, the inclusion of these two provisions in the IBC is noteworthy.

1.2.1 Opportunities and Challenges On Cross Border Insolvency Under The IBC

1.2.1.1 Opportunities

The Insolvency and Bankruptcy Code (IBC) was introduced in India to revamp the insolvency and bankruptcy framework. Since the implementation of the IBC, there has been a noteworthy improvement in India's ease of doing business ranking, according to the latest World Bank report. The report commends India's efforts to enhance accessibility to insolvency processes by adopting the new Code. Two provisions related to cross-border insolvency were

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added to ensure the completeness of the Code, contributing to its overall structure and organization.

The Insolvency Law Committee (ILC) suggests that, while foreign creditors currently have access to domestic courts under the existing IBC framework, the cross-border system should be introduced based on reciprocity. This reciprocity can be adjusted depending on the evolution of the insolvency regime in India. This cautious approach by the ILC indicates an awareness of the country's unique circumstances surrounding insolvency and bankruptcy. Despite the Code's comprehensiveness regarding domestic insolvency proceedings, more than two provisions related to cross-border insolvency are needed to address this transnational issue effectively.

Reports from the Bankruptcy Law Reforms Committee (BLRC) and the ILC emphasize the need to adopt a practical framework for dealing with cross-border insolvency under the IBC, drawing inspiration from the UNCITRAL Model Law. Sections 234 and 235 present a significant opportunity within the IBC to address the issue of cross-border insolvency.

1.2.1.2 Challenges

The challenges of having only two provisions related to cross-border insolvency under the IBC have been further discussed. Most respondents (18 out of 20) believed these provisions needed to be increased. Regarding Section 234 of the IBC, concerns were raised about the practical feasibility of negotiating bilateral agreements with different countries, as this process could take time. There is also a risk that countries may incorporate different provisions in their bilateral instruments, leading to fragmentation of India's cross-border insolvency regime. This could result in multiple litigations when a corporate debtor has assets in more than one foreign jurisdiction. Despite Section 234 providing for a moratorium on suits and proceedings in India during the insolvency resolution period, creditors or contract counterparties can initiate proceedings in other jurisdictions. Notably, although Section 234 has been notified, India has not entered into any bilateral agreement.

Concerns regarding Section 235 were also raised. While it promotes cooperation between local and foreign courts/authorities, certain lacunae were identified:

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1. There are no specific provisions outlining the manner of cooperation between local authorities and foreign courts or competent authorities.
2. There needs to be a mechanism for handling the coordination of concurrent proceedings.
3. The reliance on letters of request for cooperation may lead to unnecessary delays, as these requests have to go through official channels in both local and foreign jurisdictions, potentially causing inconvenience to creditors affected by such insolvency proceedings.

1.3 The Framework of Cross-Border Insolvency Under The UNCITRAL Model Law

1.3.1 The UNCITRAL Model Law

The UNCITRAL Model Law on Cross-border Insolvency was enacted in 1997 to help nations design their insolvency laws to address issues stemming from cross-border proceedings. The Model Law aims to facilitate an efficient, fair, and cost-effective management of transnational insolvency cases. While there has been an increase in cross-border insolvency proceedings since the 1990s, a uniform framework that the states could adopt for dealing with transnational insolvency is needed. The Model Law is an excellent document adopted by about 44 countries as of 2019, including the United States, Canada, Australia, New Zealand, Japan, Singapore, and South Africa.

The UNCITRAL has been actively involved in promoting the adoption of the Model Law across different jurisdictions. Collaborating with esteemed international organizations like the Asian Development Bank, the World Bank, the International Bar Association, and the International Association of Restructuring, Insolvency, and Bankruptcy Practitioners, UNCITRAL works to raise awareness about the advantages of adopting the Model Law. Notably, the World Bank's Principles for Effective Insolvency and Creditor/Debtor Regimes references the Model Law, emphasizing the goal of consistency with the UNCITRAL Legislative Guide on Insolvency Law. The UNCITRAL Legislative Guide is a valuable resource to assist countries in enacting or reviewing their domestic insolvency laws, making numerous references to the Model Law to

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encourage its adoption. Additionally, it encourages countries to incorporate suitable cross-border insolvency provisions into their domestic legal frameworks.

While the Model Law has a broad application, encompassing various types of debtors, Article 1(2) excludes certain entities, such as banks or insurance companies, which may be subject to special insolvency regimes in particular states. Many jurisdictions have adopted laws excluding these entities from their insolvency regimes, aligning with the Model Law's flexibility. For instance, in the United States, the insolvency law does not apply to banks and railways, although it does not exclude foreign insurance companies (U.S. Bankruptcy Code, Section 1501).

In the United Kingdom, the insolvency regime does not apply to credit institutions and insurance undertakings (The Cross-Border Insolvency Regulations, 2006). Reciprocity is not a requirement under the Model Law. However, countries such as the British Virgin Islands, Mexico, and South Africa have adopted the same either de jure or de facto.⁵

1.3.2 The Main Pillars of the Model Law

The UNCITRAL Model Law on Cross-Border Insolvency comprises four key elements:

i) Access Principle: This principle aims to eliminate barriers foreign liquidators face concerning jurisdiction, standing, and the right to be heard. It allows any foreign representative to directly apply for access to the court of a State that has adopted the Model Law, enabling them to initiate domestic insolvency proceedings.

ii) Recognition Principle: The recognition principle permits the acknowledgement of foreign proceedings and the corresponding relief by the domestic court. The 2018 Committee Report recognizes two types of foreign proceedings: Foreign Main Proceedings (occurring in the State where the corporate debtor has the main centre of interest) and Foreign Non-main Proceedings (in the State where the corporate debtor has an establishment). This distinction helps determine

⁵Das I, October 15, 2020, "*The Need for Implementing a Cross-Border Insolvency Regime within the Insolvency and Bankruptcy Code, 2016*"

<https://journals.sagepub.com/doi/10.1177/0256090920946519> retrieved on 19th October, 2023.

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the level of control a jurisdiction has over insolvency resolution proceedings and the type and extent of relief the National Company Law Tribunal (NCLT) may grant in foreign proceedings.

iii) Relief Principle: The relief principle specifies that relief can be granted in foreign main and non-main proceedings. If the NCLT determines a proceeding as a foreign main proceeding, ongoing domestic proceedings will be stayed, and the appointed foreign representative will manage the estate. In the case of foreign non-main proceedings, relief is at the discretion of the domestic court.

iv) Cooperation and Coordination Principle: This principle emphasizes cooperation and coordination between domestic and foreign courts and insolvency professionals. The Model Law establishes the maximum possible collaboration and communication framework to handle cross-border insolvency cases effectively. It also provides a framework for concurrent insolvency proceedings, i.e., for the commencement of domestic proceedings when a foreign proceeding has already started or vice versa. It also provides for coordination among two or more concurrent insolvency proceedings taking place in different countries by facilitating cooperation among them.⁶

The UNCITRAL Model Law on Cross-Border Insolvency incorporates a provision for a public policy exemption. This provision allows a court to refuse recognition of foreign proceedings or to take appropriate action under the Model Law if such recognition is inconsistent with the public policy of its nation. Numerous countries, including the USA, the U.K., and Singapore, have integrated the public policy exemption, with variations, into their domestic legal systems.

Recognizing the universality of the Model Law and its adaptability to domestic laws through necessary modifications, the second Insolvency Law Committee Report of 2018 has advocated for the introduction of cross-border insolvency provisions based on the Model Law in the

⁶Avashia. A “cross border insolvency in India” 26th February, 2023 <https://ibclaw.in/cross-border-insolvency-in-india-by-aditi-avashia/> retrieved on 22nd October, 2023.

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Insolvency and Bankruptcy Code (IBC) in India. Adopting the Model Law is seen as a positive and progressive market reform, signalling a forward-looking approach on the international stage.

While the Model Law provides a modest yet viable approach to addressing cross-border insolvency issues, some aspects still need clarification. These include determining the corporate debtor's Center of Main Interests (COMI), procedural due process, recognition of foreign discharges, and the choice of law. Nevertheless, adopting the Model Law is essential in dealing with transnational insolvency proceedings.

1.3 Guidelines on Cross-Border Insolvency Proposed by the Insolvency Law Committee

1. Features of the UNCITRAL Model Law and India's Draft Guidelines

United Nations Commission on International Trade Law Model Law on Cross-Border Insolvency, 1997 ("UNCITRAL Model Law") provides legislative guidance for states on cross-border insolvency. The UNCITRAL Model Law is a highly recommended solution for addressing a broad spectrum of cross-border insolvency issues. Recognizing the international dimensions of insolvency proceedings, the World Bank emphasizes the importance of laws encompassing jurisdictional rules, choice of law, cooperation among courts from different countries, and the recognition of foreign judgments. Furthermore, the IMF advocates for adopting the UNCITRAL Model Law, which effectively alleviates challenges in cross-border disputes, fosters cooperation, and facilitates coordination among courts and authorities in diverse jurisdictions.

The UNCITRAL Model Law is guided by four fundamental principles: Access, Recognition, Cooperation, and Coordination. It aims to grant foreign professionals and creditors direct access to domestic courts, enabling their active participation or initiation of domestic insolvency proceedings against the relevant debtor. Moreover, the Model Law promotes practical cooperation among insolvency professionals and courts across different countries, facilitating coordination to efficiently manage concurrent proceedings in diverse jurisdictions.

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The intent behind the UNCITRAL Model Law appears to assist states in shaping their insolvency laws within a modern, harmonized, and equitable framework, enhancing their capacity to address cross-border insolvency instances more effectively. Notably, it respects the differences in national laws and prioritizes improving cooperation and coordination between countries rather than seeking to unify national laws.

Thus, to address the shortcomings of the present cross-border insolvency mechanism, India has released a set of draft guidelines containing a specific chapter, i.e., Part Z ("draft chapter") on cross-border insolvency. The basis of these draft guidelines is found in the UNCITRAL Model Law, incorporating some minor modifications. These guidelines were recommended by the Insolvency Law Committee ("Committee") via its report submitted on 16.10.2018.

The Committee's report recommended incorporating the draft chapter into the Insolvency and Bankruptcy Code (IBC). This proposed chapter consists of 29 sections covering General Provisions and Public Policy Exceptions, Access of Foreign Representatives and Creditors to the Adjudicating Authority, Recognition of a Foreign Proceeding and Relief, Cooperation with Foreign Courts and Foreign Representatives, Concurrent Proceedings, and miscellaneous provisions.

Some noteworthy features highlighted in the draft chapter:

1. ***Application of the Draft Chapter:*** The draft chapter applies exclusively to corporate debtors and does not extend to individual debtors or personal insolvency. This cautious approach may stem from a desire to observe and study the implications on corporate debtors before extending it to individuals.
2. ***Reciprocity Requirement:*** The draft chapter includes a reciprocity requirement, making it applicable only to foreign countries that have adopted the UNCITRAL Model Law in their domestic legal frameworks. This raises a question about how the draft chapter would apply to cross-border insolvency processes with countries that have yet to adopt the UNCITRAL Model Law.

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3. ***Foreign Main Proceedings and Foreign Non-Main Proceedings***: The draft chapter distinguishes between two types of foreign proceedings: foreign main proceedings and foreign non-main proceedings. Foreign main proceedings occur in the State where the corporate debtor's main interests are centred. In contrast, foreign non-main proceedings occur in a state where the corporate debtor has an establishment. This distinction helps understand the level of control a foreign jurisdiction can exert over the insolvency process in India and the relief that the Adjudicating Authority can grant.
4. **Determination of Centre of Main Interests ("COMI")**: Section 14 of the draft chapter guides the determination of COMI. It presumes that the corporate debtor's registered office is its COMI unless proven otherwise, with certain conditions. The Adjudicating Authority assesses where the corporate debtor's central administration occurs to determine COMI, considering factors prescribed by the Central Government. This assessment should be conducted in a manner accessible to third parties, including creditors.

B. Benefits and implications of implementing the draft chapter

It is worth noting that around 51 jurisdictions have adopted the UNCITRAL Model Law to cope effectively with the challenges of cross-border insolvency proceedings. Along with the advantage of having reciprocity in countries like Singapore, the U.K. and the U.S., amongst many others that have adopted and implemented the UNCITRAL Model Law, India would additionally be able to avail the following benefits by adopting the UNCITRAL Model Law in the form of the draft chapter, in its legislative framework:

1. ***Economic Benefits***: Implementing a robust cross-border insolvency law would enhance the predictability and certainty of the investment framework, making India more attractive to foreign creditors.
2. ***Flexibility***: The draft chapter acknowledges differences in national insolvency laws and allows deviations from the UNCITRAL Model Law to align better with domestic conditions and maintain consistency with domestic insolvency laws.

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3. ***Protection of Domestic Interests and Public Policy Exception:*** The draft chapter permits the rejection of recognizing foreign proceedings or providing assistance if such actions contradict India's public policy. This establishes a higher threshold for public interest and policy, limiting foreign creditors, debtors, or other parties to prevent misuse of the law and process.
4. ***Precedence to Domestic Insolvency Proceedings:*** The draft chapter prioritizes proceedings initiated under the Indian Insolvency and Bankruptcy Code (Code). Consequently, once proceedings begin under the Code, the Adjudicating Authority cannot recognize any inconsistent proceedings initiated under the draft chapter. This ensures the supremacy of domestic insolvency proceedings.
5. ***Remedy in jurisdictions with reciprocity:*** Many countries have enacted the UNCITRAL Model Law with a requirement of legislative reciprocity, which means that such a country would grant recognition, cooperation, etc., to Indian proceedings only if India has adopted the UNCITRAL Model Law in some way. Therefore, adopting the draft chapter would go a long way in assisting Indian creditors and professionals to receive assistance from reciprocating countries and effectively address issues related to cross-border insolvency proceedings.
6. ***Domestic and global mechanism for the corporation:*** The draft chapter provides direct cooperation and coordination between courts and insolvency professionals in foreign and domestic jurisdictions. Such a mechanism might assist in enabling consistency in the system, resulting in a uniform line of judicial decisions and rulings and providing faster and more practical assistance in concurrent proceedings.

2.1 Jet Airways Case: Indian Judiciary's Noteworthy Encounter with Cross Border Insolvency Dispute

2.1.1 Unfolding the Jet Airways saga: First Indian cross-border insolvency case

A. Parallel insolvency proceedings in India and Netherlands

In 2019, the National Company Law Appellate Tribunal (NCLAT) made a historic ruling, marking Jet Airways as the first Indian company to undergo cross-border insolvency. This

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decision by NCLAT became a crucial precedent in India's evolving insolvency law, directing the implementation of a "Joint Corporate Insolvency Resolution Process" under the Insolvency and Bankruptcy Code (IBC). The situation unfolded when the State Bank of India filed a Section 7 application against Jet Airways, leading to the commencement of the Corporate Insolvency Resolution Process (CIRP) on June 20, 2019. The adjudicating authority noted that a Dutch Court had initiated insolvency proceedings, appointing a Bankruptcy Administrator to oversee Jet Airways' assets in the Netherlands. This action resulted from a bankruptcy petition filed by two European creditors, claiming unpaid dues totalling nearly INR 280 crores. The European creditors were seeking the seizure of one of Jet Airways' Boeing 777 aircraft as the same was parked in the Schiphol Airport in Amsterdam.⁷

B. NCLT's Decision on the Cross-Border Insolvency

After Jet Airways entered the Corporate Insolvency Resolution Process (CIRP) in India, the Bankruptcy Administrator appointed by the Dutch Court sought recognition of the Dutch insolvency proceedings from the National Company Law Tribunal (NCLT) in Mumbai. The Administrator requested the NCLT to halt the CIRP due to concurrent bankruptcy proceedings in the Netherlands, citing jurisdiction under Article 2(4) of the Dutch Bankruptcy Act. The NCLT, however, declined to suspend the Indian insolvency proceedings, asserting that Sections 234 and 235 of the Insolvency and Bankruptcy Code, addressing cross-border insolvency, were not yet in effect. Consequently, the NCLT deemed the Administrator ineligible for participation in the Indian proceedings and declared the ongoing Netherlands proceedings null and void.

C. Appeal before the NCLAT and its ruling

Displeased with the NCLT's decision, the Bankruptcy Administrator appealed to the NCLAT. The NCLAT, in response, took the following actions:

1. It nullified the NCLT's order, relying on an assurance from the Bankruptcy Administrator that no offshore assets of Jet Airways would be disposed of.

⁷Arora M., Kumar R., "India's tryst with cross-border insolvency law: How series of judicial pronouncements pave the way?" 16th April, 2021, <https://www.sconline.com/blog/post/2021/04/16/cross-border-insolvency-law/> retrieved on 19th October, 2023.

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2. The NCLAT permitted the Bankruptcy Administrator to collaborate with the Resolution Professional appointed under the Code, allowing participation in Committee of Creditors meetings, albeit with a limited role of observation and prevention of potential overlapping powers.
3. Additionally, the NCLAT facilitated cooperation between Indian and Dutch parties to formulate a resolution plan that would best serve the interests of Jet Airways and all stakeholders involved.

Under the directions of the NCLAT, the Resolution Professional under the Code and the Bankruptcy Administrator, who was appointed by the Dutch Court, mutually agreed upon a "cross-border insolvency protocol", which was essentially construed based on the principles provided in the UNCITRAL Model Law.

In a noteworthy decision, India was acknowledged as the "Centre of main interest," designating the proceedings in the Netherlands as "non-main insolvency proceedings." The Jet Airways case becomes a compelling study in the context of cross-border insolvency proceedings in India. It showcases the Indian judiciary's earnest effort to lead in developing principles and implementing mechanisms for handling cross-border insolvency cases. The case of Jet Airways is just one example among several, emphasizing the necessity of integrating a cross-border insolvency regime into the existing legal framework.

3.1. Conclusion

India, on 28-5-2016, took a step forward in this direction and introduced the Insolvency and Bankruptcy Code, 2016. The UNCITRAL Model Law provides a relatively independent framework that allows the concerned jurisdiction to evaluate and decide the operational nitty-gritty best suited to those countries' legal landscape. As such, the UNCITRAL Model Law offers a broad scope of benefits and clarity regarding cross-border insolvency disputes.

There needs to be more of a legal framework for addressing cross-border insolvency disputes in India. Even if the two provisions provided in the Code are notified and implemented, they need

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help with various shortcomings. They could not provide a comprehensive mechanism for cross-border insolvency proceedings. However, specific opportunities and limitations are provided under the two provisions, i.e., sections 235 and 236 of the Code. India has also released a set of draft guidelines recommended by the Insolvency Law Committee containing a specific chapter, i.e., Part Z ("draft chapter") on cross-border insolvency under the IBC based on UNCITRAL Model Law, incorporating some minor modifications.

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