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Analysis of Cross Border Insolvency in India: A suggestive approach

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ABSTRACT

In India the regulatory body for all the banks i.e. the banking Centre is Reserve Bank of India which is established under Reserve Bank of India Act 1934 under Hilton Young Commission. It regulates all the commercial banks in the state and controls them by giving licenses to involve in the activities of finance. So, basically it is the "banker to the bank". In its annual report for the year 2020-21 it has stated that almost crores of money in frauds and Insolvency. And almost 74% of citizens of India who are actually directly depositing their sum in banks have never received the money from the banks through which it was lost in frauds and scandals. This is actually not a good sign for a developing country like India where there is population which is middle class is more and the rate of poverty is more at the same time. If there are no such measures taken and adopted in order to cope with such frauds then it would ultimately lead to financial crisis and the citizens who are actually depositing their sums in banks might change their opinion and slowly lose faith in banks. So, if that is the case the RBI will not have any such control on the currency and banks would not be able to maintain Statutory Liquidity Ration.

So, considering this as a point for our research we would like to analyze two major financial Cross border Insolvency scams in India and the loopholes of such undertaking. Accordingly we would even analyze at the same point of the advantages which were being in favour of such Economic offenders. And then conclude our research with the measures in order which can undertake to avoid them through our analysis.

Keywords: Regulator, Statutory Liquidity Ratio, Financial Fraud, Economic Offenders, Insolvency

Introduction :

In 2015, Arun Jaitley, India's Minister of Finance, presented the bill that would establish this law to the Lok Sabha. In May of 2016, the Code was approved by Parliament, and it was not until December of the same year that it was eventually put into force. This Code strives to offer a process that is both comprehensive and collective for the settlement of issues pertaining to insolvency and bankruptcy within a time limit that is considered to be fair. The Insolvency and Bankruptcy Board and Adjudicating authorities such as the National Company Law Tribunal (NCLT) are two of the bodies and institutions that are established as a result of the Code. These bodies and institutions are created to facilitate the provision of simple relief within a fixed amount of time. The purpose of this project is to bring together and revise the laws that pertain to the re-organisation and settlement of insolvency issues for corporate entities, partnership businesses, and individuals.

- Within the context of a time-bound resolution of insolvency, to establish time limitations for the implementation of the legislation (i.e. 180 days).
- To achieve a maximum return on the investments of those who are interested.
- To stimulate entrepreneurship
- To expand the number of financial options available.
- To strike a balance between the interests of all parties involved (including alteration). The remaining balance has to be completed in the same priority

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order as the payments owed to the government.
- To create a body to serve as a regulator for insolvency and bankruptcy legislation that would be known as the Insolvency and Bankruptcy Board of India.
- In order to achieve larger levels of debt financing across a broad range of different debt instruments.
- In order to create a technique for the painless rebirth of entities.
- To cope with insolvency that spans international borders.
- In order to tackle India's problem with bad debt, a database of defaulters is being compiled.

Research Problem:

Banks do play a key role in the Indian Financial system and it looks as an underpin economic growth. Although there have been authorities to tackle the same but still there exists some slowdown to the economy due to the loop holes created during the process of administration. It is important as such to maintain such standards and have a proper regulation to tackle the Cross border Insolvency and serve the country. The administration of a country would actually be in question in case if the economy is not stable. And there is exists lot of factors which indirectly influence the stability of the economy of the country. And there is also a problem with the choice of law wherein in case if there is cross border insolvency then the application of law would be a problem as because there is no proper codification and legislation in India to deal with the cross border Insolvency. So, the researcher would like to analyze such instances of insolvency and close doors for the sake of forthcoming of any such happenings and to promote public good. The researcher feels that if the same process continues to exist then the public would lose hope on banking sector.

Research Question:

- Whether the regulation with respect to Cross border Insolvency loans seeks a change or any such amendment in order to shut doors?
- Whether the act of banks leaving the scarce provision favoring the offenders and opening doors for initiation of insolvency?

Literature review –

1) Cross-Border Insolvency in India: A Resistance to Change

This is an article which was written by the Gabriela Roca-Fernandez which was actually published through the Tulane Journal of International and Comparative Law Journal. The author in this article initially have actually expressed the need for the Cross border Insolvency and then tried to relate it with the development which took place in India and tried to relate it with the Historical development of that of India. The researcher used this article to understand the concept of Cross Border Insolvency and also in the same way tried the researcher used this article to find out a solution to the research problem in relation to the choice of law.[202]

2) CORPORATE INSOLVENCY. ITS OPERATIONS AND EMERGING PROBLEMS

This Journal Article was written by Navin K. Pahwa which was published through National Law School of India Review Journal. The author in this article have actually highlighted the problems of the Corporate Insolvency and also highlighted the challenges involved in application and implementation of the Insolvency and Bankruptcy Code, 2016. The researcher used this article to understand the motive of the implementing the legislation and at the same time the researcher felt the need for the economic growth which would be a threat in case if that is not accomplished. The author is of the view that with correct judicial and legislative interference, it may grow into a mature and effective piece of legislation, and

[202] Gabriela Roca-Fernandez, Cross-Border Insolvency in India: A Resistance to Change, 29 TUL. J. INT'l& COMP. L. 99 (2021).

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improve the ease of doing business as well as the economic scenario in India[203].

3) KEY ISSUES IN CROSS-BORDER INSOLVENCY

This Journal Article was written by Ran Chakrabarti which was published through ," National Law School of India Review. The author in this article seeks to unpack the key issues in the bankruptcy of a company with asset linkages spread across the globe. The author felt that addressing these issues has become a vital to the evolution of insolvency jurisprudence in India. The author through his article tried to bridge the gap in clarity by addressing the basic principles of cross-border insolvency and mapping out what might happen when an insolvent entity has substantial assets overseas. The researcher used this article to understand the analysis lay down by the author regarding the Cross border Insolvency[204].

4) India: Cross Border Insolvency Regime in India

This article was actually written by Zulfiquar Memon , Abhishek Gupta and Aakansha Luhach and the researcher got the access to the article through Mondaq. The author in this article through his introduction has established the Legal framework governing the Cross border Insolvency in India and then continued the discussion with the Limitations which were existing in the Legal framework of the statute. The researcher used this article to understand the objectives and reasons for the sake of implementing the statute. The author's analysis wherein he pointed out the benefits that arise upon implementation of the code can be very well appreciated. [205]

5) An overview of Cross Border Insolvency in India

This article was written by RohitLalwani and Aditi Tiwari and the researcher got the access to the same by the website run by Lexology through the AMLEGALS. The author firstly through his article explained the concept of the Cross border Insolvency and at the same time have continued the discussion with the statutory framework of the same namely the section 234 and 235 of the Insolvency Bankruptcy Code of India. The researcher used this article to state a opinion about an incident which took place in India regarding the Cross border Insolvency ie Jet Airways. [206]

6) INTERNATIONAL INSOLVENCY: AN INDIAN PERSPECTIVE ON CROSS-BORDER TREATMENT OF CASES

This Journal Article was written by Nidhi Shetye and it was published through the Fordham International Law Journal. The author in his article initially explains the overview of the statute and then later on he focused upon the statutes governing the Cross border Insolvency in India. The researcher used this article to understand the existing legal situation in India and at the same time used the reference of the cases in Indian framework regarding the Cross border Insolvency where India is related.[207]

7) Cross Border Insolvency in India: A long due dream

This article was actually written by Neha Malu and Shreyan Srivastava and it was published through Vinod Kothari Consultants website. In this article the author initially explains the development and further discussed various instances of insolvency. And further the author expressed the disagreement towards solving such cross insolvency disputes. The researcher used this article to refer the analysis worked upon by the author wherein the author made attempt to link the issue with Companies Act and in the same way tried to propose legislation

[203]Navin K. Pahwa, Corporate Insolvency: Its Operations and Emerging Problems, 30 NAT'l L. Sch. INDIA REV. 111 (2018).
[204] Ran Chakrabarti, Key Issues in Cross-Border Insolvency, 30 NAT'l L. Sch. INDIA REV. 119 (2018).
[205] Abhishek Gupta, India: Cross Border Insolvency Regime in India, Mondaq MZM Legal. (2021).
[206]RohitLalwani and Aditi Tiwari, An overview of Cross Border Insolvency in India, Lexology AMLEGALS (2022).
[207] Nidhi Shetye, International Insolvency: An Indian Perspective on Cross-Border Treatment of Cases, 39 FORDHAM INT'l L.J. 1045 (2016).

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wherein the foreign officials and representatives would get an access to domestic courts. [208] Neha Malu and Shreyan Srivastava, Cross Border Insolvency in India: A long due dream, Vinod Kothari Consultants. (2022)

Scope and Objective:

I) The primary objective is to look into the regulation which deals with the subject of recovery of money from the people even outside the jurisdiction.

II) To understand the privilege and loopholes drawn by various corporate offenders to escape from the liability.

III) And in the same process would like to suggest and pronounce a few reforms which would actually reduce the burden on the financial sector and also the economy of the country.

Research Methodology –

The methodology used in this research paper is a traditional method of research that is Doctrinal research. It involves the systematic analysis of provisions which deal with Cross border Insolvency and then understanding the need for a proper regulation. And analysis of a leading case in such sector the researcher actually usedsecondary sources like journal articles, books and case briefs for the entire process of research.

Historical Development:

India becomes independent in the year 1947 after the British control over the 200 years. So, India actually wanted to strengthen its boundaries and started legislating reforms in order to put things in control. The government gained control of a majority of the sectors, ranging from transportation to education, while the private sector composed a small portion of the economy. The initiation of the government then to set up goals as in Five year plan were very much successful so that helped the government to develop in almost all the prospects like agriculture and even in Industrial sector. The industries which were developed during then were also categorized as either solely concentrated in the public sector, state-owned, or privately owned."

The government would also even indirectly possess the control over the sectors such as manufacturing by requiring them to get hold of licenses, which were difficult to obtain and limited in number. Overall, India was adopting an economic framework that made the government the controlling figure."In the year 1970 after the nationalization of banks almost everywhere there is control over most of the sectors of the economy. It has also passed legislation such as the Foreign Exchange Regulation Act, which acted as a regulator in certain dealings in foreign exchange, and imposed certain restrictions on certain kinds of payments and monitored transactions impinging the foreign exchange and the import and exports. This act have even acted as a regulatory body to actually stop the process where the foreign companies holding more than 40% of the stake of businesses in India.[209]

In the late 19th century the government then again started then to initiate policies that promoted businesses and protected customers. Some of those reforms were actually the relaxation where the need for license is not meant for it allowed the businesses to expand to sectors of the economy that were previously government owned, and altering Foreign Direct Investment policies. Foreign Direct Investment

[208] Neha Malu and Shreyan Srivastava, Cross Border Insolvency in India: A long due dream, Vinod Kothari Consultants. (2022)

[209] UMANT BATRA, CORPORATE INSOLVENCY: LAW AND PRACTICE 580, 586 (2017)

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(FDI) began to increase in the country, which greatly benefitted the country's economy. Foreign Direct Investment is actually an investment which was made by any such firm or an individual in one country into business interests located in another country." In the past, for an FDI to be approved in India, it has to undergo a thorough approval process where the Foreign Investment Promotion Board (FIPB) evaluated the FDI submissions and gave recommendations to the ultimate decision maker, the government. And the decision would be in the hands of the government. This created various layers of application and also scrutiny before foreign investment could be made in India.' However, in the year 2017, the government abolished the regulation FIPB, and dismissed the approval process, and for the most part of it has turned process into an "automatic approval" system.

Existing Legal Situation:

When it comes to insolvency, the procedure that pertains to cross-border insolvency is largely focused on regulating the insolvency processes that operate beyond the ambit of domestic jurisdiction and the limits that are involved in the same.

- Insolvency that occurs across international borders is complicated by the following factors:
- ensuring that the interests of both local and international creditors are protected to the same degree;
- the total value of a debtor's assets that are spread out across many jurisdictions and need to be protected;
- uniformity in the bankruptcy laws and practises of various jurisdictions; coordination and cooperation among the various courts and other judicial authorities in various jurisdictions and the domestic laws that are applicable thereto

IBC provides two provisions that assist in cross-border insolvency disputes i.e. **Section 234** and **Section 235.**

Section 234: Agreements with foreign countries.

*__234.__ (1) The Central Government may enter into an agreement with the Government of any country outside India for enforcing the provisions of this Code.

(2) The Central Government may, by notification in the Official Gazette, direct that the application of provisions of this Code in relation to assets or property of corporate debtor or debtor, including a personal guarantor of a corporate debtor, as the case may be, situated at any, place in a country outside India with which reciprocal arrangements have been made, shall be, subject to such conditions as may be specified.

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

*__235.__ (1) Notwithstanding anything contained in this Code or any law for the time being in force if, in the course of insolvency resolution process, or liquidation or bankruptcy proceedings, as the case may be, under this Code, the resolution professional, liquidator or bankruptcy trustee, as the case may be, is of the opinion that assets of the corporate debtor or debtor, including a personal guarantor of a corporate debtor, are situated in a country outside India with which reciprocal arrangements have been made under section 234, he may make an application to the Adjudicating Authority that evidence or action relating to such assets is required in connection with such process or proceeding.

(2) The Adjudicating Authority on receipt of an application under sub-section (1) and, on being satisfied that evidence or action relating to assets under sub-section (1) is required in connection with insolvency resolution process or liquidation or bankruptcy proceeding, may

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issue a letter of request to a court or an authority of such country competent to deal with such request.

Section 234 of the IBC empowers the Central Government to enter into bilateral agreements with foreign jurisdiction in order to resolve the issues of cross-border insolvency. Section 235 on the other hand, empowers the Adjudicating Authority to issue letters of request on Courts of the country with which the bilateral agreement has been entered into under Section 234 with an aim to address the fate of assets of the corporate debtors which are located outside India. Despite the fact that bilateral agreements are a source of dependency that is time-consuming, expensive, and does not provide a definitive answer owing to the various levels of negotiation that are needed, these clauses at least provide light on the problem of cross-border bankruptcy in IBC.

Due to the corporate debtor's assets being located in multiple locations, the adjudicating authority may have to deal with one of the most difficult and time-consuming issues possible when trying to strike a balance between the conflicting clauses of the various treaties it has signed with the various jurisdictions. The International Law Commission acknowledged in its Report from March 2018 that the current provisions of the International Business Companies Act, including Sections 234 and 235, do not offer a complete framework within which to manage cross-border challenges.

Because of the complexity inherent in the cross-border regime, in-depth research was necessary prior to implementing the Model legislation in India. As a result, adopting the basis from the Model law seems to be a reasonable solution to this problem.

GUIDELINES ON CROSS BORDER INSOLVENCY PROPOSED BY THE INSOLVENCY LAW COMMITTEE:

A. **Features of the UNCITRAL (**United Nations Commission on International Trade Law) **Model Law and India's draft Guidelines –**

The four main principles governing the UNCITRAL Model Law are:

- Access
- Recognition
- Cooperation
- Coordination

1. Access

The Model Law's purpose is to grant direct access to domestic courts for foreign creditors and/or professionals, allowing them to participate in or initiate insolvency proceedings against any concerned debtor. This is made possible by the Model Law's provision of direct access to domestic courts.

2. Recognition

The Model Law makes it possible for domestic courts in any nation to recognise procedures that have taken place in other countries. It also makes it possible for domestic courts to assess the remedy that should be provided in conformity with the foreign proceedings.

3. Cooperation

In addition to this, one of the goals of the Model Law is to make it possible for insolvency professionals and courts from different jurisdictions to work together effectively, as well as to make it possible for them to coordinate their efforts so that they can more effectively manage the running of concurrent proceedings in multiple jurisdictions.

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4. Coordination

It would appear that the goal of the Model Law is to provide nations with guidance on how to shape their insolvency laws into a framework that is contemporary, standardized, and equitable so that they may more effectively manage cases of cross-border insolvency. In contrast, the Model Law acknowledges the diversity of national legal systems and places its primary emphasis not on the harmonization of national laws but on the enhancement of international collaboration and coordination. It does not seek to standardize national legal systems.

Its purpose is to give foreign experts and creditors immediate access to domestic courts, which, in turn, enables them to participate in and/or initiate domestic insolvency procedures against the relevant debtor. This access is intended to be provided as part of the initiative. Regarding recognition, the UNCITRAL Model Law provides for the recognition of foreign proceedings in domestic courts and permits the domestic courts to assess the appropriate form of relief to be awarded in accordance with the international proceedings. In addition, the UNCITRAL Model Law necessitates the establishment of effective cooperation between insolvency professionals and the courts of various nations, as well as the establishment of coordination, in order to successfully manage the efficient management of the conduct of concurrent proceedings in various jurisdictions. It would appear that the goal of the UNCITRAL Model Law is to provide governments with guidance on how to update, standardize, and make their insolvency laws more equitable so that they may more effectively deal with cases of insolvency that occur across international borders. Instead of seeking to converge on a single set of national laws, it gives due consideration to the fact that different countries have different legal systems and places primary emphasis on fostering greater collaboration and coordination across nations.

Approaches towards the Cross Border Insolvency: A global perspective

Insolvency:

The word insolvency is actually defined as a state of financial position where an individual or an entity is in such a position of not paying its loans to its creditors. When the debtor, creditor, and assets are found in the confinements of only one such jurisdiction, then that jurisdiction's law governs. However, with the rise in globalization, insolvency has become inherently more complex as different parties are often located in foreign jurisdictions governed by competing legal systems and proceedings. Cross-border insolvency is defined as a situation where a single debtor company has entered formal insolvency proceedings in more than one jurisdiction and there is, at least, potentially a conflict of laws affecting the conduct of the debtor's relations.

There are generally three major circumstances where the cross-border insolvency laws can be progressed:

i) When the dispute is between a debtor and foreign creditor,
ii) When the debtor's assets are located in another jurisdiction, or
iii) When there are multiple concurrent proceedings occurring against a debtor in different jurisdictions.

The approaches to solve the Cross border Insolvency:

There generally exists the two major and popular approaches to solve the cross border Insolvency:

- Territorialism
- **Universalism**

Under the territorial approach, generally the jurisdiction where the assets are situated is where the proceeding will take place, and the

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laws of that particular jurisdiction would apply and then govern. In other words, the proceedings would solely focus on the assets located in that jurisdiction. And almost every country throughout the history, territorialism has been the preferred approach by many countries because it promotes respect for "local interest" and "sovereignty."

So, ultimately the jurisdictions do possess the authority and have sole control over the assets, proceedings, and outcomes without interference from other countries laws.

The drawbacks of the same would be that in each and every jurisdiction there has to be a separate independent proceeding which would generally which increases the cost and unnecessarily elongates a process that could have been resolved in one court.

On the other hand there is a concept of Universalism wherein the proceeding takes place in the jurisdiction where the debtor is residing or the company is established regardless of where the creditors or assets are found. Therefore, in such a scenario there is one court and one law which would govern the whole proceeding against the debtor. In addition the judgment which is the result of the proceedings is ideally recognized and should be enforceable in the entire jurisdiction where the assets of the debtor are collectively located. This approach would actually render a faster, more cost effective and uniform process of justice to all the connected parties. Howsoever the second approach which was though rendering the justice in a more effected way there is hardly a country which would actually surrender their rights and accept to a judgment which is passed by another country which is basically not their law. Moreover it would even be acting in a way which is against their sovereignty.

Territorialism and universalism fall and act as an opposite extremes of the spectrum, which naturally led to the development of a third most centrist theory. It is actually a hybrid approach that aims to combine universalism and territorialism to reach a middle ground and balance both. Under this theory, an insolvency proceeding would occur in one jurisdiction. All parties located in different jurisdictions who may be involved in such proceedings generally would abide by the laws of the jurisdiction conducting the proceedings.

A case study on Jet Airways:

In the year 2019, the National Company Law Appellate Tribunal ("**NCLAT**") gave a ruling, consequent to which Jet Airways (India) Limited (**"Jet Airways"**) became the first Indian company to be subjected to cross-border insolvency. NCLAT's ruling set a leading precedent in the evolving insolvency law in India as it directed the conduct of a "Joint Corporate Insolvency Resolution Process" under IBC.

Facts:

Jet Airways, which started off as an air taxi operator in 1993 and became a scheduled carrier in 1995, has been under insolvency for two years after it shut operations in April 2019 under a heavy debt. It all started when the State Bank of India submitted a Section 7 case against Jet Airways; following the admission of that application, on June 20, 2019, the Corporate Insolvency Resolution Process (also known as "CIRP") of Jet Airways got underway. As a result of this, the authority in charge of adjudication was made aware of the fact that an insolvency proceeding had already been started by a Dutch court, and that a Bankruptcy Administrator had been appointed in the Netherlands to take charge of Jet Airways' assets that were located in that country. The same thing was done in response to a petition for bankruptcy that was submitted by two European creditors against Jet Airways for allegations of unpaid dues totaling roughly 280 crores of Indian rupees. The European creditors wanted to seize one of the Boeing 777

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aeroplanes that were parked at the Schiphol Airport in Amsterdam. This aircraft belonged to Jet Airways. A Company petition was filed in the National Company Law Tribunal (NCLT), Mumbai against Jet Airways (India) Limited ("Company") u/s 30(6) read with Section 31 of the Insolvency and Bankruptcy Code (IBC), 2016 for the initiation of insolvency proceedings by State Bank of India in the capacity of it being a Financial Creditor to the Company. The Insolvency Resolution Plan was approved by the Committee of Creditors as well as the NCLT, Mumbai via order dated 22nd June 2021

Resolution

The judgement handed down by the tribunal arrives exactly two years after the insolvency proceedings were initially initiated. The Jet Airways resolution plan was approved by the Mumbai bench of the National Company Law Tribunal (NCLT), and the Mumbai bench of the NCLT urged the Jalan-Kalrock consortium to get the necessary approvals and licences to relaunch the airline within the allotted time frame of ninety days. The permission was upheld despite the fact that the tribunal dismissed the arguments that were presented by attorneys for the Ministry of Civil Aviation (MoCA) and the Directorate General of Civil Aviation (DGCA). DGCA and MoCA have declared in the past that the consortium is not allowed to make historicity claims on slots that were owned by Jet prior to the company's bankruptcy. After some time, the slots were given to several other airlines. Because of this, the consortium's demand that airport slots maintain their historicity was denied. The learned senior counsel appearing for the Union of India relied upon the principle enunciated by the Honorable Apex Court in Rajendra K. Bhutta v. Maharashtra Housing and Area Development Authority &Anr.: (2020) 13 SCC 208 and submitted that the Corporate Debtor was not in possession of the slots on the date that the insolvency proceedings began. This was done with reference to Section 14(1)(d) of the Code. As a result, it has no legal standing to make any claims to the slots.

The resolution plan proposed by the Jalan-Kalrock consortium was granted approval by the committee of creditors (CoC) in October of 2020. The consortium intends to make an initial investment of 600 crore in the first two years of the carrier's operation in order to pay back creditors and acquire an 89.79 percent ownership in the company. The resolution plan also proposes selling existing non-core assets such as real estates and luxury cars by the end of the first year. It also states that it will repay to financial creditors 131 crore, 193 crore, and 259 crore at the end of the third, fourth, and fifth years, respectively, from the airline's cash flows. These amounts are in Indian rupees. Over the course of the next five years, the business plans to repay its creditors a total of 1,183 crore, which will include amounts collected from the proceeds of asset sales as well as cash flows.

As a consequence of this, the new promoters will keep the "Jet Airways" name, and they will recommence operations with around 25 aircraft, with a base in New Delhi. Shortly after that, they will begin operating international flights again. As a consequence of this, the Articles of Association (AoA) and the Memorandum of Association (MoA) will need to be revised before being submitted to the Registrar of Companies (RoC) concerned for the purpose of information and record. In order for the plan to be properly carried out, the Resolution Applicant is required to get all relevant permissions within the time period that may be stipulated, in accordance with any legislation that is now in existence. The Monitoring Committee is responsible for supervising the execution of the Resolution Plan and submitting a Status Report about the implementation of the Resolution Plan to this Authority on a periodic basis, most ideally once per quarter.

Outcome

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The Resolution Plan that was attached to the Application and was presented by a consortium consisting of Mr. Murari Lal Jalan and Mr. Florian Fritsch is officially accepted. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government, or any local authority to whom a debt in respect of the payment arising under any law for the time being in force is due, guarantors, and other stakeholders involved in the Resolution Plan. Specifically, it shall be binding on the Central Government, any State Government, or any local authority to whom a debt in respect of the payment arising under any law for the time being in force is due Because of this, the strategy to resolve the conflict was accepted and authorised.

Conclusion and Suggestions:

In light of the discussion that was just presented, the authors are of the opinion that it would be essential to adopt the provisions of the UNCITRAL Model Law in order to significantly cut down on the number of instances in which the insolvency laws of two or more different jurisdictions are in direct opposition to one another. The Model Law has three fundamental and inalienable elements that are designed to level the playing field for domestic and international creditors and debtors.

It is important to note that in this particular instance, the Dutch creditors discovered that it was difficult and time consuming to recover their claims from the bankrupt airline because India is not a party to the UNCITRAL (United Nations Commission on International Trade Law) Model Law. This is something that should be taken into consideration. In this regard, the authors are of the opinion that incorporating the above three key features of' recognition,' 'access,' and 'cooperation' from the Model Law within the Code would go a long way in assuaging the concerns of foreign creditors and would ensure that more multinational corporations engage in business and partnership with their Indian counterparts. [Citation needed] In addition to this, it would ensure that the interests of creditors and debtors on both the domestic and international levels are fulfilled. In addition, the Insolvency Law Committee (ILC) proposed in its report for 2018 that the provisions of the Model Law should be incorporated within the scope of the Code. This recommendation was made by the ILC.

In light of the discussion that has been presented thus far, it is of the utmost importance that certain provisions of the Model Law related to insolvency laws be incorporated within the ambit of Code in order to deal with situations in which the assets of a Company or Corporation are located in multiple locations. There is a great deal of international business and trade, which inevitably results in a number of disagreements and conflicts. In this sense, the UNCITRAL Model Law provides what is likely the most complete set of principles for the consensual resolution of such conflicts, which ultimately benefits both parties.

However, under this approach, the "judicial sovereignty" is still valued at the same rate and the jurisdictions that may have to implement the judgment of the proceeding have the ability to take the cognizance of the "local interests" and, if the proceeding impedes with the such interests, the jurisdiction could even be refrained from recognizing the proceeding any further. Many jurisdictions have adopted this alternative approach, which provides a more equitable and fair process. Nongovernmental agencies have developed legal frameworks based on the modified universalism theory that countries could adopt to foster fairness at the international level. As a result, the United Nations Commission on International Trade Law (UNCITRAL) developed a Model Law on Cross-Border Insolvency.

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