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BRIDGING THE GAP: CROSS-BORDER INSOLVENCY AND INTERNATIONAL ARBITRATION IN INDIA AN EXAMINATION OF THE CASE FOR UNCITRAL MODEL LAW ADOPTION

AUTHORED BY - AYUSH KUMAR*
B.A. LL.B. (Hons.), 2nd Year, Department of Law, Assam University, Silchar

ABSTRACT

This paper examines what happens to a foreign arbitral award holder when the Indian company against whom the award is held slides into insolvency, and whether India's continuing refusal to adopt the UNCITRAL Model Law on Cross-Border Insolvency of 1997 leaves such a creditor worse off than a similarly placed creditor elsewhere. It begins at home, tracing how Section 14 of the Insolvency and Bankruptcy Code, 2016 freezes arbitration against a corporate debtor once a moratorium is declared, using Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan (P) Ltd. and P. Mohanraj v. Shah Brothers Ispat
(P) Ltd. to show how completely domestic insolvency law subordinates private dispute resolution. It then turns to the vacuum left by Sections 234 and 235 of the Code, dependent on bilateral treaties India has never concluded, and to the Jet Airways litigation of 2019 and 2020, the only occasion an Indian tribunal improvised a cross-border protocol without any statutory framework. It sets out the four organising principles of the UNCITRAL Model Law, access, recognition, relief, and cooperation, before comparing how the United States treats arbitration clauses through the core and non-core distinction in In re United States Lines, Inc., how English courts allocated the governing law question in Syska v. Vivendi Universal SA, and how Singapore approached recognition in Re Zetta Jet Pte Ltd. The Model Law does not abolish arbitration agreements; it gives the court a predictable mechanism for staying and coordinating such claims, something India achieves only through ad hoc improvisation. The 2026 Amendment, despite being the largest overhaul of the Code since 2016, again passed over cross-border reform, and the paper closes with recommendations for a statutory chapter giving foreign award holders a predictable route into Indian insolvency proceedings.

Keywords: *cross-border insolvency, arbitration, UNCITRAL Model Law, IBC 2016, moratorium, Jet Airways, arbitral awards, India.*

I. INTRODUCTION

Indian companies today borrow abroad, build assets abroad, and sign contracts with foreign counterparties as a matter of routine business rather than exception. A very large share of those contracts, particularly the high value ones, carry an arbitration clause, because commercial parties on both sides of a cross-border deal generally prefer a neutral, enforceable, and confidential mechanism for resolving disputes over the uncertainty of litigating in an unfamiliar foreign court. This preference is entirely rational and is reflected in the steady rise of institutional arbitration filings involving Indian parties over the last decade. Trouble begins when the Indian party to that arbitration clause becomes insolvent. The moment a corporate debtor is admitted into the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016, a moratorium falls into place and existing legal proceedings, arbitration included, are frozen almost without exception. This is a deliberate legislative choice. Insolvency law is built around the idea of collective enforcement: once a debtor cannot pay everyone, the law substitutes an orderly, single forum process for the scramble that would otherwise occur if every creditor were left to chase the debtor's assets individually through whatever forum their contract happened to specify.[1] Arbitration, by contrast, is built around party autonomy and the idea that two parties can privately choose their own forum for resolving a dispute between themselves. When the debtor in that private arrangement becomes insolvent, the two philosophies collide, and something has to give.

Domestically, Indian courts have resolved this collision decisively in favour of the collective insolvency process. Once a moratorium is in place, an arbitration against the corporate debtor simply cannot go forward, and any arbitration commenced afterwards is treated as a nullity. This much is now settled and is examined in Part III of this paper. The harder and comparatively under examined question arises when the arbitration, or the arbitral award, has a foreign element, for instance when the award creditor is a foreign entity holding an award rendered outside India, or when the insolvent debtor also has assets, proceedings, or representatives abroad. Indian insolvency law has no dedicated answer to this question. Sections 234 and 235 of the Code gesture towards cross-border cooperation but depend on bilateral treaties that the Government of India has not, as of this writing, signed with a single country. The result is that a foreign arbitral award holder pursuing an insolvent Indian debtor, or an Indian award holder pursuing an insolvent foreign debtor, must rely on whatever goodwill and judicial improvisation the relevant tribunal is willing to extend, an approach that was tested and, to its

[1] See generally Bankruptcy Law Reforms Committee, Report of the Bankruptcy Law Reforms Committee, Vol. I: Rationale and Design (Nov. 2015), for the philosophy underlying the collective, time bound structure of the Code.

credit, survived in the Jet Airways litigation, but survived only because the National Company Law Appellate Tribunal was willing to fashion a cooperation protocol out of thin air rather than out of any statute.

This paper argues that the absence of a legislated cross-border insolvency framework in India, modelled on the UNCITRAL Model Law on Cross-Border Insolvency, leaves foreign arbitral award holders in a position of genuine and avoidable uncertainty, a position that jurisdictions such as the United States, the United Kingdom, and Singapore have already addressed, each in its own way, through a combination of statute and case law. The paper does not argue that arbitration should be allowed to override the collective insolvency process. Every jurisdiction studied in this paper, including the most arbitration friendly ones, subordinates individual claims, arbitral or otherwise, to the collective process once insolvency proceedings are properly recognised. What the paper argues instead is that the manner and predictability of that subordination matters enormously to a foreign creditor deciding whether to extend credit to, or contract with, an Indian company in the first place, and that India's continued reliance on an outdated bilateral treaty mechanism under Sections 234 and 235 imposes real costs on Indian businesses seeking foreign capital and on foreign creditors seeking recourse in India.

The paper proceeds in eight further parts. Part II sets out the research questions, objectives, and methodology. Part III examines how Indian insolvency law treats arbitration proceedings and arbitral claims once a domestic moratorium is declared, using the moratorium jurisprudence as the baseline against which the cross-border gap is later measured. Part IV turns to the cross-border vacuum itself, examining Sections 234 and 235 of the Code, the 2018 Report of the Insolvency Law Committee on cross-border insolvency, and the Jet Airways saga in detail. Part V explains the architecture of the UNCITRAL Model Law. Part VI undertakes a comparative study of how the United States, the United Kingdom and the European Union, and Singapore treat arbitral claims against an insolvent debtor once foreign insolvency proceedings are recognised. Part VII draws these threads together to ask specifically what Model Law adoption would change for a foreign arbitral award holder pursuing an Indian debtor. Part VIII examines the Insolvency and Bankruptcy Code (Amendment) Act, 2026 and argues that it represents a missed opportunity to close this gap. Part IX sets out recommendations, and Part X concludes.

II. RESEARCH OBJECTIVES, RESEARCH QUESTIONS, AND METHODOLOGY

A. Objectives

This paper has three objectives. The first is to establish, through decided case law, exactly how Indian insolvency law treats an ongoing or prospective arbitration once a corporate debtor enters the moratorium, so that the domestic position can serve as a fixed point of comparison. The second is to document, through the Jet Airways litigation and the surrounding statutory framework, precisely what happens today when an Indian insolvency proceeding intersects with a foreign one, whether or not arbitration is involved, since this exposes the structural gap that a foreign award holder would eventually have to navigate. The third is to compare this position against three jurisdictions that have already adopted the UNCITRAL Model Law or an equivalent regime, in order to identify concretely what a similarly placed creditor gains, or loses, by having a legislated recognition and cooperation mechanism available.

B. Research Questions

The paper is organised around three connected questions. First, why has India not adopted the UNCITRAL Model Law despite an expert committee recommendation dating back to 2018 and despite the recent, wide-ranging overhaul of the Code in 2026. Second, how do arbitral claims and awards against a cross-border debtor fare differently in Model Law jurisdictions when compared with India's existing Section 234 and 235 regimes. Third, what would adoption concretely change for a foreign creditor holding an arbitral award against an insolvent Indian debtor, and, in the reverse situation, for an Indian creditor holding an award against a foreign debtor with assets in India.

C. Methodology

The paper follows a doctrinal and comparative method. On the doctrinal side, it relies on the text of the Insolvency and Bankruptcy Code, 2016, the Arbitration and Conciliation Act, 1996, the Insolvency and Bankruptcy Code (Amendment) Act, 2026, and the decided judgments of the Supreme Court, the National Company Law Appellate Tribunal, and the National Company Law Tribunal that have interpreted these provisions. On the comparative side, it draws on reported decisions from the United States Court of Appeals for the Second Circuit, the English High Court and Court of Appeal, and the Singapore High Court, together with the text of the UNCITRAL Model Law itself and its accompanying Guide to Enactment. Secondary material, including the 2018 Report of the Insolvency Law Committee on cross-border insolvency, contemporaneous commentary, and news reporting on the 2026 amendment, is used to fill gaps that primary sources alone cannot cover, particularly given how recent some of the underlying developments are. A limitation must be stated candidly. Because the Insolvency and Bankruptcy Code (Amendment) Act, 2026 received presidential assent only in April 2026, there is at the time of writing very little judicial interpretation of its provisions, and this paper's

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analysis of the amendment is therefore necessarily more predictive than the case law-based analysis found in the earlier parts of the paper.[2]

III. TREATMENT OF ARBITRATION CLAIMS DURING CORPORATE INSOLVENCY IN INDIA

A. The Statutory Moratorium under Section 14

Section 14 of the Insolvency and Bankruptcy Code, 2016 requires the Adjudicating Authority, on admitting an insolvency application, to declare a moratorium that prohibits, among other things, the institution or continuation of any suit or proceeding against the corporate debtor in any court, tribunal, arbitration panel, or other authority, including the execution of any judgment, decree, or order. The Supreme Court has explained that the purpose of this moratorium is to give the debtor a breathing spell during which the resolution professional and the committee of creditors can attempt to revive the company as a going concern, rather than have its assets picked apart by individual creditors racing each other to court.[3] Section 14 does not distinguish between litigation and arbitration. The word arbitration panel appears in the text of the provision itself, which leaves essentially no room for an argument that arbitration proceedings somehow survive the moratorium by virtue of being contractual rather than statutory in origin.

B. Judicial Confirmation: Alchemist and P. Mohanraj

The Supreme Court confirmed the plain reading of Section 14 in Alchemist Asset Reconstruction Company Ltd. v. Hotel Gaudavan (P) Ltd., where a respondent had invoked arbitration against the corporate debtor after a moratorium had already been imposed.[4] The Court held, in unambiguous terms, that any arbitration instituted after the moratorium comes into force is non est in the eyes of the law, meaning that it has no legal existence at all rather than merely being stayed or suspended pending revival.[5] This is a stronger form of interference than a mere procedural stay. A stay implies that the proceeding continues to exist but is paused;

[2] The Insolvency and Bankruptcy Code (Amendment) Act, 2026 received the assent of the President on 6 April 2026.

[3] Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17 (explaining that the moratorium serves the twin objectives of preserving the corporate debtor's assets and preventing a multiplicity of proceedings during the corporate insolvency resolution process).

[4] Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan (P) Ltd., (2018) 16 SCC 94.

[5] Id. The Court observed that the institution or continuation of a suit or proceeding, including arbitration, is interdicted by Section 14(1)(a) once the moratorium is in place, and that any arbitration commenced in violation of the moratorium is a nullity.

a finding of non est implies that the proceeding never validly came into being while the moratorium subsists. The distinction matters because it forecloses any argument that an arbitration begun during the moratorium can simply resume once the moratorium is lifted or the resolution plan is approved; instead, the party would in principle have to start the arbitration afresh.

The Court returned to the scope of the moratorium in P. Mohanraj v. Shah Brothers Ispat (P) Ltd., a case that did not itself concern arbitration but concerned whether quasi-criminal proceedings for dishonour of cheques under Section 138 of the Negotiable Instruments Act, 1881 fell within the moratorium's reach.[6] The Court held that they did, reasoning that a Section 138 proceeding, although penal in form, is in substance a civil sanction for the recovery of money, and that permitting such proceedings to continue against the corporate debtor during the moratorium would allow a creditor to achieve indirectly what Section 14 prohibits directly.[7] The significance of P. Mohanraj for the present paper lies less in its facts and more in its method. The Court read Section 14 purposively and expansively, looking past the formal label of a proceeding to ask whether allowing it to continue would defeat the collective, asset preserving purpose of the moratorium. Applied to arbitration, the same logic explains why Indian courts have shown no inclination to carve out an exception for arbitral proceedings merely because they arise from a private contractual choice of forum rather than a statutory right of action. If anything, arbitration proceedings sit more, not less, comfortably within the moratorium's reach than a statutory criminal complaint, because an arbitral award, once rendered, would ordinarily be enforced against the very assets that the moratorium exists to protect from individual attachment.

C. Arbitrability of Insolvency Related Disputes

A related but distinct question is whether disputes that are themselves insolvency related, as opposed to disputes merely caught up in an ongoing insolvency, can be arbitrated at all. The Supreme Court addressed the general architecture of this question in Vidya Drolia v. Durga Trading Corporation, where it laid down a fourfold test for determining whether a subject matter is arbitrable, one limb of which asks whether the dispute pertains to a right in rem, in the sense of a right exercisable against the world at large, rather than a right in personam

[6] P. Mohanraj v. Shah Brothers Ispat (P) Ltd., (2021) 6 SCC 258.
[7] Id. at para. 97 (holding that the moratorium under Section 14(1)(a) covers proceedings under Section 138 of the Negotiable Instruments Act, 1881 in so far as the corporate debtor is concerned, though not in so far as the directors or officers of the debtor are separately and vicariously liable under Section 141 of that Act).

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between the specific parties to the contract.[8] Applying that framework, the Court treated insolvency and winding up proceedings as inherently non-arbitrable because they affect the rights of the entire body of creditors and stakeholders collectively, and cannot sensibly be resolved through a private forum chosen by only two of those many parties.[9] This means that once a corporate insolvency resolution process is underway, an arbitral tribunal cannot be asked to determine questions such as whether the debtor actually owes the debt that triggered the insolvency filing in the first place; that determination belongs squarely to the Adjudicating Authority.

The Court had, shortly before Vidya Drolia, drawn a related distinction in Indus Biotech Private Limited v. Kotak India Venture Fund I, holding that where a Section 7 application under the Code has been admitted, meaning that a default has been judicially established, a subsequent application for arbitration under Section 8 or a request for the appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 cannot be used to reopen the question of default. Conversely, where the Section 7 application is still pending and has not been admitted, the mere existence of an arbitration clause between the parties does not by itself prevent the Adjudicating Authority from examining the insolvency application on its own terms. A further, commercially significant restriction was laid down in K. Kishan v. Vijay Nirman Company Pvt. Ltd., where the Court held that an operational creditor cannot use an arbitral award that is still under challenge in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 as the basis for triggering an insolvency application against the debtor.[10] The Court reasoned that Section 9 of the Code, which allows an operational creditor to seek initiation of insolvency proceedings over an unpaid operational debt, was never intended to become a substitute for execution proceedings, and that permitting a creditor to weaponise a challenged award in this way would allow the insolvency process to be used as a pressure tactic in what is, at that stage, still a live and unresolved dispute about liability. Read together, these three lines of authority show an Indian judiciary that is comfortable letting arbitration and insolvency coexist only up to the point where the collective character of the insolvency process is placed at risk, at which point insolvency law is consistently given priority.

[8] Vidya Drolia v. Durga Trading Corp., (2021) 2 SCC 1.
[9] Id. (listing insolvency and winding up matters among the categories of disputes that are non-arbitrable by virtue of their in rem character).
[10] K. Kishan v. Vijay Nirman Co. (P) Ltd., (2018) 17 SCC 662.

IV. THE CROSS-BORDER VACUUM: SECTIONS 234 AND 235 OF THE CODE

A. The Statutory Text and Its Limits

Sections 234 and 235 of the Insolvency and Bankruptcy Code, 2016 are the Code's only provisions addressing cross-border insolvency. Section 234 empowers the Central Government to enter into bilateral agreements with other countries for enforcing the provisions of the Code, including directions concerning assets of a corporate debtor situated outside India, while Section 235 empowers the Adjudicating Authority to issue a letter of request to a court or authority of a country with which such a reciprocal arrangement exists, asking it to deal with assets of the corporate debtor situated in that country. Both provisions are, on their face, reasonable mechanisms for cross-border cooperation. Their fatal weakness is that they are entirely dependent on the existence of a bilateral reciprocal arrangement, and as of 2026 the Government of India has not entered into a single such arrangement with any foreign country.[11] Sections 234 and 235 are consequently often described in Indian legal writing as dead letter provisions, statutory in form but without any operative content in practice.

B. The 2018 Insolvency Law Committee Report

The inadequacy of Sections 234 and 235 was recognised early. The Insolvency Law Committee, constituted by the Ministry of Corporate Affairs, examined the question and, in its March 2018 report, recommended that India adopt a dedicated cross-border insolvency framework modelled on the UNCITRAL Model Law, to be inserted as a new chapter within the Code rather than left to case by case bilateral negotiation. The Committee's central insight was that a bilateral, treaty by treaty approach simply does not scale to the reality of modern insolvency, where a distressed company's creditors, assets, and operations may be spread across a dozen jurisdictions at once, and where negotiating a separate reciprocal treaty with each of those jurisdictions before any relief becomes available is neither realistic nor timely. A public notice inviting comments on a draft cross-border insolvency chapter was issued by the Ministry of Corporate Affairs in June 2018.[12] More than seven years later, that draft chapter has still not been enacted.

[11] See The Insolvency and Bankruptcy Code (Amendment) Act, 2026: A Significant Shift in India's Insolvency Framework, India Law Blog (May 8, 2026) (noting that Sections 234 and 235 remain unnotified in practice for want of any concluded bilateral arrangement).

[12] Ministry of Corporate Affairs, Public Notice inviting comments on the draft Chapter on Cross Border Insolvency (June 20, 2018).

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C. The Jet Airways Saga

The practical cost of this legislative inaction is best illustrated through the insolvency of Jet Airways (India) Ltd., an airline that operated a significant European hub out of Amsterdam. In May 2019, before any insolvency proceeding had been admitted in India, Jet Airways was pushed into bankruptcy in the Netherlands by an order of the Noord-Holland District Court, which appointed a Dutch bankruptcy administrator. Roughly a month later, in June 2019, the National Company Law Tribunal in Mumbai admitted a separate corporate insolvency resolution process against Jet Airways under the Code. When the Dutch administrator approached the Tribunal seeking recognition of the earlier Dutch proceeding, the Tribunal refused, holding that Sections 234 and 235 had never been notified and that, in the absence of any statutory basis for recognising a foreign insolvency proceeding, the Dutch proceeding was, so far as Indian law was concerned, a nullity.[13]

The Dutch administrator appealed to the National Company Law Appellate Tribunal, which took a markedly more accommodating view. Rather than simply reversing the Tribunal on a point of law that the statute did not actually support, since no recognition mechanism existed for the Appellate Tribunal to invoke either, it directed the Indian resolution professional and the Dutch administrator to negotiate a cooperation protocol between themselves.[14] The two sides eventually agreed on what came to be called the Cross-Border Insolvency Protocol, a document that, tellingly, borrowed its conceptual vocabulary directly from the UNCITRAL Model Law even though the Model Law had no formal force in Indian law. The protocol recorded that Jet Airways, being an Indian company, had its centre of main interest in India, that the Indian proceeding would accordingly be treated as the main insolvency proceeding, and that the Dutch proceeding would be treated as a non-main proceeding running in a coordinated but subordinate fashion alongside it. The National Company Law Appellate Tribunal approved the protocol in September 2020 and permitted the Dutch administrator to attend meetings of the committee of creditors in an observer capacity, without a right to vote.

The Jet Airways episode is frequently, and rightly, described as a landmark in Indian cross-border insolvency practice, and it undoubtedly reflects well on the pragmatism of the Appellate Tribunal. It is nonetheless important not to overstate what it achieved. The protocol was a bespoke, negotiated arrangement between two specific administrators in one specific case, not a rule of general application. Nothing in the protocol binds a different tribunal handling a

[13] Jet Airways (India) Ltd. (Offshore Regional Hub) v. State Bank of India, Company Appeal (AT) (Insolvency) No. 707 of 2019 (NCLAT), recording the National Company Law Tribunal, Mumbai Bench order of 20 June 2019 declining to recognise the Dutch bankruptcy proceeding.

[14] Company Appeal (AT) (Insolvency) No. 707 of 2019 (NCLAT, Delhi).

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different cross-border insolvency to reach the same outcome, and nothing in the Code obliges a foreign administrator, or an arbitral award holder standing behind a foreign administrator, to expect the same cooperative treatment the next time such a case arises. The episode illustrates exactly what a legislated Model Law framework would supply as a matter of right, namely a predictable recognition and cooperation mechanism, rather than what Indian law today supplies, which is the possibility of such an outcome if the tribunal happens to be persuaded to construct one.

V. THE UNCITRAL MODEL LAW ON CROSS BORDER INSOLVENCY

A. Origins and Core Principles

The United Nations Commission on International Trade Law adopted the Model Law on Cross-Border Insolvency on 30 May 1997, as a response to what it identified as a serious gap in national insolvency laws, most of which had been drafted with a wholly domestic transaction in mind and were simply not designed to cope with a debtor whose assets, creditors, or proceedings crossed national borders.[15] Rather than attempting to harmonise the substantive insolvency law of different countries, an enormously ambitious and largely unattainable goal given how differently national legal systems balance the interests of secured creditors, employees, and shareholders, the Model Law instead focuses on procedural cooperation. It is organised around four themes that recur throughout its text: access, meaning that a foreign representative of an insolvent estate is given standing to appear directly before the courts of the enacting state; recognition, meaning a structured process by which a foreign insolvency proceeding is formally acknowledged; relief, meaning the specific protections, including an automatic stay of individual proceedings, that flow once recognition is granted; and cooperation, meaning direct communication between the courts and insolvency representatives of the different jurisdictions involved.

B. Centre of Main Interest and the Main or Non-Main Distinction

The Model Law's central organising concept is the centre of main interest, generally abbreviated as COMI, a term borrowed by the drafters from earlier European insolvency instruments. A foreign proceeding taking place in the state where the debtor's COMI is located is recognised as the foreign main proceeding and receives the most extensive relief, including an automatic stay on individual actions concerning the debtor's assets the moment recognition is

[15] United Nations Commission on International Trade Law, Model Law on Cross-Border Insolvency (1997), Preamble and Guide to Enactment.

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granted. A foreign proceeding taking place elsewhere, typically where the debtor merely has an establishment or some assets, is recognised only as a foreign non-main proceeding and receives more limited, discretionary relief.[16] This main and non-main distinction is precisely what the Jet Airways protocol replicated by agreement rather than by operation of law, designating India as the seat of the main proceeding and the Netherlands as the seat of the non-main proceeding.

C. Global Adoption and India's Position

The Model Law has been adopted, in some form, by a large and growing number of jurisdictions. As of December 2020, forty eight states, comprising fifty one separate jurisdictions once certain territorial units are counted, had enacted legislation based on the Model Law, including the United States, the United Kingdom, Singapore, Japan, and Australia.[17] India is conspicuously absent from this list, and remains so notwithstanding the Insolvency Law Committee's 2018 recommendation and notwithstanding the sweeping 2026 amendment to the Code, a point developed further in Part VIII of this paper. The gap places India in the position of a one-sided beneficiary of the international system: an Indian creditor pursuing a foreign debtor can, in principle, invoke Model Law protections in any of the states that have adopted it, but a foreign creditor pursuing an Indian debtor enjoys no reciprocal statutory protection in India itself.

VI. COMPARATIVE STUDY: ARBITRAL CLAIMS AGAINST AN INSOLVENT DEBTOR ABROAD

A. United States: The Core and Non-Core Distinction

United States bankruptcy law approaches the question through a jurisdictional distinction between core and non-core proceedings, drawn from the statute governing the jurisdiction of federal bankruptcy courts.[18] A proceeding is core if it invokes a substantive right created by federal bankruptcy law itself, or if it could not exist outside the bankruptcy case at all, such as a dispute over the allowance of a claim or the avoidance of a preferential transfer. A proceeding is non-core if it involves an ordinary prepetition contractual or commercial dispute that would have existed and could have been litigated, or arbitrated, whether or not the debtor had filed for

[16] UNCITRAL Model Law on Cross-Border Insolvency, arts. 2, 16, 17, 20.
[17] Legal500, Breaking Borders: Crafting a Robust Cross-Border Insolvency Framework for India through Global Insights (Feb. 21, 2025), citing UNCITRAL status data as of December 2020.
[18] 28 U.S.C. § 157(b)(2) (setting out a non-exclusive list of proceedings treated as core to the bankruptcy case).

bankruptcy. The United States Court of Appeals for the Second Circuit addressed how this distinction interacts with an arbitration clause in In re United States Lines, Inc., a case arising out of a dispute between a bankrupt shipping company and its insurers.[19] The Second Circuit held that where the underlying claim is non-core, meaning it is essentially an ordinary prepetition commercial dispute that happens to now involve a bankrupt party, the bankruptcy court has no real discretion to override the parties' arbitration agreement, because doing so would have nothing to do with any bankruptcy specific concern and would simply be an ordinary court overriding an ordinary contract. Where the claim is core, the court retains greater discretion, but even there the arbitration agreement will still be enforced unless enforcing it would inherently conflict with the underlying purposes of the Bankruptcy Code, a standard that later decisions in other circuits have continued to apply while acknowledging that it does not always produce a clean, predictable answer.

The practical effect of the American approach is that an arbitration clause is treated with real respect even after the counterparty has filed for bankruptcy, and a creditor who is owed money under an ordinary prepetition commercial contract, including a foreign creditor, generally retains the right to have the underlying liability determined through arbitration rather than through the bankruptcy court itself. What changes after bankruptcy is not the forum for determining liability so much as the forum for enforcing whatever award that arbitration eventually produces, since payment on the resulting award still has to be sought through the bankruptcy claims process alongside every other creditor rather than through immediate execution against estate assets.

B. United Kingdom and the European Union

The English courts confronted a genuinely difficult cross-border question in Syska v. Vivendi Universal SA, arising out of an arbitration seated in London under a contract governed by Polish law, where one of the parties, a Polish company, entered insolvency proceedings in Poland while the arbitration was still pending.[20] The question was which country's law should govern the effect of that Polish insolvency on the pending London arbitration, Polish law, as the law of the state where the insolvency proceeding had opened, or English law, as the law of the seat of the arbitration. The arbitral tribunal had applied English law and allowed the arbitration to continue to an award. Under the European insolvency regulation then in force, the law

[19] United States Lines, Inc. v. American S.S. Owners Mut. Prot. & Indem. Ass'n, Inc. (In re United States Lines, Inc.), 197 F.3d 631 (2d Cir. 1999).
[20] Syska v. Vivendi Universal SA, [2008] EWHC 2155 (Comm), aff'd [2009] EWCA Civ 677.

applicable to a lawsuit pending at the time insolvency opens is the law of the state where that lawsuit is pending, and the English courts held that a pending arbitral reference fell within this same category, meaning that English law, as the law of the seat, and not Polish insolvency law, governed whether the arbitration could continue. The High Court's reasoning was affirmed by the Court of Appeal.[21] Syska therefore stands for the proposition that a pending arbitration is not automatically extinguished the moment one party becomes insolvent in a different jurisdiction; instead, a structured choice of law rule determines which country's insolvency effects actually apply to it, and the seat of the arbitration can, in the right circumstances, prevail over the insolvency forum.

Where the Model Law itself, rather than the separate European insolvency regulation, applies, the position shifts somewhat, because Article 20 of the Model Law imposes its own automatic and mandatory stay on the commencement or continuation of individual actions concerning the debtor's assets the moment a foreign main proceeding is recognised, a stay that English courts implementing the Model Law through domestic regulations have applied to new and pending proceedings, arbitration included, unless the court specifically lifts it.[22] This means that even in a Model Law jurisdiction, the creditor's underlying right to arbitrate is not abolished; recognition instead triggers an automatic pause, and the creditor, or in an appropriate case the insolvency representative, can apply to the recognising court to lift the stay for good reason, for instance to allow a dispute to be resolved on its merits through the forum the parties originally chose, while leaving enforcement against estate assets to the collective process.

C. Singapore: Recognition, Centre of Main Interest, and Limited Relief

Singapore adopted the Model Law, with certain modifications, in 2017, inserting it into the Companies Act as the Singapore Model Law. Its first significant test came in the insolvency of Zetta Jet, a private jet charter operator incorporated in Singapore with a wholly owned American subsidiary, both of which entered Chapter 11 proceedings in a Californian bankruptcy court in September 2017.[23] A minority shareholder of the Singapore entity had, before the American filing was recognised, obtained an injunction in Singapore restraining the company from pursuing the American bankruptcy filing at all. When the American trustee sought recognition in Singapore, the Singapore High Court initially granted only limited

[21] Syska v. Vivendi Universal SA, [2009] EWCA Civ 677.
[22] UNCITRAL Model Law on Cross-Border Insolvency art. 20; Cross-Border Insolvency Regulations 2006, SI 2006/1030 (UK) (giving the Model Law the force of law in Great Britain).
[23] Re Zetta Jet Pte Ltd, [2018] SGHC 16; Re Zetta Jet Pte Ltd (Asia Aviation Holdings Pte Ltd, intervener), [2019] SGHC 53.

recognition, enough to allow the trustee to apply to set aside the competing Singapore injunction, rather than the full recognition the trustee had originally sought, illustrating that recognition under the Model Law is not a rubber stamp but a genuine judicial inquiry that can be calibrated to the circumstances before the court.[24] Once the injunction was discharged, the trustee returned to court seeking full recognition, prompting the Singapore High Court to undertake a detailed inquiry into where Zetta Jet's centre of main interest actually was, notwithstanding that the company was incorporated in Singapore, because incorporation alone does not settle the COMI question under the Model Law; the court instead had to examine where the company's central administration, principal assets, and the expectations of its main creditors were actually located.[25]

The Zetta Jet litigation is useful for the present paper because it shows a Model Law court doing exactly the kind of work that the Jet Airways tribunal in India had to invent from scratch, determining which proceeding is main and which is non-main, deciding what relief automatically follows recognition, and deciding how far that relief should extend, all governed by a settled statutory text and a growing body of interpretive case law, rather than by a bespoke protocol negotiated between the parties in the particular case.

VII. WHAT MODEL LAW ADOPTION WOULD MEAN FOR ARBITRAL AWARD HOLDERS IN INDIA

Bringing the domestic and comparative material together, three concrete changes follow from Model Law adoption for a foreign arbitral award holder facing an insolvent Indian debtor. First, the foreign award holder, through the debtor's foreign representative or in an appropriate case directly, would gain a clear route to have a foreign insolvency proceeding recognised by the Adjudicating Authority in India, replacing the current position under Sections 234 and 235, where recognition is available only if a bilateral treaty happens to exist, which today it never does. Second, once recognised, the award holder would know in advance, from the statute itself rather than from the discretion of a particular bench, whether an automatic stay applies to its claim and what relief it can apply to have lifted, mirroring the Article 20 mechanism examined in the English and Singaporean material above. Third, and perhaps most importantly for a creditor deciding whether to extend credit to an Indian company in the first place, the award holder would be dealing with a predictable legal regime rather than hoping that the tribunal

[24] Re Zetta Jet Pte Ltd, [2018] SGHC 16.
[25] Re Zetta Jet Pte Ltd, [2019] SGHC 53.

handling its particular case is willing to replicate the kind of cooperative protocol that the National Company Law Appellate Tribunal constructed in Jet Airways.

It is worth being precise about what adoption would not do. Nothing in the comparative material surveyed in Part VI suggests that Model Law jurisdictions allow arbitration to override the collective insolvency process once a main proceeding is properly recognised; the American core and non-core distinction still channels the ultimate question of payment through the bankruptcy claims process, and the English and Singaporean automatic stay provisions still pause individual enforcement the moment recognition occurs. What changes is not whether the collective process ultimately controls distribution of the debtor's assets, which it does in every jurisdiction studied, but how predictably and transparently a foreign creditor can find out where it stands, and Indian law today simply does not offer that predictability to anyone outside the handful of parties who have been fortunate enough to see the National Company Law Appellate Tribunal build them a bespoke solution.

VIII. THE 2026 AMENDMENT AND THE MISSED OPPORTUNITY

The Insolvency and Bankruptcy Code (Amendment) Act, 2026, which received the assent of the President on 6 April 2026, is widely regarded as the most significant reform of the Code since its original enactment in 2016.[26] Among its notable features are the introduction of a Creditor-Initiated Insolvency Resolution Process, an alternative pathway that allows financial creditors to trigger insolvency outside the traditional route through the Adjudicating Authority, tighter timelines for the corporate insolvency resolution process, and a legislative response to two Supreme Court decisions, commonly referred to in practitioner commentary as the Vidarbha and Rainbow Papers line of authority, that had been seen as complicating the timely admission of insolvency applications and the treatment of statutory dues respectively. The amendment also strengthens accountability standards for insolvency professionals and expands the role of the committee of creditors.

What the 2026 amendment does not do is legislate a cross-border insolvency chapter. Despite the seven years that had elapsed since the Insolvency Law Committee's 2018 recommendation, and despite Parliament undertaking what commentators have called a sweeping rewrite of the Code in the very same legislative session, the amendment nowhere mentions the UNCITRAL Model Law, and Sections 234 and 235 emerge from the 2026 amendment exactly as they were

[26] The Insolvency and Bankruptcy Code (Amendment) Act, 2026, Act No. __of 2026.

in 2016.[27] This is a striking omission. A legislature willing to reverse two Supreme Court decisions and to introduce an entirely new insolvency pathway in the same statute plainly had the institutional capacity and the political will to legislate on cross-border insolvency as well, had it chosen to prioritise the issue. That it did not suggests either that cross-border insolvency reform remains, for now, a lower legislative priority than domestic timeline and creditor rights issues, or that the Government intends to bring a separate, standalone cross-border insolvency bill at a later date, a possibility some commentary continues to hold out hope for even as it acknowledges the repeated delay.

For the specific concern of this paper, the consequence is straightforward. A foreign arbitral award holder pursuing an insolvent Indian debtor in 2026 stands in materially the same position as a similarly placed creditor would have stood in 2019, when the Jet Airways litigation first exposed the gap. The only available route remains an ad hoc application to the Adjudicating Authority or the Appellate Tribunal, in the hope that the tribunal is willing to fashion cooperative relief of the kind seen in Jet Airways, rather than any right conferred by statute.

IX. RECOMMENDATIONS

Building on the analysis above, this paper offers four specific recommendations. First, Parliament should enact a dedicated cross-border insolvency chapter within the Code, built on the access, recognition, relief, and cooperation architecture of the UNCITRAL Model Law, rather than continuing to rely on Sections 234 and 235, and should do so as a standalone amendment rather than waiting for the next general overhaul of the Code, given how long the 2018 recommendation has already waited. Second, that chapter should expressly clarify how a foreign arbitral award, and a pending foreign seated arbitration, are to be treated once a foreign main proceeding is recognised, borrowing from the English and Singaporean experience of applying an automatic but liftable stay rather than the blunt non est treatment that Alchemist currently applies even to purely domestic arbitration. Third, the National Company Law Tribunal should be designated, expressly and by rule, as the forum with jurisdiction to hear recognition applications, so that foreign representatives and foreign award holders know from the outset which forum to approach rather than having to discover this, as the Dutch administrator in Jet Airways effectively had to, through litigation. Fourth, in the interim period before any such legislation is enacted, the National Company Law Appellate Tribunal should

[27] See India's Cross-Border Insolvency Reform: A Distant Dream? RFKN Legal Analysis (July 18, 2026) (observing that Parliament has nowhere explicitly mentioned adoption of the UNCITRAL Model Law, either in the 2025 Bill or in the resulting 2026 Amendment Act).

consider formalising the Jet Airways cooperation protocol model into a standing practice direction or template, so that future tribunals facing a cross-border insolvency are not required to reinvent the same solution from scratch, and so that foreign creditors have at least some documented basis for predicting how an Indian tribunal is likely to approach their case pending full legislative reform.

X. CONCLUSION

Indian insolvency law today treats arbitration with unusual firmness once a moratorium is declared, and the Supreme Court's decisions in Alchemist Asset Reconstruction and P. Mohanraj leave very little room for an arbitration, domestic or otherwise, to proceed against a corporate debtor undergoing resolution. That firmness is defensible on its own terms; the collective insolvency process exists precisely to prevent any single creditor, however legitimate its underlying claim, from extracting value ahead of the rest. The genuine problem examined in this paper is not that Indian law subordinates arbitration to insolvency, since every jurisdiction studied here does the same in one form or another, but that Indian law offers no predictable, legislated mechanism through which a foreign arbitral award holder can even find out where it stands once a cross-border element enters the picture. The Jet Airways litigation showed that Indian tribunals are capable of improvising a workable solution when pressed, borrowing, tellingly, the very vocabulary of centre of main interest and main versus non-main proceedings that the UNCITRAL Model Law supplies. What Jet Airways could not do, because no single case ever can, is turn that improvisation into a right that the next foreign creditor can rely on in advance. The Insolvency and Bankruptcy Code (Amendment) Act, 2026 had every opportunity to supply that right and did not take it. Until Parliament legislates a cross-border insolvency chapter along the lines recommended by the Insolvency Law Committee in 2018 and reinforced by the comparative practice surveyed in this paper, a foreign arbitral award holder dealing with an insolvent Indian company will continue to depend, as the Dutch administrator in Jet Airways did, on the discretion and goodwill of the particular tribunal it happens to appear before, rather than on the settled law that creditors in the United States, the United Kingdom, and Singapore can already take for granted.

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